



County of Milwaukee
Office of the Sheriff

David A. Clarke, Jr.
Sheriff

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FROM: Edward H. Bailey, Inspector, Milwaukee County Office of the Sheriff
SUBJECT: Authority of the Milwaukee County Sheriff

As a constitutional officer of the state, but an elected official of the county, case law and statute have aided in establishing the nature and limits of the sheriff's roles and responsibilities. Generally speaking, the sheriff has a degree of autonomy not granted county department heads. The county board has budget authority over the sheriff's office but must fund the office sufficiently to meet state mandates and provide law enforcement. There are several notable statutory citations and court cases on the Milwaukee County Sheriff's authority, which have come to define the duties of this sheriff:

The Wisconsin State Constitution, Article VI, County officers; election, terms, removal; vacancies.

Coroners, registers of deeds, district attorneys, and all other elected county officers, except judicial officers, sheriffs, and chief executive officers, shall be chosen by the electors of the respective counties once in every 2 years.

Beginning with the first general election at which the governor is elected which occurs after the ratification of this paragraph, sheriffs shall be chosen by the electors of the respective counties, or by the electors of all of the respective counties comprising each combination of counties combined by the legislature for that purpose, for the term of 4 years.

Sheriffs may not hold any other partisan office.

When a vacancy occurs in the office of sheriff, the vacancy shall be filled by appointment of the governor, and the person appointed shall serve until his or her successor is elected and qualified.

Wisconsin Professional Police Association v. Dane County (1982):

In the exercise of executive and administrative functions, in conserving the public peace, in vindicating the law, and in preserving the rights of the government, he (the sheriff) represents the sovereignty of the State and he has no superior in his county.

Washington County v. Washington County Deputy Sheriff's Association (2008):

The Wisconsin Constitution does not define the duties of a sheriff, but case law has described examples and a method of analysis. Initially, the definition of whether duties were part of the sheriff's constitutionally protected powers focused on a historical analysis of whether they were longstanding established duties of the sheriff at common law such as housing the county's prisoners in the jail...But...the Wisconsin Supreme Court shifted the focus of the analysis to those duties that characterized and distinguished the office of sheriff...

Andreski v. Industrial Commission et al (1952)

The position of sheriff is one of great antiquity and honor. He was the deputy of the king in his shire and was accountable to no one but the king to whom he was responsible...

He was accompanied by his court, composed as was the king's court, of representative nobles, freeholders and burglers, before whom his officers brought persons accused of crime. Trial was had under the supervision of the sheriff and if conviction resulted the sheriff imposed the sentence and executed it. Although in rank some noblemen might be higher, in temporal power and authority within his shire and within his term of office the sheriff was legally superior to them all. He was the representative of the king, accountable only to the king and the king's authority lay in him.

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 his county...

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. He divides his time according to his own judgment of what is necessary and desirable but is always subject to call and is eternally charged with maintaining the peace of the county and the apprehension of those who break it. In the performance of this duty he is detective and patrolman, as well as executive and administrator...

We recite these qualities and characteristics of the office not because they are novel but because they are so old that they are easily forgotten or unappreciated...

The sheriff's hours of work are such as he deems necessary. So, too, are his methods.

In the *Andreski* case the court was very clear, firm, and definitive when describing the Sheriff's authority. Even though the *Andreski* decision was made a half-century ago, it is often referenced in other court and Attorney General opinions. The *Andreski* case reinforced

the Sheriff's authority by saying "a Sheriff's work, his methods and his hours, are carried out as he sees fit." In this case we do not deal with a subordinate municipal employee who is duplicated over and over but with one who is sui generis.

Wis. Stats. § 59.22, which states (in part): **Compensation, fees, salaries and traveling expenses of officials and employees:**

The compensation established shall not be increased nor diminished during the officer's term and shall remain for ensuing terms unless changed by the board.

The board shall establish the annual compensation of the sheriff as straight salary. No portion of that salary may include or be based on retention of fees by the sheriff. No portion of that salary may be based on providing food to prisoners.

Wis. Stats. § 59.27, which states (in part): **Sheriff; duties:** The sheriff of a county shall do all of the following:

- Take the charge and custody of the jail maintained by the county...
- Attend upon the circuit court held in the sheriff's county...
- Personally, or by the undersheriff or deputies, serve or execute all processes, writs, precepts and orders issued or made by lawful authority and delivered to the sheriff.
- In counties having a population of 300,000 or more, assign one deputy, to be mutually agreed upon by the sheriff and the district attorney, to the office of the district attorney.
- Conduct operations within the county and, when the board so provides, in waters of which the county has jurisdiction...for the rescue of human beings and for the recovery of human bodies.
- Enforce all city, or village, ordinances in a city, or village, in which the sheriff provides law enforcement services under a contract

Wis. Stats. § 59.28(1), which states (in part): **Peace maintenance; powers and duties of peace officers**

"Sheriffs and their undersheriffs and deputies shall keep and preserve the peace in their respective counties..."

Wis. Stats. § 59.84(10)(b), which states (in part): **Expressways and mass transit facilities in populous counties: Policing of expressways¹**

¹ Note: It is helpful to provide two key definitions (from statute) when considering this issue, to wit:

Expressway means a divided arterial highway for through traffic with full or partial control of access and, generally, with grade separations at intersections.

Policing of expressways. Expressways shall be policed by the sheriff who may, when necessary, request and shall receive cooperation and assistance from the police departments of each municipality in which expressways are located...

Wis. Stats. § 349.02(1), which states (in part): **Police and traffic officers to enforce law**

It is the duty of the police, sheriff's and traffic departments of every unit of government and each authorized department of the state to enforce chs. 346 to 348 and 350.

Wis. Stats. § 302.425 which states (in part): **Prisons; State, County and municipal; Home detention programs.**

Sheriff's or superintendent's general authority. A county sheriff or a superintendent of a house of correction may place in the home detention program any person confined in jail. The sheriff or superintendent may transfer any prisoner in the home detention program to the jail.

The sheriff or superintendent may, if he or she determines that the home detention program is appropriate for a prisoner, place the prisoner in the home detention program and provide that the prisoner be detained at the prisoner's place of residence or other place designated by the sheriff or superintendent and be monitored by an active electronic monitoring system.

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Highway means all public ways and thoroughfares.