

MAINE STATE LEGISLATURE

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RICHARD S. COHEN
ATTORNEY GENERAL



79-185
STEPHEN L. DIAMOND
JOHN S. GLEASON
JOHN M. R. PATERSON
ROBERT J. STOLT
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

October 2, 1979

Charles Sharpe, Sheriff
Cumberland County Sheriff's Office
122 Federal Street
P. O. Box 308
Portland, Maine 04112

Re: Chief Deputy

Dear Sheriff Sharpe:

We would like to respond to your request for an opinion regarding the time which you have to appoint a Chief Deputy and your oral request on the issue of whether you may appoint an Acting Chief Deputy. The Attorney General has referred this request to me for answer.

As you know, the statute in question, 30 M.R.S.A. §954, requires that the sheriff appoint a Chief Deputy "as soon as may be after [the sheriff] takes office." 30 M.R.S.A. § 954. Hence, the statute speaks only of when the appointment should be made after the sheriff takes office and does not provide guidance concerning whether the appointment is to be made when a vacancy occurs otherwise than by the expiration of the sheriff's term of office. We may safely assume, however, that the intent of the Legislature in enacting this statute was to provide that there would not be a long period of time during which there would be no Chief Deputy. The need to avoid such a gap is created by the effect of 30 M.R.S.A. § 956, which provides that the Chief Deputy shall act as sheriff in the event of vacancy in the office of sheriff. The purpose of this statute is clearly to prevent a situation in which no one is authorized to perform the duties of the sheriff. See generally 80 C.J.S. Sheriffs and Constables § 21. It may thus be concluded that the words "as soon as may be" in § 954 should be applied to the situation in which there is a vacancy in the office of Chief Deputy, as well as to the situation in which a new sheriff has not appointed a Chief Deputy.

It then becomes necessary to determine the meaning of "as soon as may be." There are no Maine cases dealing with this specific statute, nor with the words "as soon as may be" in

general. In fact, there are very few cases defining the legal meaning of such language, and most of the cases construe contracts containing that phrase. Almost without exception, these cases have held that the phrase "as soon as may be" means within a reasonable time. E.g., George A. Fuller Co. v. Jersey City, 29 A.2d 720 (N.J. St. Bd. of Tax Appls. 1943). Cases have also attempted to import the element of promptness into this definition but have qualified it with the concept of reasonableness. Id. Thus, under § 954, the office of Chief Deputy must be filled within a prompt but reasonable period of time.

The second, and more important, aspect of the issue which you have raised is whether the sheriff has the power to appoint a given person as Acting Chief Deputy. Although this question is not free from doubt, we believe that the answer is in the affirmative. This opinion rests on two basic principles: first, that the Chief Deputy serves at the pleasure of the sheriff, 30 M.R.S.A. § 954, and, second, that the sheriff has the general authority, either by statute or common law, to appoint, assign duties to, and generally supervise his deputies.

It appears to be a general principle that, under the common law, the sheriff had broad power to appoint, employ, fix salaries of and supervise deputies. E.g., Warren v. Walton, 202 S.E.2d 405 (Ga. 1933). This broad supervisory authority is based, in part, on the fact that the sheriff was himself responsible for any neglect or default on the part of his deputies while they were in the performance of their official duties. Kittredge v. Frothingham, 114 Me. 537 (1916). Any statutes altering or affecting these common law powers are to be strictly construed as they are in derogation of the common law. Warren v. Walton, supra.

In addition, it is provided by statute that the Chief Deputy is to serve at the pleasure of the sheriff. 30 M.R.S.A. § 954. This has been held to mean that the appointment and the tenure of the Chief Deputy are completely discretionary with the sheriff. 80 C.J.S. Sheriffs and Constables § 22.

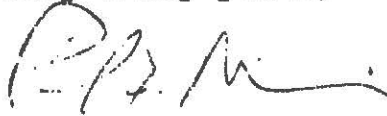
Applying these principles to the question at issue, we reach the conclusion that the sheriff has the power to appoint an Acting Chief Deputy. While the Maine statutes do address the general area of the power of the sheriff to appoint deputies, see 30 M.R.S.A. § 951 et seq., they appear to be silent, except in a very general sense, on the supervisory powers of the sheriff. It may thus be concluded that, except where specifically abrogated, the broad common law authority of the sheriff to assign duties to and supervise his deputies has not been disturbed by the Legislature; in the alternative, such power might be implied

generally from the silence of the statutes. In either event, the powers of the sheriff would appear to be adequately preserved to allow him to appoint an Acting Chief Deputy, in the absence of a statute specifically prohibiting such an appointment.

In conclusion, it would appear that a Maine sheriff has a right to appoint an Acting Chief Deputy, the only limitation being that a permanent Chief Deputy be appointed with reasonable promptness.

I hope this information is useful to you. If you have any further questions, please feel free to contact this office.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'P.F. Macri', written in a cursive style.

PAUL F. MACRI
Assistant Attorney General

PFM:jg