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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

October 30, 1980

Honorable G. Arthur Brennan
District Attorney - Prosecutorial
District 1
York County Courthouse
Alfred, Maine 04002

Dear District Attorney Brennan:

This will respond to your letter of September 9, 1980 in which you seek our advice concerning the following question:

"Whether a county sheriff's refusal to re-appoint a deputy sheriff to a new three-year term must be based upon cause and be subject to review by the county commissioners or the county personnel board?"

For the reasons discussed below, it is our opinion that a sheriff's decision not to re-appoint a deputy to a new three-year term of office need not be based upon "cause" and is not subject to review by the county commissioners or the county personnel board.

Prior to 1977 deputy sheriffs were appointed by the county sheriff and served at the latter's pleasure. 30 M.R.S.A. §958 (1976-1977 Supp.). By virtue of Chapter 431, §4 of the Public Laws of 1977 (effective October 24, 1977), the Legislature substantially altered the method by which deputy sheriffs are to be appointed and the term of office for which they are to serve. Chapter 431, §4 repealed and replaced 30 M.R.S.A. §958 and transferred the substantive content of that statute which dealt with the appointment of deputy sheriffs to 30 M.R.S.A. §951.¹ Section 951 provides that deputy sheriffs are to be

1. The present provisions of 30 M.R.S.A. §958 (1980-1981 Supp.) deal exclusively with the compensation of full-time, part-time and special deputy sheriffs.

appointed by the sheriff with the approval of the county commissioners or the county personnel board, if such a board has been established in a particular county.² The Legislature mandated that the appointment of a deputy sheriff is to be made "without regard to any political affiliation and solely on the basis of professional qualifications relating to law enforcement duties or potential for acquiring those qualifications." 30 M.R.S.A. §951, 1st ¶ (1980-1981 Supp.).

With respect to the term of office of a deputy sheriff, the second paragraph of 30 M.R.S.A. §951 provides in pertinent part, that "[d]eputies 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." During the term of his appointment, a deputy sheriff may be dismissed, suspended or otherwise disciplined by the sheriff "only for cause."³ 30 M.R.S.A. §951, 2d ¶ (1980-1981 Supp.). At the request of a deputy who has been dismissed, suspended or otherwise disciplined by the sheriff, the county commissioners, or the county personnel board, are required to "investigate the circumstances and fairness of the action, and, if it finds the charges unwarranted, shall order the reinstatement of the deputy to his former position with no loss of pay, rights or benefits resulting from the dismissal, suspension or disciplinary action." 30 M.R.S.A. §951, 2d ¶ (1980-1981 Supp.). Finally, 30 M.R.S.A. §951 contains a definition of "cause" for the dismissal, suspension or disciplinary action of a deputy. It provides:

"Cause for dismissal, suspension or disciplinary action shall be a just, reasonable, appropriate and substantial reason for the action taken that relates to or affects the ability, performance of duties, authority or actions of the deputy or to the public's rights or interest."

In responding to your inquiry, our task is to ascertain and give effect to the Legislature's intent. See, e.g., Concord General Mutual Ins. Co. v. Patrons-Oxford Mutual Ins. Co., Me., 411 A.2d 1017, 1020 (1980); Paradis v. Webber Hospital, Me., 409 A.2d 672, 675 (1979). It is a cardinal principle of statutory construction that the language of a law is to be given its plain meaning "unless the act discloses a legislative intent otherwise."

2. The establishment, membership and the powers and duties of a county personnel board are governed by 30 M.R.S.A. §§1131-1134 (1978) as enacted by P.L. 1977, c.431, §16.

3. During the Second Regular Session of the 108th Legislature, sheriffs were given the authority, subject to the approval of the county commissioners or the county personnel board, to lay off or dismiss deputies in order "to meet the requirements of budget reductions or governmental reorganizations." 30 M.R.S.A. §951, 2d ¶ (1980-1981 Supp.) as amended by P.L. 1977, c.650, §4.

Vance v. Speakman, Me., 409 A.2d 1307, 1310 (1979); Hurricane Island Outward Bound v. Town of Vinalhaven, Me., 372 A.2d 1043, 1046 (1977). See also 1 M.R.S.A. §72 (3) (1979). Moreover, when construing a piece of legislation the courts will attempt to interpret it so as to further the purposes which the Legislature sought to accomplish. See e.g., State v. Heald, Me., 382 A.2d 290, 294 (1978); Waddell v. Briggs, Me., 381 A.2d 1132, 1135 (1978). In this connection, it is often helpful to examine the legislative history of the law in question. See, e.g., Schwanda v. Bonney, Me., ___ A.2d ___, Slip op. at 5 (Supreme Judicial Court, Opinion issued August 7, 1980); State v. Bellino, Me., 390 A.2d 1014, 1021 (1978); Finks v. Maine State Highway Comm'n Me., 328 A.2d 791, 797 (1974). Finally, we would point out that, ordinarily, the word "may", when used in a statutory enactment, is deemed to be permissive and not mandatory. See Schwanda v. Bonney, Me., ___ A.2d ___, slip op. at 9-10 (1980).

The plain language of 30 M.R.S.A. §951, 2d ¶ (1980-1981 Supp.) persuades us that the Legislature did not intend that a sheriff's decision not to re-appoint a deputy at the expiration of the latter's three-year appointment was to be based on "cause" as statutorily defined. Section 951 clearly provides that a sheriff may appoint full-time or part-time deputies, and that such deputies are to be originally appointed for a probationary period of not more than six months. Once a deputy has completed his original probationary appointment, he "may be appointed or reappointed for a term of 3 years." 30 M.R.S.A. §951, 2d ¶ (1980-1981 Supp.) (emphasis added). In our view, section 951 unambiguously provides that the decision not to appoint or reappoint a deputy sheriff for a three-year term is a discretionary one which is to be exercised solely by the county sheriff.⁴ The requirement of demonstrating cause applies only where a sheriff attempts to dismiss, suspend or otherwise discipline a deputy during the latter's term of appointment. Had the Legislature intended the requirement of showing cause to apply to a sheriff's decision not to appoint or reappoint a deputy in the first instance, it could easily have said so with the use of appropriate statutory language. The Legislature's failure to do so convinces us that it had no intention of imposing the "cause" requirement on a sheriff's discretionary decision not to appoint or reappoint a deputy to a three year term.

Our assessment of the plain language of 30 M.R.S.A. §951 (1980-1981 Supp.) is confirmed by the legislative history of that statute. The present version of section 951, as enacted by P.L. 1977, c.431, §4, originated as L.D. 224 (H.P. 214) being "An Act to Clarify and Reform the Laws Relating to County Law Enforcement." This bill was one of the products of the Study Report prepared by the Joint Select Committee on County Government. See Final Report of the Joint Select Committee on County Government: Study on County Government (H.P. 1670). The "Statement of Fact" accompanying L.D. 224 stated that the bill's purpose

4. Of course, as we have previously observed, once the sheriff exercises his discretion to appoint or reappoint a deputy, his decision is subject to the approval of the county commissioners or the county personnel board. See 30 M.R.S.A. §951, 1st ¶ (1980-1981 Supp.).

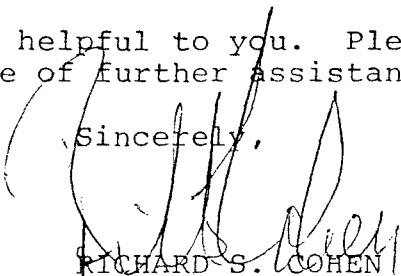
was to implement the recommendations of the Joint Select Committee, one of which was to increase the professionalism of deputy sheriffs by establishing "a simple modified civil service approach to hiring and firing." In its Study Report, the Joint Select Committee candidly stated that one of its goals was to reduce the amount of political patronage involved in the hiring and firing of deputy sheriffs. See Final Report, supra at 25-26. In particular, the Joint Select Committee was highly critical of the practice whereby deputies could be discharged whenever a new sheriff was elected to office. *Id.* As stated by Senator Jackson of Cumberland, who served as the Senate Chairman of the Joint Select Committee, one of the principal purposes of section 951 was to protect deputies from being "removed at the whim of an election." II Leg. Rec. 1287 (Senate, May 26, 1977).⁵ The legislative history of L.D. 224 reveals that the purpose of section 951's requirement that a deputy sheriff's appointment last for three years was to provide him with some measure of job security during the term of his employment and to protect him from being terminated merely because a new sheriff had been elected. Moreover, the Legislature imposed upon the sheriff the obligation of demonstrating "a just, reasonable, appropriate and substantial reason" (i.e. cause) for dismissing, suspending or taking other disciplinary action against a deputy sheriff during the term of his appointment. Nothing in either the Final Report of the Joint Select Committee on County Government or the legislative debate surrounding the enactment of L.D. 224 suggests that the Legislature ever intended to require a sheriff to demonstrate "cause" to justify his decision not to appoint a deputy sheriff to a three-year term or not to reappoint him to a new three-year term. Rather, the legislative history of 30 M.R.S.A. §951, as well as its plain language, indicates that the "cause" requirement is not applicable to such decisions by the county sheriff. To conclude otherwise would render meaningless the statutory mandate that a deputy be appointed or reappointed to a three-year term of office since it would make a deputy's appointment or reappointment automatic in the absence of a showing of "cause." In other words, to impose the "cause" requirement on a sheriff's decision not to appoint or reappoint a deputy would, as

5. It should be observed that both the Joint Select Committee and the Legislature were keenly aware of the United States Supreme Court's decision in Elrod v. Burns, 427 U.S. 347 (1976) which held that deputy sheriffs could not be discharged by the newly elected sheriff solely because of their political affiliations. See Final Report, supra at 25-26; II Leg. Rec. 1345 (Senate, May 31, 1977) (remarks of Mr. Jackson). For a more recent discussion of the constitutional issues involved in the firing of public employees solely because of their political affiliations or beliefs, see Branti v. Finkel, ___ U.S. ___, 100 S.Ct. 1287.

a practical matter, convert the deputy's three-year term of office into an indefinite term of office. We do not believe the Legislature intended such a result.⁶ See, e.g., Waddell v. Briggs, Me., 381 A.2d 1132, 1135 (1978); Goodwin v. Luck, 135 Me. 288, 290, 194 A.305 (1937).

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,



RICHARD S. COHEN
Attorney General

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6. Although we have concluded that a sheriff's decision not to appoint or reappoint a deputy need not be based on statutory "cause," we would point out that a sheriff's hiring practices are, nevertheless, subject to other provisions of Maine law, including the Maine Human Rights Act. See 5 M.R.S.A. §4572 (1979).