



State of West Virginia
Office of the Attorney General

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The Honorable Joseph R. Canestraro
Marshall County Prosecuting Attorney
Marshall County Courthouse
600 7th Street
Moundsville, WV 26041

Dear Prosecutor Canestraro:

You have asked for an Opinion of the Attorney General concerning civil service protections for county sheriffs. This Opinion is being issued under West Virginia Code Section 5-3-2, which provides that the Attorney General “may consult with and advise the several prosecuting attorneys in matters relating to the official duties of their office.” When this Opinion relies on facts, it depends solely on the factual assertions in your correspondence with the Office of the Attorney General.

Your letter seeks an opinion about “the rights, if any, of an outgoing elected sheriff with regard to civil service protections.” Your letter explains that your sheriff formerly worked as a deputy sheriff and then won election as the Marshall County sheriff in 2020. Having recently lost his bid for reelection, he wishes to return to his former position.

Thus, you have asked the following legal question:

Can a sheriff go back to his former rank as a lieutenant and begin serving as a deputy sheriff again once his term ends? Or, pursuant to W. Va. Code § 7-14-15, did he give up his civil service deputy sheriff status once he ran for the office of Sheriff in 2020 and won, such that he must now reapply to be a deputy sheriff?

We conclude that your sheriff gave up his civil-service status when he left his deputy position, so he may not automatically return to his former position. Civil service protections apply to current deputy sheriffs—not former ones like your sheriff. Further, civil service law allows

reinstatement of a deputy sheriff if he resigned from his deputy position not more than two years ago. W. VA. CODE § 7-14-8(d)(2). But your sheriff resigned about four years ago, thus precluding reinstatement.

DISCUSSION

West Virginia's civil service laws say that "[n]o deputy sheriff of any county subject to the provisions of this article may be removed, discharged, suspended or reduced in rank or pay except for just cause." W. VA. CODE § 7-14-17(a); *see also* W. VA. CODE § 6-3-2. These provisions protect "deputy sheriffs" in the present tense, meaning they apply to *current* deputies, not past ones. And these provisions do not apply to sheriffs who in West Virginia are elected. *See* W. VA. CONST. art. IX, § 3. Because the individual you are asking about is currently a sheriff, not a deputy, the clear language of these provisions shows that civil-service protections do not apply to him. *Compare State v. Smith*, 243 W. Va. 470, 479, 844 S.E.2d 711, 720 (2020) (saying courts apply a "statute's plain language"), *with Boyles v. Wash. State Dep't of Ret. Sys.*, 716 P.2d 869, 870 (Wash. 1986) (finding that a sheriff could return to his role as deputy sheriff after losing an election because the "plain language" of the statute there created a "reversion right").

A person serving as sheriff is not protected by Sections 6-3-2 or 7-14-17 because he cannot hold his deputy sheriff role concurrent with his position as the sheriff. The positions are mutually exclusive. Under basic agency-principal concepts, when your sheriff took office his appointment as a deputy sheriff came to an end. Nothing in West Virginia law suggests a person can be both sheriff and deputy sheriff simultaneously. Just the opposite, in fact. The position of deputy sheriff and authority to appoint them "is derived by statute." *Meadows v. Hopkins*, 211 W. Va. 382, 386, 566 S.E.2d 269, 273 (2002). The West Virginia statutes governing deputy sheriffs cast sheriffs and deputy sheriffs in terms of "principal" and agent. W. VA. CODE § 6-3-1, *et seq.* For over 100 years case law has consistently applied this framework. *E.g.*, syl. pt. 3, *Rowan v. Chenoweth*, 49 W. Va. 287, 38 S.E. 544 (1901) ("A deputy sheriff is agent of the sheriff."); *Webster Cnty. Comm'n v. Clayton*, 206 W. Va. 107, 112 n.8, 522 S.E.2d 201, 206 n.8 (1999) (calling the sheriff the deputy's "principal"). Crucially, an agent is one "authorized and directed to act on behalf of another." *Clark v. Blue Cross Blue Shield of W. Va., Inc.*, 203 W. Va. 690, 714, 510 S.E.2d 764, 788 (1998) (emphasis added). Our Supreme Court's case law and the major treatises on agency consistently use that formulation: agency-principal relationships involve "dealings between two parties by and through the medium of another"; "[a]gency is succinctly defined as ... the representation of one called the principal by another called the agent"; "[an agent is] one who acts for or in the place of another." *Id.* (ticking through several major treatises) (emphasis added) (cleaned up). Because an agent must be "another," "a person cannot be, at the same time," principal and agent. 99 FRANCIS C. AMENDOLA, ET AL., C.J.S. WORKERS' COMPENSATION § 191. So, by taking office, your sheriff necessarily resigned his former deputy sheriff position.

The Civil Service Commission has no power to reinstate your sheriff because he resigned more than two years ago. West Virginia Code § 7-14-8(d)(2) says an "applicant who formerly served as a deputy sheriff for more than six months before resignation is eligible for reinstatement by appointment," among other things, if he "seeks reinstatement within two years of resignation as a deputy sheriff." But your sheriff resigned his deputy sheriff role roughly four years ago. This far exceeds the "two years [since] resignation" required by statute. A 2020 resignation date is thus

fatal to any claim by your sheriff to civil service reinstatement. *See Meadows*, 211 W. Va. at 387, 566 S.E.2d at 274 (applying West Virginia Code Section 7-14-8 to hold that someone who resigned his deputy sheriff position to run for sheriff but then lost in the primary could be reinstated because only six months had run between resignation and reappointment).

This result squares with the public policy decisions underlying our civil service laws. For one, the Legislature's prohibition on deputy sheriffs running for and holding public office exists because the "possibility of coercion of employees by superior officers remains a strong factor in state, county, and municipal elections." *Sowards v. Cnty. Comm'n of Lincoln Cnty.*, 196 W. Va. 739, 748, 474 S.E.2d 919, 928 (1996). The Legislature wanted to "remov[e] even the implication of impropriety from law enforcement whose very effectiveness and success is dependent upon its freedom from political influence." *Id.* Faithful enforcement of our civil service laws is important to "preserving the political neutrality—and avoiding even the appearance of political partisanship—in stocking and maintaining the ranks of those charged with enforcing the law." *Id.* For another, the law should not encourage deputy sheriffs to routinely take leaves of absence or resign to run for office. *Deeds v. Lindsey*, 179 W. Va. 674, 680, 371 S.E.2d 602, 608 (1988). Regularly losing members of the force would be "incompatible with the efficient administration of justice"—especially "in sparsely populated counties with a small number of deputies; these counties would undoubtedly experience difficulty in replacing a deputy sheriff on a possibly temporary basis." *Id.* Likewise, departments could struggle if they are compelled to reemploy an outgoing sheriff even if they are already fully staffed.

CONCLUSION

Your present sheriff is not entitled to automatically return to his former position as a deputy sheriff without applying again. He is also not eligible for civil service reinstatement. We express no opinion on whether he could be appropriately rehired through the ordinary civil-service selection procedures.

Sincerely,



Patrick Morrisey
West Virginia Attorney General

Michael R. Williams
Solicitor General

Frankie Dame
Assistant Solicitor General