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OFFICE OF CORPORATION COUNSEL

Milwaukee County

COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION

WILLIAM J. DOMINA
Corporation Counsel

TIMOTHY R. SCHOEWE
MARY ANN GRIMES
ROBERT E. ANDREWS
Deputy Corporation Counsel

ROBERT A. McKNIGHT
LOUIS EDWARD ELDER
JOHN F. JORGENSEN
MARY ELLEN POULOS
MARK A. GRADY
JOHN E. SCHAPEKAHM
TIMOTHY R. KARASKIEWICZ
RICHARD H. BUSSLER, JR.
Principal Assistant Corporation Counsel

DATE: September 18, 2003

TO: Roger Quindel, County Supervisor

FROM: William J. Domina, Corporation Counsel

SUBJECT: **LEGAL OPINION:** Authority of the Sheriff and of the courts relative to the authority of the County Board

You have requested an opinion from this office on the above referenced subjects.

Specifically, you have inquired about the authority of the Sheriff unilaterally to develop and implement new programs which increase his budget deficit without notice to or approval from the County Board, and also about the authority of the Sheriff, again without the prior knowledge or approval of the Board, to discontinue or curtail particular programs.

As a general proposition, the published decisions of the Wisconsin appellate courts are extremely deferential to the office of the Sheriff. The following statement is typical: "Within the field of his responsibility for the maintenance of law and order the sheriff today retains his ancient character and is accountable only to the sovereign, the voters of this county, though he may be removed by the governor for cause. No other county official supervises his work or can require a report or an accounting from him concerning his performance of his duty. *He chooses his own ways and means of performing it*," *Andreski v. Industrial Comm'n.*, 261 Wis. 234 (1952). With regard to the performance of what the courts have deemed to be those "immemorial duties" which "gave character and distinction" to the office of sheriff, a Wisconsin sheriff is largely immune from legislative control. We know from the cases that those constitutionally protected duties include the duty to take charge of the jail and the prisoners therein, *State ex rel. Kennedy v. Brunst*, 26 Wis. 412 (1870), the duty to attend upon the courts, *Wisconsin Professional Police Ass'n. v. Dane County*, 106 Wis. 2d 303, 316 N.W.2d (1982), and the duty to enforce the laws and investigate crimes, *Manitowoc County v. Local 986B*, 168 Wis. 2d 819, 484 N.W.2d 584 (1992).

In view of the authorities cited in the foregoing paragraph, we believe that the Sheriff has the authority to decide how to deploy the resources available to him to perform his traditional functions, and that he is not obliged to seek or obtain County Board approval of those decisions. To use the examples cited in your September 2, 2003 letter, the Sheriff has the authority to decide whether to devote resources to a gun interdiction program at the expense of other

programs, such as TABS or DARE[1], and that decision is not subject to review by the County Board.

However, if the Sheriff arrogates to himself the authority to deliberately incur expenditures beyond what is appropriated in the budget, his authority runs up against the countervailing authority of the County Board, exercised in conjunction with the County Executive, to adopt an annual budget establishing the appropriations available to each of the County's departments, including the Sheriff's department, Wis. Stat. s. 59.60. There is no "bright line" rule in the statutes or the case law to which we can look to resolve such conflicts. The attorney general has observed that "while it may be said that an elected county constitutional officer [such as the sheriff] is answerable to no one but the electorate in the faithful discharge of his or her constitutional and statutory duties, such officers are, and always have been, subject to reasonable budget constraints," 77 Wis. Op. Att'y. Gen 113, 118 (1988). The supreme court, even as it acknowledged the constitutionally protected prerogatives of the sheriff, has pointed out that the sheriff is subject to some level of legislative control. He cannot operate entirely independently of the rest of county government as "a fourth branch of government", *Manitowoc County v. Local 986B*, 168 Wis. 2d 819, 831, 484 N.W.2d 584 (1992).

In the event of a conflict, the issue will be whether the budgetary constraints which the County Board attempts to impose are in fact reasonable. The County Board and the County Executive are not permitted to exercise their budgetary and organizational authority, as these affect the operations of the Sheriff or the other constitutional elected officers of the County, "so arbitrarily or unreasonably as to effectively narrow or frustrate the proper exercise of the constitutionally or statutorily mandated official duties of such other elected county officers," 77 Wis. Op. Att'y Gen. 113, 119 (1988). As an extreme example of this principle, Milwaukee County was not permitted to effectively eliminate the office of coroner (then a constitutional elective office) by reducing the salary of the coroner to $50 per year, *Schultz v. Milwaukee County*, 250 Wis. 18, 26 N.W.2d 260 (1947). Less extreme cases "must, of course, be dealt with on a case-by-case basis", 77 Wis. Op. Att'y Gen 113, 119 (1988).

Because the statutes and constitutional provisions governing both the office of the sheriff and the powers of county boards and other municipal legislative bodies vary significantly from state to state, decisions from foreign jurisdictions are of limited utility in addressing the issues you raise. It is nevertheless fair to say that there is substantial case law from other states supporting the proposition that the authority of sheriff, particularly as it impacts the county budget, is subject to some reasonable legislative control. *See, e.g., Geveva County Com'm. v. Tice*, 578 So. 2d 1070 (Ala. 1991) (County commission could not be ordered to pay for deputy sheriffs' overtime from funds neither budgeted nor appropriated to the sheriff's department), *County of Butte v. Superior Court*, 176 Cal. App. 3d 639 222 Cap. Rptr. 429 (1985) (Appellate court vacated injunction preventing county board from cutting staff of sheriff's department because board was acting within scope of its constitutional role in reducing staff and setting the budget), *Board of Comm'rs v. Wilson*, 260 Go. 482, 396 S.E.2d 903 (1990) (County board of commissioners did not abuse its discretion by budgeting a smaller sum that requested by the sheriff to pay his

[1] Although the Sheriff's decisions in this regard are largely immune from the control of the County Board, his authority is not unlimited. He may not ignore specific duties imposed by statute, e.g., the affirmative requirement in Wis. Stat. s. 59.84(10)(b) the "expressways shall be policed by the sheriff . . ."

deputies' salaries), *McDonald v. County Bd. of Kendall County*, 146 Ill. App. 3d 1051, 497 N.E.2d 509 (1986) (A county board's decision to divide funds appropriated for criminal investigations between the state attorney and the sheriff did not impermissibly alter the duties, powers or functions of the sheriff), *Burks v. Lane County*, 72 Ore. App., 257, 695 P.2d 1373 (A municipality and its officers had the power to made budgetary decisions concerning the amount of funding to provide to the sheriff where state law did not specify the amount of funding required).

You have also inquired about the authority of the courts relative to the authority of the County Board in budgetary matters. Although the appellate courts have not been so effusive on the subject of the clerk of court as they have been with respect to the office of the sheriff, much of what is stated above applies with equal force to the clerk of court. In particular, the opinions of the attorney general which are cited above apply to all the county's elective constitutional officers, including the clerk of court. The County Board may not exercise its budgetary authority arbitrarily or capriciously so as to narrow or frustrate the proper exercise of the clerk's proper exercise of his constitutional and statutory duties.

The relationship between the County Board and the courts is further complicated by the fact that the judiciary (unlike the sheriff) really is a separate branch of government. The courts have cloaked themselves with the "inherent authority" to resist unconstitutional infringements upon judicial power. In *In re Courtroom*, 148 Wis. 109, 134 N.W. 490 (1912), the judge of Branch 5 of the Circuit Court of Milwaukee County found that the courtroom and facilities which the County Board had caused to be leased for his use were not adequate, and he ordered his court to be established and staffed, at County expense, in alternative quarters deemed by him to be more suitable. The Wisconsin supreme court affirmed that order, based upon the court's inherent powers. "The authorities, in so far as any can be found on the subject, are to the effect that a constitutional court of general jurisdiction has inherent power to protect itself against any action that would unreasonably curtail its powers or materially impair its efficiency. A county board has no power to even attempt to impede the functions of such a court, and no such power could be conferred upon it. Circuit courts have the incidental power necessary to preserve the full and free exercise of their judicial functions, and to that end may, in appropriate cases, make *ex parte* orders without formally instituting an action to secure the desired relief." 148 Wis. at p. 121.

The appellate courts continue to cite the doctrine of inherent authority in more modern cases to invalidate legislative or executive actions which, in the courts' view, interfere unreasonably with the administration of justice. In *Barland v. Eau Claire County*, 216 Wis. 2d 560, 575 N.W.2d 691 (1998), the supreme court held that circuit judges' inherent authority extends to the decision to remove their "judicial assistants", regardless of the "bumping" provisions of a county's collective bargaining which, in the case of Judge Barland's assistant, would have resulted in her removal from that position. In *Joni B. v. State of Wisconsin*, 202 Wis. 2d 1, 549 N.W.2d 411 (1996), the supreme court invalidated a statute which forbade the circuit courts to appoint counsel for parents in certain children's court proceedings, holding, *inter alia*, that the statute violated the constitutional separation of powers by interfering with the courts' inherent power to appoint counsel in order to effect the efficient administration of justice.

In summary, in our opinion, if the Sheriff or the court system is provided with a reasonable appropriation, neither is empowered to exceed that appropriation. Such power, if given to the Sheriff or the court system, would amount to the power to appropriate, which power is vested in the legislative and executive branches of government. Although the question of what is "reasonable" in terms of appropriations is not a simple one, and may be subject to the inherent powers of the court system to provide for the efficient administration of justice, neither the court system nor the sheriff is empowered with unfettered discretion with regard to expenditures.

Respectfully submitted,

WILLIAM J. DOMINA
Corporation Counsel