
The Office of Sheriff in North Carolina



North Carolina Sheriffs' Association
Post Office Box 20049
Raleigh, North Carolina 27619
(919) SHERIFF (743-7433)
www.ncsheriffs.org

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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 required 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 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 overwhelmingly passed by the voters in November 2010, officially amending the North Carolina Constitution (Attachment 1). This legislation and the constitutional amendment was strongly supported by the North Carolina Sheriffs' Association.

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 either an elected or appointed individual. Also, the individual does not have to be convicted of the felony in North Carolina, rather any conviction, anywhere, disqualifies the felon from serving as a sheriff.

¹ N.C. Const. Art. VII, § 2.

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

In 2018, a convicted felon that had felony convictions expunged filed for candidacy to run for sheriff in North Carolina. The expungement the individual obtained was not based upon a pardon of innocence or a judicial determination of innocence.

The North Carolina Sheriffs' Association assisted in the drafting of legislation in 2018 that would clarify that any convicted felon that later has that conviction expunged is still barred from holding the Office of Sheriff. The only exception to this rule would be if the individual obtained a pardon of innocence or was judicially determined to be innocent of the crime by a court. An amendment to House Bill 1089 was introduced in the 2018 Session of the General Assembly that would make this clarification in our General Statutes (Attachment 2a). This bill was not enacted into law in the 2018 session, but will be pursued again during the 2019 session of the General Assembly.

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."

On January 29, 2016, the Supreme Court of North Carolina issued important decisions in the following three cases filed against Chipp Bailey, former Sheriff of Mecklenburg County: *McLaughlin and Stanley v. Bailey*, 368 N.C. 618 (2016); *Young v. Bailey*, 368 N.C. 665 (2016); and *Lloyd v. Bailey*, 368 N.C. 286 (2016). Copies of these cases, collectively known as the "Bailey" case, are included as Attachments 3a through 3c.

A critical aspect in the Bailey cases dealt with the authority of a sheriff to dismiss employees based upon loyalty considerations alone. Former employees of Sheriff Bailey (detention officers and deputies) claimed they were wrongfully fired because they did not support Sheriff Bailey's run for re-election in 2010. The Supreme Court disagreed with the former employees and unanimously held that deputy sheriffs can be lawfully dismissed by a sheriff based upon political considerations. The Supreme Court said, in part, "...by standing in the elected sheriff's shoes, a deputy sheriff fills a role in which loyalty to the elected sheriff is necessary to ensure that the sheriff's policies are carried out."

The Supreme Court in Bailey also held that a sheriff's office is not a program or department of a county. The Court went on to explain that deputy sheriffs, and other employees of a sheriff's office, are not county employees for purposes of N.C. Gen. Stat. § 153A-99 (County Employee Political Activity) and that because of this statute the employees are not entitled to any of the protections of § 153A-99.

A sheriff's exclusive authority to supervise and discharge employees, as well as the exclusive authority to establish policy within the sheriff's office, is also discussed in the Fourth Circuit Court of Appeals case of *Little v. Smith*, 114 F. Supp. 2d 437 (2000), which is included as Attachment 3d.

Finally, G.S. 153A-103 will be reviewed in greater detail during the class on "An Introduction to the Employment of Sheriff's Office Personnel" later during Week One of the Sheriffs' Leadership Institute.

N. C. Gen. Stat. Chapter 162. Sheriff.

N.C. Gen. Stat. Chapter 162 contains numerous provisions governing the Office of Sheriff. A copy of this 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 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 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.

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

It is a common mistake to incorrectly refer to a "sheriff's department" or to use the terms "sheriff's office" and "sheriff's department" interchangeably. There is no such entity as a sheriff's department in North Carolina.

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, and not to any county employee or governing board.

There is an important difference between an office and a department. In county government, you will often find a Health Department, Department of Social Services, Finance Department, Information Services and Technology Department, and Parks and

Recreation Department. The head of each of these Departments is not an elected official but is an appointed employee of the county who is hired by and supervised by the county manager.

The Office of Sheriff is not simply another “department” of county government. The term “department” refers to a subunit of county government, with county department heads who are subordinate to the county governing board. On the other hand, the Office of Sheriff is a constitutional office having exclusive powers and authority under our State constitution. The powers of the Office of Sheriff are not subject to the dictates of a local county governing board.

While 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 Department 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 “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.

The one year county residency requirement prior to the “election” has been interpreted in a 1998 opinion letter from Senior Deputy Attorney General Ann Reed to mean one year prior to the general election (Attachment 13a). Also, 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.

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* (Attachments 15a-15b). 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/she alone has jurisdiction throughout the county.

Please see the following excerpt from 70 Am. Jur. 2d *Sheriffs* §30 (2008):

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 (Attachment 18a) and § 128.1-1 (Attachment 18b) have been enacted by the General Assembly pursuant to N.C. Const. Art. VI, § 9. 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, automatically terminates the person's authority in the first office to which they were elected or appointed.

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 at Chapel Hill 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).²

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 the person 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).

Finally, there is one specific statute that will allow a person to hold one elective office in addition to two appointive offices. N.C. Gen. Stat. § 115D-16 (Attachment 21a) allows a person to be appointed to a community college board of trustees, which is a public office, while at the same time holding an elective office and one other appointive office under N.C. Gen. Stat. § 128-1.1. Due to the unique circumstances surrounding holding multiple offices, any sheriff already holding one appointive office should consult with their legal advisor prior to accepting another appointive office.

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

² Eliason v. Coleman, 86 N.C. 236, 240-241 (1882).

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. § 163A-700, to take office on the first Monday in December after the election, December 3, 2018 (Attachment 22). Also see N.C. Gen. Stat. § 153A-26 (Attachment 28a).

Questions often arise about precisely when a newly-elected sheriff or a re-elected sheriff is required to take the oaths of office, and whether or not the oaths of office for the sheriff must be taken at 12:01 a.m. on the first Monday in December. While the statute sets the date for a sheriff's term of office to commence on the first Monday in December, there is no penalty if the newly-elected or re-elected sheriff does not take the oaths of office at a precise time on the first Monday in December. Article VI, Section 10, of the N.C. Constitution says: "Continuation in office. In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified." N.C. Gen. Stat. § 128-7, Officer to hold until successor qualified, provides: "All officers shall continue in their respective offices until their successors are elected or appointed, and duly qualified." "Duly qualified" has been interpreted to mean to take the oath of office.

These provisions of law allow sheriffs to take their oaths of office at anytime after midnight on the first Monday in December, which is why most sheriffs take their oaths of office during normal business hours, and do not take their oaths of office in the middle of the night right after midnight.

These provisions of law keep the "sitting" sheriff in office until the "new" sheriff actually takes office. This applies whether the incoming sheriff is a newly-elected sheriff or is an incumbent sheriff who has just been re-elected. Also, re-elected sheriffs must re-take their oaths of office and must require their deputies to do so as well.

Once a newly-elected or re-elected sheriff takes the oaths of office, the deputies in the sheriff's office have no authority whatsoever, and each deputy must take new oaths of office after the sheriff takes the sheriff's oaths of office. It is recommended that all deputies take their oaths of office immediately after the newly-elected or re-elected sheriff takes the sheriff's oaths of office to avoid any lapse in the deputies' authority. Don't forget to make arrangements to get deputies to promptly take their oaths of office, even if they are out of town (or State) on vacation or out of town (or State) in a training class. Failure of a deputy to take the oaths of office on the same date as the sheriff could also result in a break in service for the deputy that would jeopardize the deputy's eligibility for the Special Separation Allowance retirement benefit if the deputy is within five years of retirement eligibility.

Occasionally, the outgoing sheriff will retire effective 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 the month of 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 make sure that his or her deputies take their oaths of office 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 (depending on the county). 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 (Attachments 24a-24b).

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. 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 (Attachment 27)

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 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 for making any false return on any process to me directed; so help me, God.”

Oaths of Office of Deputy Sheriffs (Attachment 27)

Deputy sheriffs must 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 have an oath administered 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 of Office Must be Filed

Pursuant to N.C. Gen. Stat. § 153A-26, all oaths must be filed with the clerk. The clerk as defined by N.C. Gen. Stat. § 153A-1, is the clerk to the board of county commissioners, not the clerk of court (Attachments 28a-28b). Please see the attached blog post by David Lawrence of The University of North Carolina at Chapel Hill 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 University of North Carolina at Chapel Hill 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.

NOTE: Oaths of office cannot be administered personally by a sheriff, unless the sheriff is also a notary public commissioned by the North Carolina Secretary of State. A notary public is a “public officer” per N.C. Gen. Stat. § 10B-3(13), which relates to the prohibition regarding dual office holding in certain circumstances.

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 and the 1978 opinion of Special Deputy Attorney General David Crump 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 (a Liberty Mutual Company) in Cabarrus County, (800) 542-5385 and Mimosa Insurance Company in Burke County,

(828) 437-5357.

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 Sylvia Ogle at (404) 995-2722 or Sylvia.m.ogle@marsh.com.

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 1 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

N.C. Gen. Stat. § 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 N.C. Gen. Stat. §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 3). 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 University of North Carolina at Chapel Hill 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 legislative bills that specifically addressed the sheriff's budget in Clay and Graham Counties (Attachments 42a-42c).

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 1 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).³

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 first adopts a resolution to transfer the property (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).

³ Jackson v. Board of County Commissioners, 171 N.C. 379, 88 S.E. 521 (1916).

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 Assistant Attorney 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 55a-55b).

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.

However, new bills have been introduced each session of the North Carolina General Assembly since 2015 that are designed to allow for the service of civil process papers by private process servers in the 10 largest counties in North Carolina. [House Bill 881](#) (2015 - 2016 Sessions), [House Bill 706](#) (2017 Session) and [House Bill 1040](#) (2018 Session) were all successfully defeated by the North Carolina Sheriff's Association (Attachments 55c – 55e). These bills further illustrate the continued efforts to diminish the authority of the Office of Sheriff.

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.

House Bill 980 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 was not 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 not 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 bill was 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 not enacted into law. 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 was 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 was not enacted into law. This bill was 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 was opposed by the North Carolina Sheriffs' Association (Attachment 69).

Similar bills were introduced in the 2017 Session of the North Carolina General Assembly. Both House Bill 395 and Senate Bill 505 from the 2017 Session would give the North Carolina Police Benevolent Association (PBA) a seat on the North Carolina Criminal Justice Education and Training Standards Commission. Neither bill was enacted into law. These bills were also opposed by the North Carolina Sheriffs' Association (Attachments 69a – 69b).

Protect Officers from Retaliation

House Bill 643 from the 2013 Session of the North Carolina General Assembly would have enacted laws allegedly designed to protect municipal and county law enforcement officers who report improper or unlawful government activity from retaliation. The bill would have encouraged county and municipal law enforcement officers to report to their supervisor or department head evidence of activity that would constitute any of the following:

1. a violation of State or federal law, rule or regulation;
2. fraud;
3. misappropriation of State and local government resources; or
4. gross mismanagement, a gross waste of monies or gross abuse of authority.

The bill would have further provided for a reporting employee to be protected from retaliation, including discharge, threats or discrimination in compensation, terms, conditions, location or privileges of employment for reporting, preparing to report or the refusal to carry out a directive or order that violates State or federal law, rule or regulation or that poses a substantial and specific danger to public health and safety. This bill was opposed by the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police. **The protections outlined in this bill are already provided by existing law and would likely result in unnecessary lawsuits when employees are disciplined.**

House Bill 643, Protect Officers from Retaliation, was a late addition to the agenda of a long meeting of the House Committee on Rules, Calendar and Operation of the House. Representatives of both the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police spoke at the committee meeting and voiced strong opposition to the bill. However, the bill passed out of committee.

During a ten-hour-long House session, the bill was finally considered near midnight. House members all received a letter from the North Carolina Sheriffs' Association expressing opposition to the bill stating that the proposed law would infringe upon the right of sheriffs to employ at will and that the bill would direct policy that should be decided at the local level. The bill was defeated on a vote of 56 against and 54 in favor with the opposition spearheaded by Representatives Jamie Boles, Leo Daughtry, John Faircloth and Allen McNeill. This bill was not enacted into law (Attachment 70).

Similar bills were introduced in the 2017 Session of the North Carolina General Assembly.

Both House Bill 37 and Senate Bill 596 from the 2017 Session were allegedly designed to protect municipal law enforcement officers who report improper or unlawful government activity from retaliation, as described above. However, county law enforcement officers were omitted from the 2017 bills. It is likely that additional legislation would be sought to include county law enforcement officers if either of these bills were enacted into law. Both bills were opposed by the North Carolina Sheriffs' Association and the North Carolina Association of Chiefs of Police. Neither bill was enacted into law (Attachments 70a-70b).

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. § 163A-365(3), this implies that lobbying by them is recognized and authorized (Attachment 71).

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 of *Horne v. Chafin* discussing the matter (Attachments 72a-72b).

NOTE: County money is used to pay dues to the North Carolina Association of County Commissioners and the North Carolina School Boards Association. City money is used to pay dues to the North Carolina League of Municipalities.

Sheriff's Office Contracts

Agreements for cooperation between the sheriff's office and other agencies, such as mutual assistance agreements, are typically unique to the sheriff signing the agreement and therefore may be discontinued by incoming sheriffs without county approval.

However, contracts for the provision of services that obligate county funds cannot be unilaterally discontinued by the incoming sheriff, unless allowed by the terms of the contract itself. The board of county commissioners (Board) is the sole body that has the authority to enter into contracts which obligate county funds. N.C. Gen. Stat. § 153A – 12 (Attachment 73). The Board can delegate this authority to others. The extent to which a Board delegates its contracting authorities is generally a function of local policy. Thus, any contracts entered into by a sheriff that obligate county funds must be authorized by the Board.

A county official such as a sheriff cannot enter into a contract that obligates county funds without receiving authority from the Board to do so. Pursuant to N.C. Gen. Stat. § 159 – 28(e), "if an officer or employee of a local government or public authority incurs an obligation or pays out or causes to be paid out any funds in violation of this section [funds which have not been appropriated], he and the sureties on his official bond are liable for any sums so committed or dispersed..." (Attachment 74).

This provision of law emphasizes that a county is not bound by a contract entered into by

a person who does not have the authority granted by the Board to do so. Therefore, any new contracts that obligate county funds that may be contemplated by a new sheriff must be authorized by the Board before they are entered into.

Election Law – Promising Jobs for Political Support

Pursuant to N.C. Gen. Stat. § 163A-1388, 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 75).

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. § 163A-1390 (Attachment 76).