
The Office of Sheriff in North Carolina



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Establishment of the Office of Sheriff

Overview

North Carolina's 1776 Constitution established the Office of Sheriff and it has been a constitutionally created office since that time. At its creation in 1776, the office had, and continues to have, the duties and authorities of sheriffs as they were under the common law of England.

Although the Office of Sheriff was expressly created in North Carolina's first Constitution in 1776, no system of local government was created by the Constitution. A uniform scheme of county and township government was not created until the adoption of North Carolina's Constitution of 1868, almost 100 years later. Therefore, the Office of Sheriff in North Carolina is almost older than county government itself.

North Carolina's Constitution provides:

In each county a sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law. No person is eligible to serve as Sheriff if that person has been convicted of a felony against this State, the United States, or another state, whether or not that person has been restored to the rights of citizenship in the manner prescribed by law. Convicted of a felony includes the entry of a plea of guilty; a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or a plea of no contest, nolo contendere, or the equivalent.¹

Prior to 1938, the term of Office of Sheriff was two years. In 1938, the voters approved a Constitutional amendment changing the term of office to four years.

No Felon as Sheriff

On July 1, 2010, the North Carolina General Assembly passed House Bill 1307 that allowed the voters to decide on an amendment to the North Carolina Constitution (N.C. Const. art. VII, § 2). This amendment was passed by the voters in November 2010, officially amending the North Carolina Constitution (Attachment 1).

Until this amendment, there was no constitutional provision prohibiting a convicted felon from being elected or appointed sheriff. This amendment prohibits anyone that has been convicted of a felony from serving as sheriff, which applies to both a sheriff elected or appointed. Also, the individual does not have to be convicted of the felony in North Carolina, rather any conviction, anywhere qualifies.

Please see the attached position paper prepared by the North Carolina Sheriffs' Association further discussing the "No Felon as Sheriff" amendment (Attachment 2).

¹ N.C. Const. art. VII, § 2.

N.C. Gen. Stat. § 153A-103. Number of Employees in Offices of Sheriff and Register of Deeds

The text of N.C. Gen. Stat. § 153A-103 can be found in Attachment 3 of this publication. The following important points can be found in this law:

1. Each sheriff has “the exclusive right to hire, discharge, and supervise the employees” in the sheriff’s office.
2. Each sheriff is “entitled to at least two deputies.”

This statute will be reviewed in greater detail during the class on “Hiring and Firing Employees” later this week.

N. C. Gen. Stat. § 162. Sheriff.

N.C. Gen. Stat. § 162 contains numerous provisions governing the Office of Sheriff. A copy of that General Statutes Chapter is included as Attachment 4. Sheriffs are encouraged to review each of the individual General Statutes contained in Chapter 162.

Common Law Duties and Authorities of the Office of Sheriff

The common law remains in “full force and effect” in North Carolina unless legislatively changed. Thus, the sheriff’s common law duties are still the law, and still duties of the sheriff, unless changed by statute. Duties such as the operation of the jail, law enforcement, service of process, and courts (bailiffs) existed at common law and have not been changed by statute in North Carolina. The General Statutes explicitly codify some of these duties and assume the existence of others.²

As to the sheriffs’ common law duty with respect to bailiffs, see *Prince George County v. Aluisi*, which can be read in its entirety in Attachment 5.

Sheriff’s Office Versus Sheriff’s Department

The Office of Sheriff is an office provided for by the North Carolina Constitution. Sheriffs occupy an elected office just like the Governor, Chief Justice of the Supreme Court, Attorney General, and numerous other elected officers. In the “chain of command,” elected officers report solely to the citizens within their jurisdiction.

There is no such entity as a sheriff’s department. In county government, you will often find a Health Department, Human Services Department, Finance Department, Information Services and Technology Department, and Parks and Recreation Department. The head of each of these departments is not an

² Source: Matthew Mason, Sheriff’s Attorney for the Guilford County Sheriff’s Office, June 2010.

elected official but is an appointed employee of the county who is hired by and supervised by the county manager.

Unfortunately, the Office of Sheriff is often erroneously referred to as a sheriff's department. Doing so is as incorrect as referring to the Department of Governor instead of the Office of Governor.

Several resources are attached that clearly explain the constitutionally mandated Office of Sheriff and how it is distinguished from departments of county government. Those resources include:

- a. An Amicus Curiae (Friend of the Court) Brief filed by the North Carolina Sheriffs' Association in the case of *Harter v. Vernon* and *McLaughlin v. Bailey* (Attachment 6a and Attachment 6b respectively).
- b. Articles from the March-April 1993 issue of *Sheriff Magazine* published by the National Sheriffs' Association entitled: "Sheriff's Office Versus Office of the Sheriff"; "Preserve the Office of Sheriff"; Election versus Appointment"; and "Sheriffs' Offices under Attack" (Attachment 7).
- c. An article published by the National Sheriffs' Association entitled, "Preserve the Office of Sheriff by Continuing the Election of our Nation's Sheriffs" (Attachment 8).
- d. An article published by the National Sheriffs' Association entitled, "Elected Office of the Sheriff – Executive Summary" (Attachment 9).
- e. An article published by the National Sheriffs' Association entitled, "County Police versus the Elected Sheriff" (Attachment 10a).
- f. An e-mail dated May 3, 2013 from the North Carolina Sheriffs' Association Executive Vice President to all sheriffs concerning the "supervision" of the sheriff (Attachment 10b).

The History of the Office of Sheriff

A detailed discussion of the history of the Office of Sheriff was originally published by the National Sheriffs' Association and is now maintained on the website of the North Carolina Sheriffs' Association (Attachment 11).

For a detailed history of the Office of Sheriff specifically in North Carolina, see the attached paper written by retired Union County Sheriff Frank McGuirt dated December 28, 1998 (Attachment 12).

Qualifications to be Elected Sheriff

N.C. Gen. Stat. § 162-2

Pursuant to N.C. Gen. Stat. § 162-2, to be eligible for the Office of Sheriff, a person must:

- a. Be 21 years of age,
- b. Have resided in the county in which he or she is chosen for one year immediately preceding his or her election,

- c. Not practice law, and
- d. Not serve as a member of the General Assembly.

Please see Attachment 13 to read this law in its entirety.

The North Carolina Constitution

The North Carolina Constitution also sets the qualifications to be elected sheriff as follows:

- a. N.C. Const. art. VI, § 6 states that every qualified voter who is 21 years of age shall be eligible for election by the people to office.
- b. N.C. Const. art. VI, § 8 states the reasons why a person will be disqualified for office.
- c. N.C. Const. art. VII, § 2 states that no person convicted of a felony may serve as sheriff.
- d. N.C. Const. art. VI, § 1 states that every person who was born in the United States and every person who has been naturalized, who is 18 years of age is qualified to vote.

Please see Attachment 14 to read these North Carolina Constitutional Sections in their entirety.

Sheriff as the Chief Law Enforcement Officer of the County

The sheriff is the chief law enforcement officer of the county. *Dawson v. Radewicz* and *Southern Railway Co. v. Mecklenburg County* (Attachment 15). An opinion from Attorney General Lacy H. Thornburg, dated October 24, 1985, interprets this to mean that the sheriff may leave local enforcement in local hands only as long as reasonable efforts in good faith are made by the local police authorities to enforce the law (Attachment 16). Another meaning often assigned to the term “chief law enforcement officer of the county” is that the sheriff and he alone has jurisdiction throughout the county.

Please see the following excerpt from 70 Am. Jur. 2d *Sheriffs* §30 (2208):

Where sheriffs are constitutional officers whose powers and duties are not expressly enumerated in the constitution [as is the case in North Carolina], such powers and duties are proscribed by the common law as modified by the acts of the legislature. ... Common law duties are many and varied and encompass more than traditional law enforcement. Thus, the sheriff is generally the chief law enforcement officer of the county, and, as a general rule, sheriffs, within the scope of their respective jurisdictions, are given power, and have the duty, to preserve the peace and public order, enforce the criminal laws, prevent and detect crime, provide security for courts, serve criminal warrants and other writs and summonses, and transport prisoners.

Dual Office Holding

Overview

N.C. Const. art. VI, § 9 provides:

- a. No person shall hold concurrently any two offices in this State that are filled by election by the people.
- b. No person shall hold concurrently any two or more appointed offices or any combination of elected or appointed offices, except as the General Assembly shall provide by general law.

Please see Attachment 17 for the full text.

In addition, N.C. Gen. Stat. § 128-1 and 128.1-1 have been enacted by the General Assembly pursuant to N.C. Const. art. VI, § 9 (Attachment 18). N.C. Gen. Stat. § 128-1.1 specifically authorizes any person who holds an elective office in State or local government to hold one other appointive office at the same time. The following are examples:

- a. A sheriff could not also hold the elected office of school board member at the same time;
- b. A sheriff could, at the same time, hold the appointive office of any one of the following offices:
 - i. A city police officer;
 - ii. A deputy sheriff in another county; or
 - iii. A member of the North Carolina Sheriffs' Education and Training Standards Commission.

“Public Office” Defined

The important distinction to make when determining if a position is a public office is the authority the position has to make and enact final decisions. This means that if the position is solely an advisory one, it does not constitute a public office. However, if the position has authoritative power to make governmental decisions, it is a public office. Examples of solely advisory positions are:

- a. Governor's Crime Commission;
- b. Actual Innocence Commission;
- c. State Emergency Response Commission; and
- d. Domestic Violence Commission.

When a person holds an office or offices and then accepts election or appointment to another office such that the total number of offices held by the person exceeds those allowed by law, the acceptance of the most recent office, by operation of law, terminates the person's authority in the first office to which they were elected or appointed (Attachment 17).

For an explanation on what is and what is not generally considered to be a “public office,” see the attached blog post by Fleming Bell at the University of North Carolina (UNC) School of Government (Attachment 19). The conclusion that Bell reaches is that it is a complicated issue and that many factors need to be considered. The Supreme Court of North Carolina did explain that “[t]he true test of a public

office seems to be that it is parcel of the administration of government, civil, or military, or is itself created by the law making power” (Attachment 20).³

A sheriff will not be considered to be holding two offices if one of the offices he holds is ex officio, meaning “of or from the office.” A person holding one office is said to be serving ex officio in a second office if she or he holds the second office by virtue of holding the first office. See attached blog post by Fleming Bell discussing this idea of holding an office ex officio (Attachment 21).

Practical Tip

Prior to being sworn in as sheriff, the sheriff-elect should determine whether or not he or she currently occupies any other elected or appointed office in federal, state, or local government. If the sheriff-elect has any doubt whatsoever, he or she should consult with the Law Enforcement Liaison Section of the North Carolina Attorney General’s Office for guidance and advice prior to taking the Oath of Office as Sheriff.

Beginning the Term of Office

Sheriffs newly elected in November are scheduled by law, pursuant to N.C. Gen. Stat. § 163-1, to take office on the first Monday in December after the election, December 1, 2014 (Attachment 22).

Occasionally, the outgoing sheriff will retire effectively on November 30. This is usually done to enable the outgoing sheriff to collect a full month’s retirement benefit for the month of December. If the outgoing sheriff does not retire until December 1, they will not receive retirement benefits for December and will receive their first retirement benefits beginning on the first day of the following January.

N.C. Gen. Stat. § 162-3 provides that a sheriff may vacate the office by resigning the office by notice to the board of county commissioners (Attachment 23).

Often, retiring sheriffs who retire on November 30 will make arrangements to have the newly elected sheriff appointed and sworn into office on November 30. If this happens, the newly elected sheriff must also swear in his or her deputies on November 30. Then, on the first Monday in December when the new term of office begins, the newly elected sheriff and all deputies must be sworn in again to begin the new term of office.

If the outgoing sheriff resigns on November 30, the procedure for appointing a new sheriff to serve the remainder of the outgoing sheriff’s term is governed by either N.C. Gen. Stat. § 162-5 or 162-5.1. Until a new sheriff is appointed, the duties of the sheriff shall be carried out by the county coroner, or if there is no county coroner by the chief deputy sheriff, or if there is no chief deputy sheriff, then by the senior deputy sheriff in years of service (Attachment 24).

For those counties specifically listed in N.C. Gen. Stat. § 162-5.1, the board of county commissioners must appoint the person recommended by the county executive committee of the same political party as the outgoing sheriff. For those counties not listed in this statute, N.C. Gen. Stat. § 162-5 provides that the vacancy can be filled by an appointment by the board of county commissioners and they are not required to consult with the county executive committee of the outgoing sheriff’s political party.

³ *Eliason v. Coleman*, 86 N.C. 236, 240-41 (1882).

If the outgoing sheriff intends to resign prior to December 1, the newly elected sheriff should make arrangements to be appointed as sheriff effective on the effective date of the resignation of the outgoing sheriff.

Please see the attached publication entitled “Vacancy in the Office of Sheriff” for more details on these and other aspects of sheriffs’ office vacancies (Attachment 25).

Pursuant to N.C. Gen. Stat. § 162-17, an outgoing sheriff must deliver unexecuted civil processes to the new sheriff and then the new sheriff must have sufficient time to execute them (Attachment 26).

Oaths of Office

Oaths of Office for Sheriffs

At the time of their swearing in, newly elected sheriffs must take three different oaths of office.

- a. The first oath is required by Article VI, § 7 of the North Carolina Constitution.

“I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and the laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as Sheriff of _____ County, so help me God.”

- b. The second oath is required by N.C. Gen. Stat. § 11-7 and applies to every person elected or appointed to office in North Carolina.

“I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain, and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God.”

- c. The third oath is required by N.C. Gen. Stat. §11-11 and specifically applies to the Office of Sheriff.

“I, _____, do solemnly swear (or affirm) that I will execute the Office of Sheriff of _____ County to the best of my knowledge and ability, agreeably to law; and that I will not take, accept or receive, directly or indirectly, any fee, gift, bribe, gratuity or reward whatsoever, for returning any man to serve as a juror or making any false return on any process to me directed; so help me, God.”

Oaths of Office of Deputy Sheriffs

Deputy sheriffs should take the following three oaths:

- a. The first oath is required by Article VI, § 7 of the North Carolina Constitution.

“I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and the laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as deputy sheriff, so help me God.”

- b. The second oath is required by N.C. Gen. Stat. § 11-7 and applies to every person elected or appointed to office in North Carolina.

“I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God.”

- c. The third oath is required by N.C. Gen. Stat. § 11-11 and applies to all law enforcement officers.

“I, _____, do solemnly swear (or affirm) that I will be alert and vigilant to enforce the criminal laws of this State; that I will not be influenced in any matter on account of personal bias or prejudice; that I will faithfully and impartially execute the duties of my office as a law enforcement officer according to the best of my skill, abilities, and judgment; so help me, God.”

Oaths for Other Sheriffs’ Office Personnel

No oath is provided for by law or required for sheriffs’ office personnel other than the sheriff and deputy sheriffs. However, many sheriffs voluntarily choose to administer an oath to all sheriffs’ office employees encouraging their loyalty and support of the sheriff’s office. Several copies of such oaths are included (Attachment 27).

Where Oaths Must be Filed

Pursuant to N.C. Gen. Stat. § 153A-26, all oaths must be filed with the clerk. The clerk as defined by General Statute §153A-1, is the clerk to the county board of commissioners, not the clerk of court (Attachment 28). Please see the attached blog post by David Lawrence of the UNC School of Government discussing the difference between the clerk to the board of county commissioners and the clerk of court (Attachment 29).

According to Joe Ferrell, Professor of Public Law and Government at the UNC School of Government, it is not a material mistake if the oaths are filed in the incorrect clerk’s office. The important element is that the oath is taken and the bond, if any, is posted. Please see the attached e-mail from Fleming Bell of the UNC School of Government about filing oaths in the wrong clerk’s office (Attachment 30).

N.C. Gen. Stat. §128-5 makes it unlawful to begin the duties of the Office of Sheriff or deputy sheriff before taking the oaths of office (Attachment 31).

Please see the attached article entitled “Our Oath of Office, A Solemn Promise” from the September 2009 *FBI Law Enforcement Bulletin* that discusses the history and meaning of the oath (Attachment 32).

Who May Administer Oaths of Office?

N.C. Gen. Stat. § 11-7.1 provides that an oath of office may be administered by:

- a. A justice, judge, magistrate, clerk, assistant clerk, or deputy clerk of the General Court of Justice, a retired justice or judge of the General Court of Justice, or any member of the federal judiciary;
- b. The Secretary of State;
- c. A notary public;
- d. A register of deeds;
- e. A mayor of any city, town, or incorporated village;
- f. A chairman of the board of county commissioners of any county;
- g. A member of the House of Representatives or Senate of the General Assembly; or
- h. The clerk of any county, city, town or incorporated village.

Authority of Office – Special Deputy Sheriffs

Deputy sheriffs are of two kinds. The first is a general deputy or under-sheriff, who by virtue of his appointment has authority to execute all the ordinary duties of the Office of Sheriff. The second, is a special deputy sheriff who is an officer pro hac vice (for the time being) to execute a particular writ on some certain occasion, but acts under a specific and not a general appointment of authority.

This means that a special deputy sheriff may not be assigned general duties. The special deputy sheriff must act only on a particular assignment and has only the authority of an ordinary citizen until directed to do a particular act. His authority ends, and he ceases to be an officer, when the act he was directed to do is completed. See the attached 2012 opinion from Special Deputy Attorney General John Aldridge discussing special deputy sheriffs (Attachment 33).

A sheriff can delegate the supervision of a special deputy sheriff to a general or regular deputy sheriff.

Sheriff's Bond

N.C. Gen. Stat. § 162-8 requires the sheriff to furnish a bond payable to the State of North Carolina. The amount of the bond shall be determined by the board of county commissioners, but shall not exceed \$25,000 (Attachment 34).

N.C. Gen. Stat. § 162-9 provides that the board of county commissioners shall “take and approve” the sheriff’s bond and have it registered and the original deposited with the clerk of the superior court for safekeeping prior to the sheriff taking office. The bond shall be provided by the sheriff to the board of county commissioners on the first Monday of December next after the election (Attachment 35).

Bonds may be obtained by sheriffs from various sources.

Initially, a newly elected sheriff may wish to consult with the outgoing sheriff or with the county finance office or the county manager to find out where the bond was obtained for the previous sheriff.

Frequently, bonds are obtained from local insurance companies. Companies used by sheriffs in the past include Peerless Insurance Company in Cabarrus County [800-542-5385] and Mimosa Insurance Company [828-437-5357] in Burke County.

A third option for obtaining bonds is through a company entitled Marsh. This is the company that sheriffs will be referred to if they contact the North Carolina Association of County Commissioners (NCACC) with the question of where to obtain bonds. The NCACC said they preferred if sheriffs would contact Marsh directly as they are actually handling the bonds. The appropriate person to contact at Marsh is MaryAnn Dark at (704) 374-8353 or maryann.dark@marsh.com. MaryAnn said that they would provide bonds for newly elected sheriffs; however, they will not provide bonds for sheriffs alone, but for all bonded employees in the sheriff's county. This means that in order for a sheriff to obtain a bond from Marsh, all other bonded county officials must agree to obtain their bonds from Marsh as well whenever the county's bonds are up for renewal.

The sheriff must obtain the bond and provide it to the board of county commissioners prior to assuming the Office of Sheriff. N.C. Gen. Stat. § 14-229 makes it a Class I misdemeanor to assume the Office of Sheriff prior to filing the bond, and this statute also provides that the sheriff who does not comply "shall be ejected from his office" (Attachment 36).

When re-elected, a sheriff is not expressly required to refile the bond with the board of county commissioners if that bond is already on file and has not expired. However, out of caution, a sheriff, after his or her re-election in November, may want to send the board of county commissioners a copy of the bond showing its expiration date along with a letter notifying them that he or she is providing an additional copy of the bond that is already on file. Sending this letter is not necessary, but would be helpful in the event that someone later tried to say that the sheriff did not submit his or her bond as required, even though a preexisting bond was still in effect and on file.

Compensation for the Sheriff

Compensation for a New Term

General Statute § 153A-92 provides for the compensation payable to the sheriff. This statute provides that the salary of the newly elected sheriff shall be no less than the salary of the departing sheriff, unless the board of county commissioners adopted a resolution reducing the new sheriff's pay. To be binding, the resolution must have been adopted at least 14 days before the last day for filing notice of candidacy for the Office of Sheriff. If no such resolution was filed within that time period, the "salary, allowances, and other compensation" of the newly elected sheriff shall be no less than what was provided to the outgoing sheriff. While the board of county commissioners can increase a sheriff's compensation at any time, the sheriff's compensation cannot be reduced during the sheriff's current term of office (Attachment 37).

The board of county commissioners has the authority to adopt a resolution at least 14 days prior to the last day of filing for the Office of Sheriff that reduces the compensation for the Office of Sheriff effective at the beginning of the next term of office. The reduction would apply to a sitting sheriff who was re-elected to a new term. See the letter from Attorney General Lacy H. Thornburg to Glenn Jernigan dated May 17, 1990 (Attachment 38).

Compensation Mid-Term

There are two different interpretations regarding the effect of N.C. Gen. Stat. § 153A-92 on a sheriff who is appointed mid-term:

- a. The first is that the board of county commissioners cannot reduce the salary of a sheriff who was appointed to serve the remainder of an outgoing sheriff's current term of office. The procedure for reducing the sheriff's salary is specified in General Statute §153A-92(b)(2) and can only be done during the year of a general election. Please see the attached e-mail from Eddie Caldwell (Attachment 39).
- b. The second way to interpret the statute is that it only applies to an elected sheriff; and further that there is no support for the argument that the board of county commissioners cannot reduce the salary for a newly appointed sheriff that is appointed to finish the outgoing sheriff's term of office. Please see the attached e-mail from Chip Killian (Attachment 39).

Compensation for Employees

Pursuant to N.C. Gen. Stat. § 153A-92(b)(3), the board of county commissioners cannot reduce the salaries or compensation of the sheriff's office personnel unless the reduction applies equally to all employees of all county offices and departments (Attachment 37).

For example, in a county funding crisis, the board of county commissioners may reduce the salary of all employees paid by the county by five percent (5%), but could not make the pay reduction apply only to personnel in the sheriff's office. Any such pay reduction cannot apply to the elected sheriff.

Budget for the Office of Sheriff

The board of county commissioners has the authority to fix the number of salaried employees in the offices of the sheriff and the register of deeds pursuant to N.C. Gen. Stat. § 153A-103, even though each sheriff has the exclusive right to hire, discharge, and supervise employees in these offices (Attachment 4). This means that while the sheriff has the sole authority to decide who to hire and fire, the number of deputy sheriffs and personnel hired can be limited by the budget that is decided by the board of county commissioners.

Mid-year Budget Reductions

For mid-year budget reductions to become effective, the board of county commissioners are required to pass an amended budget ordinance pursuant to N.C. Gen. Stat. §159-15 (Attachment 40).

According to Jack Vogt, Adjunct Professor at the UNC School of Government, there is no statute that requires equal budget cuts on a percentage or dollar amount basis for the sheriff and other county offices or departments. See the attached e-mail dated November 6, 2008 (Attachment 41).

Legislative Relief

While there is no current statute to prevent the board of county commissioners from cutting only the sheriff's budget, relief can be, and has been, sought through the North Carolina General Assembly. See three attached bills that specifically addressed the sheriff's budget in Clay and Graham Counties (Attachment 42).

Occupational Restrictions on Sheriffs

Pursuant to N.C. Gen. Stat. § 162-2, a sheriff may not, during the term of office, engage in the practice of law or serve as a member of the General Assembly. This statute does not prohibit attorneys from serving as sheriff, but it does prohibit attorneys who serve as sheriff from practicing law during their term of office as sheriff (Attachment 43).

N.C. Gen. Stat. § 84-2 prohibits both sheriffs and deputy sheriffs from engaging in the "private" practice of law. The statute does not prohibit attorneys from serving as sheriff or as a deputy sheriff. However, it does prohibit attorneys from engaging in the "private" practice of law while serving as a sheriff or deputy sheriff (Attachment 44).

While N.C. Gen. Stat. § 162-2 prohibits sheriffs from practicing law in any capacity, N.C. Gen. Stat. § 84-2 prohibits deputy sheriffs only from engaging in the "private" practice of law. Therefore, deputy sheriffs could concurrently practice law as a Sheriff's Office Legal Advisor or as an attorney for a governmental agency.

N.C. Gen. Stat. § 84-2 does not apply to special deputy sheriffs, meaning that special deputy sheriffs can engage in the private practice of law. This statute specifically applies to sheriffs and deputy sheriffs. See the attached memorandum from Attorney General Roy Cooper, dated February 9, 2007 (Attachment 45).

N.C. Gen. Stat. § 159-9 provides that the sheriff may not serve as the county budget officer (Attachment 46).

Arrest of County Commissioners

N.C. Gen. Stat. § 153A-43 authorizes the board of county commissioners to order the sheriff to take an absent member of the board into custody if the member is absent from a meeting of the board (Attachment 47).

Please note that a sheriff is authorized to take an absent member of the board of county commissioners who is absent from a meeting of the board into custody **ONLY** when ordered to do so by the board of county commissioners.

Reports to the County Commissioners

N.C. Gen. Stat. § 153A-104 authorizes the board of county commissioners to require any officer, including the sheriff, "to make to the board, either directly or through the county manager, periodic or special reports concerning any matter connected with the sheriff's duties." The board may require that

such a report be made under oath. However, the statute does not specify the format or content of any such report and those matters would remain within the discretion of the sheriff as long as the sheriff filed the report if requested to do so (Attachment 48).

Willfully Failing to Discharge Duties of the Sheriff's Office

N.C. Gen. Stat. § 14-230 makes it unlawful for a sheriff to “willfully omit, neglect or refuse to discharge any of the duties of his office” and makes such an offense punishable as a Class I misdemeanor. In addition, the offending sheriff who violates this statute “shall be punished by removal” from the Office of Sheriff (Attachment 49).

Care and Use of County Property; Sites of County Buildings

N.C. Gen. Stat. § 153A-169 provides that the board of county commissioners shall supervise the maintenance, repair, and use of all county property, including the courthouse. Also it is within the sound discretion of the board of county commissioners to have the courthouse or jail/detention center repaired or to erect a new one (Attachment 50).⁴

It is important to note that the above statute gives the authority to the board of county commissioners to designate where the sheriff's office will be located; however, it does not give the board of county commissioners the authority to force a sheriff to occupy the property that they have chosen. For an example of this situation see the attached *Graham Star* newspaper articles about the Sheriff of Graham County (Attachment 51).

Pursuant to N.C. Gen. Stat. § 160A-274, a sheriff's office cannot convey property owned by the county to another sheriff's office, unless the board of county commissioners adopts a resolution to transfer the property first (Attachment 52). However, pursuant to N.C. Gen. Stat. § 160A-266(c), the board of county commissioners could delegate the authority to the sheriff to dispose of personal property valued at less than \$30,000 (Attachment 53). Please see the attached memorandum dated March 3, 2000, discussing the issue further (Attachment 54).

County-Owned Vehicles

While the board of county commissioners has the authority to control the sheriff's budget pursuant to N.C. Gen. Stat. § 153A-103 the sheriff has the exclusive jurisdiction with respect to supervision of his employees, which includes creating policies regarding vehicles driven by those employees (Attachment 4). This means that the board of county commissioners cannot adopt a resolution forcing a policy on the personnel of the sheriff's office dealing with county vehicles; however, the board of county commissioners can choose to decrease the funding for county-owned vehicles. See the attached memorandums between Sheriff Tim Daugherty, dated August 25, 2009, and Special Deputy Attorney

⁴ *Jackson v. Board of County Commissioners*, 171 N.C. 379, 88 S.E. 521 (1916).

General Joy Strickland, dated September 9, 2009, discussing the authority of the sheriff to authorize deputies to drive home county-owned vehicles outside the county (Attachment 55).

Attempts to Reduce the Authority of the Office of Sheriff

The powers and duties that you will assume on the first Monday in December after the election have been fiercely protected by the sheriffs who have served before you, and by the North Carolina Sheriffs' Association.

The sheriffs of North Carolina and the North Carolina Sheriffs' Association have a long-standing position of vigorously opposing any attempts to reduce the duties and authority of the constitutional Office of Sheriff.

Some attempts to reduce the authority of the Office of Sheriff will be very obvious. For example, several years ago a pilot program was adopted by the General Assembly allowing one county to have civil process papers served by civilian process servers in addition to the county sheriff and his deputies. When the legislation that created this experiment was about to expire, the North Carolina Sheriffs' Association fought very hard to keep this experiment from being continued or expanded. The Association was successful and legislation to continue this experiment was defeated, thereby preserving the duty and authority of the sheriff to serve civil process and to not allow civil process to be served by private civil process servers.

Other attacks on the power and authority of the Office of Sheriff will not be as clearly identified. Often this occurs when a county government official "offers" to relieve a sheriff of a "burden." This might occur when the county personnel director offers to handle all human resource functions for the Office of Sheriff. Once this function is delegated by the sheriff to a county department, the authority of the Office of Sheriff has been diminished and it is extremely difficult, if not impossible, to return that authority back to the Office of Sheriff in that particular county.

For example, some local governments have proposed to contract with a private business to operate the county jail. In an opinion from Attorney General Michael Easley, dated June 23, 1995, it is clear that the sheriff cannot be forced to privatize the county jail (Attachment 56).

Also the issue has been raised about the ability of private prison operators to rent or sell bed space to county jails or the ability of a sheriff to subcontract with a private business for the supervision of county inmates. In a letter from Attorney General Michael Easley, dated March 29, 1999, it is clear that neither activity would be permitted. The letter clearly states that "any arrangement that would transfer control of any aspect of the function or operation of a local jail to a private entity would not be allowed under the current provisions of North Carolina law" (Attachment 57).

Sheriffs who allow county departments to "help out" the sheriff by taking over some of the sheriff's office functions might later find those county departments trying to take away sheriff's office functions that the sheriff does not wish to give up. See the attached memorandum from Eddie Caldwell to Sheriff Ronald Hewett dated September 27, 2006 about the supervision of employees of the sheriff (Attachment 58).

Periodically, other government officials will tell a sheriff that the sheriff is required to take certain action or refrain from taking a certain action. Generally, such statements do not include any reference to a particular law that compels the sheriff to take or refrain from taking the action. Frequently, sheriffs who are confronted with these situations will ask the person making the statement to provide the sheriff with a copy of the law that requires the action described. Usually the person who made the statement cannot provide a copy of any such law, because no such law exists and because there is no such requirement on the sheriff.

The North Carolina Sheriffs' Association consistently and vigorously opposes any legislation introduced in the North Carolina General Assembly that would diminish the duties and powers of the Office of Sheriff in any way.

Labor Union Legislation and Pending Bills

Peace Officers' Bill of Rights

House Bill 980 from the 2007 session of the North Carolina General Assembly would implement a form of the Peace Officers' Bill of Rights. This bill would require all State and local law enforcement agencies to establish formal disciplinary procedures that must be followed when disciplining law enforcement officers, including the right to be represented by a lawyer, a union representative, or any other person. As introduced, this bill would not apply to sheriffs' deputies. Previous versions of the same legislation introduced in prior legislative sessions included many more expansive provisions and would have included sheriffs' deputies. See the 1991 version of the bill when it was first introduced (Attachment 59). If this legislation is enacted, it is likely that the proponents of this legislation will seek to expand its requirements and make it apply to sheriffs' deputies in future legislative sessions.

The bill was amended in 2007 in the House Judiciary I Committee to delete State law enforcement agencies from coverage by the bill. The bill was narrowly approved by the Committee and then was scheduled to be considered by the House in full. It was eventually withdrawn from the House agenda and re-referred back to the House Judiciary I Committee where it remained. It was not considered in 2008 and it was not enacted into law. This bill was opposed by the North Carolina Sheriffs' Association (Attachment 60).

Under North Carolina law, a sheriff and the sheriff's deputy are "one person" [See the Amicus Curiae (Friend of the Court) Brief (Attachment 6)]. In performing their duties, deputy sheriffs act for the sheriff and in the sheriff's name and right. Since the sheriff is liable and responsible for the actions of the sheriff's deputies, the sheriff must retain ultimate authority to determine who will and who will not be employed by the sheriff.

The North Carolina Sheriffs' Association vigorously opposes legislation that is commonly known as the "Peace Officers' Bill of Rights." This position is explained in detail in the Association's paper on this issue (Attachment 61).

Collective Bargaining

Senate Bill 1543 from the 2007 session of the North Carolina General Assembly would authorize public employees to organize for the purpose of collective bargaining and would create the Public Employee

Labor Relations Commission. The commission would be made up of five members appointed by the Governor and four members appointed by the General Assembly to ensure fair dealings between public employers and labor organizations. Collective bargaining aims to reach a collective agreement between employees and employer which usually centers on such issues as employee pay, working hours, training, health and safety, and rights to participate in workplace or company affairs. This bill was not enacted into law. This bill was opposed by the North Carolina Sheriffs' Association (Attachment 62).

Restore Contract Rights to State/Local Employees

House Bill 1583 from the 2007 session of the North Carolina General Assembly would allow payroll deduction of dues to continue for government employees' associations that engage in collective bargaining between state and local government. Further, this bill would require collective bargaining between state and local government employers and employee associations. This bill has not been enacted into law. This bill was opposed by the North Carolina Sheriffs' Association (Attachment 63).

Public Safety Employer-Employee Cooperation

House Bill: House Bill 1584 from the 2007 session of the North Carolina General Assembly would allow public safety officers employed by local governments to form an association or labor organization. The bill would also allow an officer whose rights have been violated to sue in civil court to obtain injunctive relief or monetary damages. Public safety officer is defined in this legislation as a firefighter or an emergency medical services personnel. As introduced, it did not include law enforcement officers, but if it is enacted into law, there will likely be follow up legislation to add law enforcement officers at a later date. This bill was enacted into law. This bill was opposed by the North Carolina Sheriffs' Association (Attachment 64).

Senate Bill

Senate Bill 970 from the 2007 session of the North Carolina General Assembly would establish a Public Safety Employer/Employee Cooperation Act, which would allow public safety officers employed by local governments to have collective bargaining like a union. When the organization represents more than half of its members, the organization may advocate for their members and be present at the interrogations of members, meet with the employer leadership, reduce agreements to a memorandum of understanding, and enforce the memorandum in a civil action. This bill would also allow the officer who feels his rights have been violated to sue in civil court to obtain monetary damages or other damages. This bill was not enacted into law. This legislation is opposed by the North Carolina Sheriffs' Association (Attachment 65).

Federal Bill

Senate Bill 3194 from the 2010 session of the United States Congress would establish a Public Safety Employer/Employee Cooperation Act, which would allow public safety officers employed by local governments to have collective bargaining like a union. This bill was opposed by the North Carolina Sheriffs' Association (Attachment 66).

Repeal Collective Bargaining Ban N.C. Gen. Stat. § 95-98

Senate Bill 178 from the 2009 session of the North Carolina General Assembly would repeal the prohibition on contracts between governmental entities and labor organizations for the purpose of collective bargaining and allow collective bargaining in North Carolina [N.C. Gen. Stat. § 95-98]. This

bill was not enacted into law. This bill is opposed by the North Carolina Sheriffs' Association (Attachment 67).

Firefighter/EMS/LEO Dues Payroll Deduction

Senate Bill 1271 from the 2007 session of the North Carolina General Assembly would require that a public safety employer must make a payroll deduction upon the request of the employee for any membership dues of any firefighter and emergency service personnel organization that represents a majority of eligible employees in the agency. This bill was amended to add law enforcement officers to the groups who are allowed to make a payroll deduction for membership dues at an officer's request for a law enforcement organization or association with at least 2,000 members statewide. This bill has not been enacted into law. This bill is opposed by the North Carolina Sheriffs' Association (Attachment 68).

Add FOP Member to Criminal Justice Commission

House Bill 130 from the 2009 session of the North Carolina General Assembly would include the State Lodge of the Fraternal Order of Police on the membership of the North Carolina Criminal Justice Education and Training Standards Commission. This bill was not enacted into law. This bill is opposed by the North Carolina Sheriffs' Association (Attachment 69).

Authority to Pay North Carolina Sheriffs' Association Dues with County Money

Due to the fact that elected officials are exempt from registration for lobbying pursuant to N.C. Gen. Stat. § 120C-700(3), this implies that lobbying by them is recognized and authorized (Attachment 70).

Lobbying activities are allowed to be paid for by County money if they are for a public purpose, which arguably the North Carolina Sheriffs' Association is. See attached e-mail from attorney Fred Baggett and the case *Horne v. Chafin* discussing the matter (Attachment 71).

Election Law – Promising Jobs for Political Support

Pursuant to N.C. Gen. Stat. § 163-274, it is a Class 2 misdemeanor “for any person to give or promise, in return for political support or influence, any political appointment or support for political office” (Attachment 72).

Any public official who violates the above statute will not only be punished by law, but will also be removed from office pursuant to N.C. Gen. Stat. § 163-276 (Attachment 73).