

SHERIFFS: Responsible for enforcing law in
county.

December 18, 1942

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Honorable George S. Montgomery
Presiding Judge
Jackson County
Kansas City, Missouri



Dear Judge Montgomery:

This will acknowledge receipt of your letter of December 18, 1942, in which you request an opinion as follows:

"Our Sheriff writes me under date of December 11th, quote; 'Under the decision in the case of State ex inf. McKittrick vs. Williams, I am charged with the duty of policing the county, including Kansas City'.

"As I recall it I talked with you about this matter after the rendering of this decision by the Supreme Court and you said that such was not the case.

"I shall be very glad to have your opinion on this at an early date."

As you are well aware, the case of State ex inf. McKittrick vs. Williams, referred to in the excerpt from a letter of the Sheriff of Jackson County, was a case brought by Roy McKittrick, Attorney-General, against James L. Williams, Sheriff of Jackson County, to oust the sheriff for lawfully and knowingly neglecting and refusing to enforce laws. The case is reported in Volume 346 Mo. Rep.

at page 1003.

In his defense against allegations of the information and the evidence offered in support of them, Mr. Williams contended that the responsibility for enforcing the law in Kansas City was upon the municipal police department. The Supreme Court ruled against this contention and discussed the duties of the sheriff at length on page 1014 and 1015. This discussion of the sheriff's duties and responsibilities is the latest one from our appellate courts, and we are quoting at length:

"A further argument of respondent is to the effect that he should not be charged with the failure of law enforcement in Kansas City as charged because the duty to enforce the law there was upon the metropolitan police department. We find from the evidence that while the violations-charged were prevalent throughout Jackson County the greater number did take place in Kansas City. But it cannot be successfully asserted that a local police force has supplanted the sheriff in his duties as a peace officer. His is an important office and one of the oldest known to law. Under the common law he was the conservator of the peace within the county, had the safe keeping of the county jail and commanded the posse comitatus. One author says that 'for a thousand years the sheriff has been the principal conservator of the peace in his county, with full power to command, whenever necessary, the power of the county.' (Murfree on Sheriffs.) He has also been referred to as the chief executive officer of his

county. By statute (Secs. 11516, 11518, R. S. 1929, Ann. Stat., p. 7485) as well, he is made the conservator of the peace within his county. His duties are described in Farmers' Mut. Fire Assn. v. Nunolt (Mo. App.), 81 S. W. (2d) 977:

"Sheriffs are given power, and it is made their duty, to preserve the peace, arrest and commit to jail all felons, traitors, and other misdoers, to execute all process, and to attend upon courts of record. The powers and duties of the conservator of the peace exercised by the sheriff are not strictly judicial; but he may be said to act as the chief magistrate of his county, wielding the executive power for the preservation of the public peace, and it has been held that the duty of a sheriff in the enforcement of the law implies initiative on his part, and that he must be reasonably alert with respect to possible violations of the law, and is not entitled to wait until they come to his personal knowledge, but must follow up information received from any source.'

"His authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinance the cities and towns have their police departments or their town marshals. Even the State has its highway patrol. Still the authority of the sheriff with his correlative duty remains. It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his res-

possibility under the law. Usage cannot alter the law. (United States v. McDaniel, 8 L. Ed. 587) It is self-evident that a custom or usage repugnant to the express provision of a statute is void. A policeman is an officer whose duties have been, for local convenience, carved out of the old duties of constable, and the constables were always part of the general force at the disposal of the sheriff. There is no division of authority into those of the sheriff and the police. Each is a conservator of the peace possessing such power as the statutes authorize. (See Vickers on Police Officers.) In every county there are a number of peace officers of varying authority. They and the sheriff must work in harmony. In the larger communities where dense population has increased the hardship of proper law enforcement police departments have developed scientific methods of crime detection and prevention. Larger means and a greater number of men are available to a local police department than to the county sheriff. Methods of rapid communication and transit are provided. Under these circumstances the sheriff may leave local enforcement in local hands, but only so long as reasonable efforts in good faith are made to enforce the law.

"The courts have taken cognizance of the development of local enforcement agencies. It has been held, and correctly so, that a sheriff may assume that a city police department will do its duty in enforcing the law and hence will not be guilty of any serious neglect of duty if he gives little attention to police matters in such city.

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But this rule has a proper qualification. If the sheriff has reason to believe that the police force is neglecting its duty it is his duty to inform himself. And if he knows that the police are ignoring or permitting offenses his duty to prevent and suppress such offenses is the same as it would be if there was no municipality and no police force. The derelictions of other officials cannot excuse his failure to perform his statutory duties. (State ex rel. Thompson v. Reichman, 135 Tenn. 353, 188 S. W. 225.)"

CONCLUSION

The sheriff is the chief law enforcement officer of the county and has the duty and responsibility of seeing that the laws are properly enforced. However, he may assume that the police forces of the municipalities will properly and conscientiously perform their duties, and the sheriff is therefore not required to devote a great deal of time to routine police work in the municipalities. Should the police forces of the municipalities fail to properly enforce the law, responsibility still rests upon the sheriff and for any willful failure or refusal to perform his duties to the fullest extent of his ability he would be subject to be ousted from office.

Respectfully submitted,

APPROVED:

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Attorney-General

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