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County Budgets
30 M.R.S.A. 951, 952, 953
County Sheriff's Deputies

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February 4, 1977

Honorable Thomas M. Mangan
Senate Chambers
State House
Augusta, Maine 04333

Dear Senator Mangan:

This letter responds to your oral request for an opinion from this office on four questions concerning county budgets. Your questions concern budget items for the sheriff's department, and it is our understanding that they are being asked in conjunction with legislative review of the proposed Androscoggin County Budget. Your questions and our answers and rationale are set forth below.

Question 1: "Title 30 M.R.S.A. § 951, last sentence, indicates that 15 uniforms are to be provided for the sheriff and all full-time deputies in Androscoggin County. In light of this provision, is it permissible for the County budget to include funds for more than 15 uniforms?"

The answer to this question is affirmative.

Title 30 M.R.S.A. § 951 reads, in pertinent part:

"[The sheriff] shall require any of said deputies, while engaged in the enforcement of Title 29, section 2121, to wear a uniform sufficient to identify themselves as officers of the law. Upon approval of the county commissioners, uniforms for full-time deputies required by this section shall be furnished by the county. The number of uniforms to be furnished the sheriff and all full-time deputies in each county shall be as follows: Androscoggin, 15;" (emphasis provided)

Title 29 M.R.S.A. § 2121, cited in the segment of section 951 quoted above, concerns stopping and examining motor vehicles, licenses, registration, and permits. Therefore, it is clear the Legislature intended that those deputy sheriffs who are engaged in a very visible law enforcement activity should wear uniforms sufficient to identify themselves to the public, that the county should furnish the uniforms required for this purpose, and that the number of uniforms for this purpose was set at 15 for Androscoggin County. It follows that this number of uniforms has been set as a minimum number required for the purposes stated in the section, but would not prevent the county commissioners from including additional funds for other uniforms in their budget estimates. Additional funds could be included for uniforms for deputies performing other duties, or in contemplation of legislative changes in the uniform requirements.

The foregoing analysis is supported by the statutory history of § 591. The initial predecessor of this section required uniforms for the same purpose, but set no limit and specified that the uniforms would be ". . . provided without expense to the county." P.L. 1937, chapter 220. Presumably, the cost of the uniforms was borne by the deputies. In 1951 the section was amended to require each county to provide up to 2 uniforms for this purpose, upon approval of the county commissioners. P.L. 1951, chapter 123. In 1959 the number of uniforms for any county for this purpose was increased to 4. P.L. 1959, chapter 271. In 1965 the section was amended by adding the specification that uniforms were for "full-time" deputies and by setting specific numbers of uniforms for each county in place of the previous provision for all counties. During debate on this bill (H.P. 261; L.D. 330), there was considerable comment and a considerable expressed difference of opinion as to the effect of the legislation. Legislative Record, House, April 14, 1965, and May 17, 1965, pages 1307, 1308 and 2193. However, the position accepted by the Legislature, in light of passage of the bill as amended, appears to have been that purchase of additional uniforms would not be prohibited. The amendment to section 591 in 1971 merely increased the number of uniforms required in each county. P.L. 1971, chapter 213.

It should be parenthetically noted that the use of the words "all full-time deputies" in the last sentence would not change our opinion. It is possible that more than one uniform could be provided to a deputy if the number of deputies was less than the number of uniforms set in the statute. Alternatively, there is no requirement that all deputies be in uniform. The uniform requirement applies only to activities in enforcement of 29 M.R.S.A. § 2121, though there may be good reasons why deputies performing other activities should also be uniformed.

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Question 2: "In light of the requirement of 30 M.R.S.A. § 953 that special deputy sheriffs receive reasonable compensation and expenses incurred in the performance of duties, must there be a line item allocation in the county budget for this purpose?"

The answer to this question would depend upon the expected utilization of these special deputies and the manner in which the county commissioners proposed to pay their compensation.

The special deputies to which the question refers are those appointed pursuant to the authority given in 30 M.R.S.A. § 952. That section contemplates the use of special deputies only for specified emergency situations, as will be explained more fully in answer to question 4 below. If the county commissioners have some reason for expecting that such emergencies may occur during the forthcoming fiscal period, they may wish to include a line item in their budget estimates for the compensation and expenses required by § 953. Alternatively, since the special deputies would be used for "emergency" purposes, the county commissioners could also decide to pay the compensation and expenses out of the county contingent account, as authorized by 30 M.R.S.A. § 252. However, there is no requirement that the county commissioners include a line item for this purpose in their budget estimates.

Question 3: "Who decides the 'reasonable compensation' for special deputies?"

The answer to this question is that the determination is made by the county commissioners subject to statutory limitation.

Compensation of special deputy sheriffs appointed under § 952 is governed by § 953, which reads, in pertinent part:

". . . the county commissioners shall fix and order paid from the treasury of the county to such deputies a reasonable compensation, not exceeding the per diem compensation to deputy sheriffs for attending court, together with actual and necessary expenses incurred in the performance of duty."

The clear language of the statute provides that it is the county commissioners who make the determination of the amount of compensation. The limitation on this determination is the per diem compensation to deputies for attending court, which is presently \$20 a day for actual attendance upon a session of the Supreme Judicial Court or the Superior Court. 30 M.R.S.A. § 1051,15.

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Question 4: "Can special deputy sheriffs be used on a routine basis or only under special circumstances?"

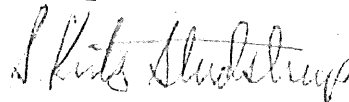
The answer to this question is that special deputy sheriffs appointed pursuant to § 952 may be used only for the special circumstances cited in that section.

The initial predecessor of § 952 was enacted in 1917 as one of several bills responding to the State's war effort. The section originally read, in part:

"Whenever a state of war shall exist or be imminent between the United States and any foreign country, sheriffs may appoint . . . special deputies"

In 1959 the section was repealed and replaced to read in its present form (P.L. 1959, c. 179), with the exception of references in the second sentence of the section which were changed by P.L. 1973, chapter 537, § 35 due to executive reorganization. Sheriffs may now appoint and train special deputies at any time, rather than being limited to such appointments during time of war or during a state of emergency. However, read as a whole, the section still reflects a legislative intent that such special deputies should be used only under special circumstances. It is provided that the sheriff or his chief deputy shall order special deputies to active duty ". . . when a state of war exists, or when the Governor shall proclaim an emergency under Title 37-A, Chapter 3, or when the State Director of the Bureau of Civil Defense declares that a state of emergency is imminent." In addition, the powers of special deputies are limited to ". . . the duration of the emergency that exists or which has been proclaimed or during the time for which they have been ordered to duty." Furthermore, the special deputies are personally responsible for ". . . any unreasonable, improper or illegal acts committed by them in the performance of their duties," and would not benefit from any immunities which might apply to regular deputies. These various provisions indicate that special deputy sheriffs should not be called to active duty for routine activities. Their use should be restricted to emergency situations as specified in § 952.

Sincerely,



S. KIRK STUDSTRUP
Assistant Attorney General