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*Sheriff's Appointment of Deputies
County Rep. by Sheriff
3 MRS. 951*

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August 16, 1977

Honorable Donald H. Burns
R.F.D. #1, Box 485
North Anson, Maine 04958

Dear Representative Burns:

We are responding to your oral request for an opinion of this office on several questions which you have posed relative to L.D. 224, "AN ACT to Clarify and Reform the Laws Relating to County Law Enforcement." This L.D. has been enacted as Chapter 431 of the Public Laws of 1977, and will be effective as of October 24, 1977. We will set forth your questions and our answers separately below.

Your first question is a request for clarification of the appointment provision for deputy sheriffs set forth in the new 30 M.R.S.A. § 951, ¶ 2. That paragraph reads, in pertinent part,

"Deputies shall be originally appointed for a probationary period of not more than 6 months and thereafter may be appointed or reappointed for a term of 3 years. The sheriff may dismiss, suspend or otherwise discipline a deputy during the term of his appointment only for cause."

We interpret this provision to mean that once the probationary period of 6 months or less has been served, the sheriff must decide whether the deputy will be appointed for a regular term of three years. If the sheriff decides in the affirmative, the appointment must be approved by either the county commissioners or the county personnel board if one has been established. At the end of the first three-year term and any succeeding three-year term a similar decision would be made as to reappointment of the deputy. Dismissal, suspension or discipline of a deputy at any time other than the end of the three-year term may be imposed only "for cause." This interpretation is supported by legislative debate on L.D. 224. Legislative Record, Senate, May 31, 1977, p. 1345.

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Your second question is how the provisions of 30 M.R.S.A. § 951, ¶2 will apply to present deputy sheriffs at the time that the provisions become effective this October.

It is our opinion that prior to the effective date, October 24, 1977, present deputy sheriffs should be considered for appointment to an initial three-year term. Once the statute is effective, sheriffs should use the procedures set forth in Chapter 431 to make the formal appointments within a reasonable time. Any present deputies who are not appointed to a three-year term will have to be terminated. As these will not be original appointments, we do not feel that a probationary period would be necessary under the statute. Since deputy sheriffs presently serve at the pleasure of the sheriffs (30 M.R.S.A. § 958), such appointments will not detract from any tenure in office. In addition, such appointments will not detract from any tenure in office. In addition, such appointments will promote the legislative intent of L.D. 224 that there be a continuity of qualified, experienced deputies in the sheriff's office.


Your third question concerns the effect, if any, which Chapter 431 provisions will have upon deputy sheriffs who are presently serving under and are funded by contracts made pursuant to the Comprehensive Education and Training Act (CETA).

It is our understanding that the contract between the CETA administrator and the sheriff's departments are one year contracts and provide no guarantee that the trainees will be further employed in the sheriff's office after the termination of the contract period. Since these deputies are employed under existing contracts and since Chapter 431 will not be effective until October 24, 1977, it is our opinion that the provisions of that Chapter will not effect the existing contractual relationships. Nor will the effect of Chapter 431 grant any greater rights of tenure in office to those deputies who are employed pursuant to the CETA contract. However, it should be noted that the legal status of deputies to be employed under a CETA contract which will commence subsequent to the effective date of Chapter 431 is unclear. After that date, there will be no authorization for the sheriff to appoint deputies under circumstances other than those set forth in 30 M.R.S.A. § 951 for "full-time", "part-time," or "special" deputies, as those terms are defined in 30 M.R.S.A. § 853. Deputies who are appointed on a full-time basis but under a contract which lasts for only a one-year period, do not appear to come within the purview of these new statutory provisions.

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If you have any further questions on this matter, please
let us know.

Sincerely,


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Attorney General

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