



TYRONE C. FAHNER  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

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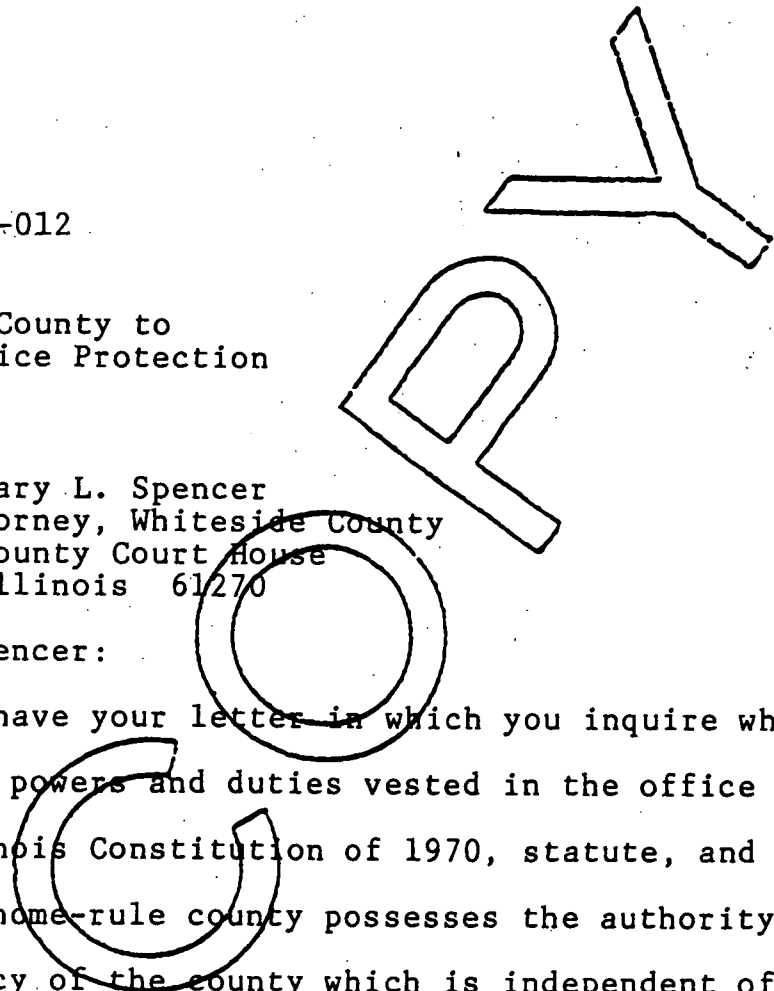
FILE NO. 82-012

COUNTIES:  
Power of a County to  
Provide Police Protection

Honorable Gary L. Spencer  
State's Attorney, Whiteside County  
Whiteside County Court House  
Morrison, Illinois 61270

Dear Mr. Spencer:

I have your letter in which you inquire whether, in view of the powers and duties vested in the office of sheriff by the Illinois Constitution of 1970, statute, and the common law, a non-home-rule county possesses the authority to create a police agency of the county which is independent of the sheriff. For the reasons hereinafter stated, it is my opinion that a non-home-rule county possesses no power to create such an agency.



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The office of sheriff is created by the Constitution. (Ill. Const. 1970, art. VII, § 4(c).) The sheriff is the principal executive officer of his county, and may exercise the powers of a sheriff at common law, except as such common law powers have been altered by the Constitution, statute, or ordinance. (Ill. Const. 1970, art. VII, § 4(d); People v. Nellis (1911), 249 Ill. 12, 23; Dahnke v. People (1895), 57 Ill. App. 619, 627, aff'd 168 Ill. 102 (1897).) Statutory provisions pertaining to the powers and duties of the office of sheriff are largely declaratory of common law. (People v. Cermak (1925), 239 Ill. App. 195, 199.) A county may not, by ordinance, alter duties of a sheriff which are imposed by statute. (Ill. Rev. Stat. 1979, ch. 34, par. 429.18.)

By statute, the sheriff is conservator of the peace in his county, with the duty to keep the peace and the power to pursue, apprehend, and arrest offenders. (Ill. Rev. Stat. 1979, ch. 125, pars. 17, 81, 82.) The sheriff is required to serve, execute, and return all warrants, process, orders and judgments within his county, which are legally directed or delivered to him. (Ill. Rev. Stat. 1979, ch. 125, par. 15.) The sheriff is required, in person or by deputy, to attend upon all courts held in his or her county. (Ill. Rev. Stat. 1979, ch. 125, par. 19, as amended by P.A. 82-472, effective January 1, 1982.) The sheriff is the warden of the county

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jail, with the duty to receive and confine all persons committed to his custody by any competent authority. (Ill. Rev. Stat. 1979, ch. 75, pars. 2, 4.) To assist in the performance of the duties of his office, the sheriff is authorized to appoint one or more deputies, not exceeding the number allowed by the county board of his county. (Ill. Rev. Stat. 1979, ch. 125, par. 7.) Duly appointed deputy sheriffs may perform any and all of the duties of the sheriff, in the name of the sheriff, and the acts of his deputies are held to be the acts of the sheriff. (Ill. Rev. Stat. 1979, ch. 125, par. 12.)

Non-home rule counties, being mere creatures of the State, can exercise only those powers expressly delegated by the constitution or statute, or those which arise by necessary implication from expressly-granted powers. (Ill. Const. 1970, art. VII, § 7; Heidenreich v. Ronske (1962), 26 Ill. 2d 360, 362; 1973 Ill. Att'y Gen. Op. 18, 19.) Counties are granted no specific statutory power to create or form police agencies separate from the office of sheriff, nor is this power necessarily implied from the power to furnish police services to the county. (See, Connelly v. County of Clark (1973), 16 Ill. App. 3d 947, 949.) Rather, counties have the general statutory power to provide police protection through the office of the sheriff. 1980 Ill. Att'y Gen. Op. 60, 62.

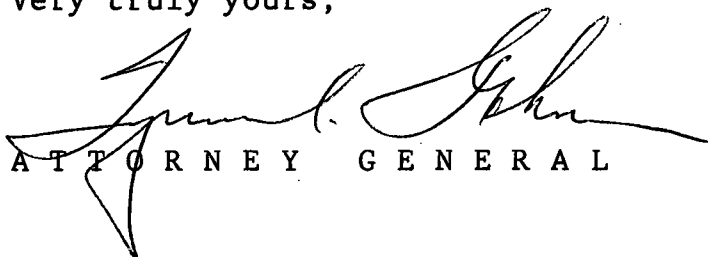
Furthermore, it is well established that when the constitution or statutes of the State create an office,

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prescribe the duties of its incumbent, and provide for his compensation and expenses, no person or board has the authority to expend, or to authorize the expenditure of other public funds for the purpose of performing the duties which are imposed upon such officer. (Ashton v. County of Cook (1943), 384 Ill. 287, 300; Stevens v. Henry County (1905), 218 Ill. 468, 478-79; Abbott v. County of Adams (1919), 214 Ill. App. 201, 206.) The creation and operation of an independent county police agency to provide police protection to the county would obviously require the expenditure of public funds to perform duties already imposed upon the sheriff. Thus, the creation of such an agency would exceed the authority of the county board to expend public funds. Instead, if additional manpower is necessary to provide adequate police protection within a county, sufficient funds should be appropriated to the sheriff to augment the number of his deputies, to enable him to perform the duties and functions ascribed to his office. See, People v. Cermak (1925), 239 Ill. App. 195, 201.

For the reasons hereinabove stated, it is my opinion that a non-home-rule county is without power to create an independent agency or other police body to perform all or part of the duties and functions imposed upon the office of sheriff.

Very truly yours,

  
ATTORNEY GENERAL