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SPRINGFIELD

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FILE NO. S-328

COUNTY OFFICERS:
County Merit Commission
for Deputy Sheriffs

Honorable Louis R. Bertani
State's Attorney of Will County
Courthouse
Joliet, Illinois 60431

Dear Mr. Bertani:

I acknowledge receipt of your letter which poses several questions as follows:

The County Board of Supervisors of Will County created a Merit Commission several years ago pursuant to the provisions of Illinois Revised Statutes, Chapter 34, Paragraph 859.1, a copy of which said statute is attached hereto. In connection with the operations of the Commission, a number of questions have arisen concerning the limits of Commission power with respect to the Commission itself. We can find no applicable Illinois law and we are frankly confused by the divergence of opinion

and operations of other Merit Commissions in other counties. Accordingly, we seek an opinion with respect to the following questions:

1. Can a Merit Commission independently initiate complaints against any Sheriff's deputy?
2. Would an auxiliary policeman operating under the direction of the Sheriff on a part-time basis and provided for by action of the County Board be subject to the jurisdiction of the Merit Commission?
3. Can a Merit Commission provide for required deputy schooling after hiring the aforesaid deputy?"

The first paragraph of chapter 34, paragraph 859.1,

Illinois Revised Statutes 1969, reads, in pertinent part:

"The County Board in any county having a population of less than 1,000,000 may, by ordinance, provide for all deputies other than special deputies, employed on a full time basis in the office of Sheriff to be appointed, promoted, disciplined and discharged pursuant to recognized merit principles of public employment and for such employees to be compensated according to a standard pay plan approved by the board.
* * * " (Emphasis added)

Your three questions involve not only the power granted by statute to the Merit Commission but how those powers may be limited by the rights of the individual who is being "disciplined and discharged pursuant to recognized merit principles of public employment."

Your first question is whether the Merit Commission can independently initiate complaints against a deputy sheriff.

The statute provides the Commission shall "promulgate rules, regulations and procedures for the operation of the merit system." There was no grant of power to initiate complaints. It is a fundamental rule of statutory construction that listing several powers means other unlisted powers are excluded. (See People v. Wiersema State Bank, 361 Ill. 85, and In re Estate of Tilliski, 390 Ill. 273 at 283).

The rights of the individual brought before the Commission must also be considered. In Gigger v. Board of Fire and Police Commissioners, 23 Ill. App. 2d 433, at 437-439, the court said:

"An individual's rights before an administrative agency have been spelled out by the courts in a number of cases. An administrative agency, the creature of statute, must pursue the procedure and rules laid down upon it by the legislature to give validity to its action. Chicago Rys. Co. v. Commerce Commission ex rel. Chicago Motor Coach Co., 336 Ill. 51. The statute (Chapter 24, Section 14-11) provides that 'No Officer . . . shall be removed or discharged except for cause, upon written charges, and after an opportunity to be heard in his own defense.' Formality in proceedings before an administrative agency is not exacted by the courts

(Palmyra Tel. Co. v. Modesto Tel. Co., 336 Ill. 158; Sloan v. Hawkins, 337 Ill. App. 345, 352, 86 N.E. 2d 117); and, charges need not be drawn with the same nice refinements and subtleties as pleadings in a court of record. Schyman v. Department of Registration and Education of Illinois, 9 Ill. App. 2d 504, 510, 133 N.E. 2d 551. However, a hearing before an administrative agency should not be a partisan hearing with the agency on one side arrayed against the individual on the other. Instead, it should be an investigation instituted for the purpose of ascertaining and making findings of fact. Fleming v. Illinois Commerce Commission, 388 Ill. 138, 147, 57 N.E. 2d 384. Included should be a fair consideration of the individual's objections (Brotherhood of Railroad Trainmen v. Elgin, J. & E. Ry. Co., 382 Ill. 55, 69, 46 N.E. 2d 932) and, an opportunity to be heard should not be arbitrarily limited in scope. The hearing should adhere reasonably to the procedure ordinarily followed in controverted matters. People v. Hurley, 336 Ill. App. 205, 218, 83 N.E. 2d 512.

Basic American justice presupposes a fair and impartial hearing before a fair and impartial tribunal. 'It is well settled in Illinois that an administrative tribunal cannot rely upon its own information for support of its findings.' Smith v. Department of Registration, 412 Ill. 332, 347, 106 N.E. 2d 772, 730. ' . . . an order must be based upon evidence produced in the hearing at which an opportunity is given to all interested parties to offer evidence and cross-examine witnesses.' Curtis v. State Police Merit Board, 349 Ill. App. 448, 457, Ill. N.E. 2d 159, 163. 'A statute which compels a litigant to submit his controversy to a tribunal of which his adversary is a member

makes his antagonist his judge and does not afford due process of law.' Such a statute will be stricken by the courts. Commissioners of Drain. Dist. No. 1 v. Smith, 223 (Sic. should read 233) Ill. 417, 425. Surely what cannot be done by statutory means, cannot be done otherwise.

It is imperative that the record of an administrative hearing show that an impartial inquiry into the facts was conducted. It should never appear, as it does in this case, that the procedure was aimed primarily at proving the guilt of the plaintiff. The hearing in this case was more of a prosecution than an inquiry, more of an effort to prove the charges rather than to investigate the facts."

As a categorical proposition or judgment I do not say that the County Merit Commission cannot independently initiate complaints against a sheriff's deputy; however, in the interest of fairness and the duty of zealouslyness on the part of the Commission members, it would appear to be a recognized merit principle to have charges instituted against a deputy by the sheriff of the county, thereby avoiding the problems mentioned by the Court in Gigger.

The answer to your second question is in the negative. The Act applies only to deputies "employed on a full time basis," and not to auxiliary policemen who work on a part time basis.

With respect to your third question, it is my opinion that the Merit Commission may institute training requirements for deputies. So long as rules and regulations with respect to schooling are reasonable, there is no inhibition against such a practice. It is the general rule that an express grant of power or duty by the legislature to an administrative official - in this case a Commission - to do a particular thing includes the express grant of power to do all that is reasonably necessary to execute the power or duty. (Owens v. Green, 400 Ill. 280). In the case of Zinzer v. Board of Fire and Police Commissioners, 28 Ill. App. 2d 435 at 439-440, the court said:

"Those who are responsible for furnishing a public service must have the necessary power and authority to assure it. An efficient public service requires competently trained personnel as much as it needs adequate equipment. Improvement, review, examination and revision of personnel are as important as refitting of equipment because methods and means are constantly changing. So, those in authority must have the power to insist upon an adequate training program for their personnel, just as they have the duty to have adequate equipment at the ready. Thus, the head of a city police or fire department must have such discretion to carry out programs of training and retraining as are necessary to

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maintain a high quality of public service. Though this is not an unlimited discretion, we are disinclined to disturb this type of order unless it clearly appears to have been arbitrarily exercised. The record here fails to convince us that the Chief acted arbitrarily when he requested the firemen to attend this training course. Consequently, their refusal to obey was insubordination sufficient to justify the suspension ordered."

The answer to your third question is therefore in the affirmative.

Very truly yours,

A T T O R N E Y G E N E R A L