

MAINE STATE LEGISLATURE

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ATTORNEY GENERAL



STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

January 29, 1981

The Honorable George A. Carroll
State Representative
House of Representatives
State House
Augusta, Maine 04333

Dear Representative Carroll:

This will respond to your request for advice as to whether a county sheriff is required to patrol the entire county which he serves. It is our opinion that no such requirement exists as a matter of either statutory or constitutional law.

The extent of the sheriff's obligation to patrol^{1/}the

1/ "Patrol" is defined in 30 M.R.S.A. §1121(13) as follows:

13. Patrol. "Patrol" means the regular and repeated circuit of the jurisdictional area as a method of deterring criminal activities, of observing or inspecting for possible violations or criminal activities, of providing for rapid response to calls for assistance and of maintaining order and the general peace. Patrol includes regulating and facilitating the movement of people and vehicles and maintaining highway safety by routine enforcement of the traffic laws and also the response to particular calls for assistance. Patrol may be conducted on foot or in a motor vehicle, aircraft or watercraft.

county is expressly addressed in 30 M.R.S.A. § 1122 which reads as follows:

The sheriff in each county, in person or by his deputies, may patrol throughout the county, but shall not be required by law to patrol the entire county. The county commissioners, with the agreement of the sheriff, may enter into a contract with a municipality under section 63 to provide specific patrol services by the sheriff's department in return for payment for such services.

On its face, section 1122 clearly provides that the sheriff is not required to patrol the entire county.

Section 1122 was enacted as part of comprehensive legislation proposed in the Report of the Joint Select Committee on County Government: Study on County Government (hereinafter Committee Report), which was submitted to the 108th Legislature. In discussing the rationale for the section, the Committee observed that as a practical matter, sheriffs and municipal police seem to have generally reached an agreement not to interfere in each others operations and to cooperate where possible. One result of this understanding has been that county law enforcement has stayed out of areas of strong local departments and has concentrated its operations in rural areas. Based upon these findings, the Committee concluded:

. . .that this present method of informal cooperation and equality was consistent with its general premise that the sheriff's department should enforce the law directly in the rural area and assist and support municipal departments in their operations in urban areas. Thus, the Committee's draft legislation includes language to remove the sheriff's obligation to patrol throughout the county, while continuing the authorization to do so. Committee Report at 28.^{2/}

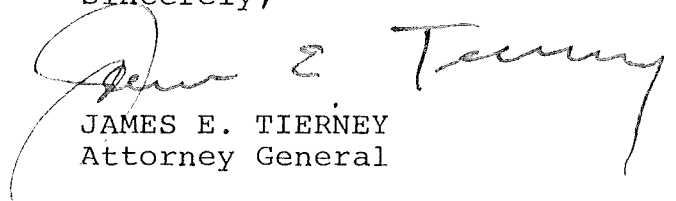
^{2/} We should note that the language of section 1122 is identical to that which was proposed by the Committee. See 108th Legislature, Legislative Document No. 224, § 15, enacted by P.L. 1977, c. 431, § 15.

There can be no doubt, then, that the Legislature consciously chose not to require the sheriff to patrol the entire county.

You have also asked whether the sheriff is constitutionally mandated to patrol the entire county, a proposition which would presumably render section 1122 invalid. Simply stated, we can find no such constitutional mandate. As observed by the Law Court in Sawyer v. Commissioners of Androscoggin County, 116 Me. 408 (1917), even though the sheriff is a constitutional officer, his responsibility "as a conservator of the peace and a protection to society against the commission of vice and crime" derives from the common law and the statute law. 116 Me. at 441. Since the duties of the sheriff are thus not grounded in the State Constitution, we find no defect in a statute which provides that the sheriff is not required to patrol the entire county.^{3/}

I hope this information is helpful. Please feel free to call on me if my office can be of any further service.

Sincerely,



JAMES E. TIERNEY
Attorney General

JET:ks

^{3/} Needless to say, the decision to make available or withhold the services of the sheriff could be unconstitutional if predicated upon impermissible criteria such as the race of the person seeking the services. Your inquiry does not, however, raise a problem of this nature.