

upon its business done in this State, less return premiums". The provision did not exclude cash surrender values as does our statute. In the Kansas statute a deduction was provided for any premiums returned on account of cancellation. Again no mention of cash surrender values was made. Neither case considered the problems arising out of a situation where an annuitant dies before the commencement of payments under the policy.

Accordingly, we advise you that it is not proper for insurance companies to deduct sums paid at death or surrender of annuity policies from gross considerations reported under the requirements of Section 8, Chapter 132, P. L. 1945, N. J. S. A. 54:18A-8.

Very truly yours,

GROVER C. RICHMAN, JR.,
*Attorney General of
New Jersey.*

By: JOHN F. CRANE,
Deputy Attorney General.

JFC:b

JUNE 10, 1955.

HONORABLE WILLIAM F. PARKER,
Sheriff, Burlington County,
County Court House,
Burlington, New Jersey.

FORMAL OPINION—1955. No. 23.

DEAR MR. PARKER:

You have asked for our opinion whether you, as Sheriff of Burlington County, have the authority to appoint Special Deputies Sheriff under the following circumstances.

On or about April 1, 1955, desiring to institute a motor vehicle patrol of the highways in your County, you appointed, by deputation in writing, 12 persons as Special Deputies Sheriff to conduct such patrol, without compensation.

You issued to such deputies, uniforms purchased by the Board of Freeholders, and a gun, shells, blackjacks, handcuffs and a number of blank summonses.

Since the above date, such deputies have patrolled the State, County and Municipal highways, in teams of two, in motor vehicles owned by the County of Burlington and furnished to the deputies by you.

During the course of such patrols, the deputies have on many occasions issued a summons to a person apprehended for a violation of the Motor Vehicle Act.

The deputies also have been making inspections of premises in the County to determine if any violation of the criminal laws has occurred, and on at least one occasion, have made an arrest on a charge of disorderly conduct.

It is our opinion that a Sheriff has no authority to appoint Special Deputies Sheriff under the foregoing circumstances.

A County Sheriff is an official recognized by the Constitution of this State. Art. 7, Sec. 2, Par. 2 of the 1947 Constitution provides:

"County clerks, surrogates and sheriffs shall be elected by the people of their respective counties at general elections. The term of office of county clerks and surrogates shall be five years, and of sheriffs three years. Whenever a vacancy shall occur in any such office it shall be filled in the manner to be provided by law."

The authority of a County Sheriff to appoint and employ assistants is found in R. S. 40:41-28 and 40:41-31.

R. S. 40:41-28, as amended, concerns the appointment of Undersheriffs, etc. It provides as follows:

"The appointment of an undersheriff shall be by writing under the hand and seal of the sheriff. Every undersheriff, before he assumes his office, shall take and subscribe before a judge of the County Court of the county, an oath that he will well and faithfully execute the office of undersheriff, according to the best of his skill and judgment. He shall file his appointment, with the certificate of his oath endorsed thereon and attested by the judge, in the office of the county clerk. Nothing in this section contained shall prevent the sheriff from removing an undersheriff at pleasure."

R. S. 40:41-31 allows a County Sheriff to select and employ necessary deputies, chief clerks and other employees, and provides:

"The sheriff shall select and employ the necessary deputies, chief clerks and other employees, who shall receive such compensation as shall be recommended by the sheriff and approved by the board of chosen freeholders, except that in counties of the second class having a population in excess of two hundred thousand the salaries of the undersheriff and chief clerk or executive clerk shall be fixed by the sheriff. In such counties the amount fixed for the undersheriffs shall not be in excess of three-fourths, and that fixed for the chief clerk or executive clerk shall not be in excess of three-fifths, of the salary of the sheriff, nor shall such compensation be less than was received by such officers prior to March thirtieth, one thousand nine hundred and twenty-seven. The compensation of all such officers shall be paid semimonthly by the proper disbursing officer of the county on warrant approved by the sheriff."

Deputies to a County Sheriff are of two classes, to wit, general deputies or undersheriffs and special deputies. The distinction between deputies to a Sheriff was defined in the case of *Allen v. Smith*, 12 N. J. Law 184, (Sup. Ct. 1831) where the Court said at page 188:

"There are two kinds of deputies of a sheriff well known in practice. 1st. 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. (Com. Dig. tit. *163) Viscount 542, B. 1. *He executes process without special power from the sheriff, and may even delegate authority in the name of the sheriff for its execution to a special deputy. 2d. A special deputy, who is an officer pro hac vice; to execute a particular writ on some certain occasion. He acts under a specific, not general appointment and authority."

The authority of a sheriff to appoint a special deputy sheriff was decided in the case of *Meyer v. Bishop*, 27 N. J. Eq. 141 (Chan. 1876), affirmed, sub nom, *Meyer v. Patterson*, 28 N. J. Eq. 239 (E. & A. 1877). In that case the petitioner claimed to have a lien on mortgaged premises sold by the Sheriff of Middlesex County under a writ of fieri-facias issued out of the Court of Chancery. The petitioner sought to have the sale set aside on the ground that the sale had been made in the Sheriff's absence by a person acting as the sheriff's assistant pursuant to a verbal contract to take charge of the Sheriff's office in making all sales, etc. on a particular day. The Court said at p. 144:

"The appointment under consideration was not accompanied by the delivery of any process, and does not seem to have been limited to the performance of a specific act, in a single case, but to have been designed to operate as a complete transfer of the general powers of the office, for that day at least, for the discretion was to make all the sales and adjournments necessary on that day. The appointee was, pro tempore, to exercise all the powers of the office, and to be as fully invested with the sheriff's pre-

rogatives as though he had been elected, commissioned and sworn. He was to exercise the discretionary power of adjournment conferred by the statute, (Revision 753, Sec. 5); to decide the order in which the several sales advertised for that day should be made; also, whose bids should be accepted and whose refused, (*Merwin v. Smith*, 1 Green's Ch. 197); whether the sales had been properly advertised or not, and also whether the sum bid for any specific piece of property was sufficient to justify a sale, or was so grossly inadequate as to render a sale of it nugatory. (*Cummins v. Little*, 1 C. E. Green 49.) To permit a sheriff to delegate the large and important discretionary powers with which he is invested in making sale of real estate, by simply uttering a verbal command to any subordinate he may call to his aid, and to allow such subordinate to exercise these powers in the sheriff's absence, without even an oath that he will use them faithfully, would manifestly inaugurate a new and dangerous practice, and give countenance to a palpable violation of the obvious purpose of the law. Whatever may have been the real purpose of the sheriff, his conduct, in the instance under examination, must, in legal contemplation, be regarded as an attempt to appoint an under-sheriff, in utter defiance of the plain requirements of the statute."

Although *Meyer v. Bishop*, supra, was concerned with a verbal authorization to a special deputy sheriff, it cannot be said that if the deputation were in writing, the writing would cure the defective appointment. The evil which *Meyer v. Bishop*, supra, sought to prevent was a "complete transfer of the general powers of the sheriff's office to an unauthorized person."

The Legislature has seen fit to allow a sheriff to appoint persons who may exercise all of the powers and duties of a county sheriff, which persons are known as under-sheriffs. However, the Legislature in its wisdom has also imposed a limitation on the number of undersheriffs who may be appointed in any particular county. (R. S. 40:41-30.)

R. S. 40:41-30 provides:

"In counties bordering on the Atlantic ocean having a population of between fifty and one hundred thousand the sheriff may appoint not more than four undersheriffs. In all other counties the sheriff may appoint not more than two undersheriffs. All such undersheriffs shall hold office during the pleasure of the sheriff making the appointment or his successor, and shall be included in the unclassified service of the civil service."

The group in question here are neither undersheriffs nor special deputy sheriffs. They are not undersheriffs because their number exceeds the statutory limitation imposed by R. S. 40:41-30, and their oath of office is not sworn to and subscribed before the proper official, nor are their appointments and oaths filed in the proper office, (R. S. 40:41-28). They are not special deputies sheriff because "their appointment does not seem to have been limited to the performanc of a specific act, in a single case." *Meyer v. Patterson*, supra. Their duties are general and discretionary, including general law enforcement. The appointment of special deputies, under the circumstances presented here, is an unauthorized delegation of the power and duties of a County Sheriff.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: SAUL N. SCHECHTER,
Deputy Attorney General.