



Position Paper

NORTH CAROLINA SHERIFFS' ASSOCIATION

2021

The Elective Office of Sheriff

The North Carolina Sheriffs' Association SUPPORTS - HIGH PRIORITY the elective Office of Sheriff and is OPPOSED - HIGH PRIORITY to any attempt to make the Office of Sheriff an appointed office. As described in greater detail below, our State Constitution makes the Office of Sheriff an elective office and there are numerous checks and balances in place to ensure the elective Office of Sheriff is responsive to the citizens of this State.

— North Carolina's 1776 Constitution established the Office of Sheriff and it has been a constitutionally required office since that time. The Office of Sheriff is not simply another “department” of county government. The Office of Sheriff is a constitutional office having exclusive powers and authority under the North Carolina Constitution. Sheriffs occupy an elective office just like the Governor, Attorney General, Secretary of State, and numerous other elected officials.

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

— At its creation in 1776, the Office of Sheriff had, and continues to have, the duties and authorities of sheriffs as they were under the common law of England. 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 are still the duties of the sheriff, unless changed by statute. Duties such as the operation of the jail, law enforcement, service of process, and the courts (bailiffs) existed at common law and have not been changed by statute in North Carolina.

¹ N.C. Const., Art. VII, § 2.

— Checks and balances that frame our democratic system of government are also placed on the elective Office of Sheriff. While the sheriff is directly accountable to local constituents, he or she is also accountable to the board of county commissioners for two important aspects of the Office. North Carolina statutes allow the board of county commissioners to set the sheriff’s budget and ultimately, the number of employees in the sheriff’s office.^{2,3} Otherwise, sheriffs act independently of the board of county commissioners. This ensures impartiality of the sheriff if called upon to investigate one of these county officials.

— In addition, North Carolina General Statutes place further checks and balances on sheriffs by requiring his or her removal from office for willful or habitual neglect or refusal to perform the duties of office, willful misconduct or maladministration in office, corruption, extortion, upon conviction of a felony, or for intoxication or upon conviction of being intoxicated.⁴ A petition for removal alleging any of the above may be filed with the clerk of superior court in the sheriff’s county by the county attorney or the district attorney. In addition, a petition for removal alleging any of the above may also be filed by five qualified electors in the sheriff’s county if the petition is approved by the county attorney or district attorney.⁵

— A sheriff may be suspended from office by a superior court judge after a petition for removal is filed, but before a full hearing on the petition once the judge has reviewed the petition and any supporting affidavits.⁶ Even if a sheriff is suspended from office prior to hearing, he or she is still entitled to a full hearing before a superior court judge before being permanently removed from office.⁷

— Finally, and equally as important, the sheriff is likely to encounter constituents on a daily basis and is likely to be asked about decisions made by the sheriff’s office. Therefore, as an elected official, the sheriff must understand the population he or she serves and must answer the community’s needs through action. Ultimately, citizens hold the sheriff accountable in a general election for the successes or failures of his or her office.

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² G.S. § 153A-101 & G.S. § 159-10 (2020).

³ G.S. § 153A-103 (2020).

⁴ G.S. § 128-16 (2020).

⁵ G.S. § 128-17 (2020).

⁶ G.S. § 128-19 (2020).

⁷ G.S. § 128-16 (2020).