

OCTOBER 9, 1961

COLONEL JOSEPH D. RUTTER
Superintendent of State Police
 Department of Law and Public Safety
 West Trenton, New Jersey

MEMORANDUM OPINION—P-29

DEAR COLONEL RUTTER:

You have asked whether five years' experience as an undersheriff qualifies an applicant for a private detective's license under the Private Detective Act of 1939. (N.J.S.A. 45:19-8 *et seq.*) The section of the act covering qualifications for licensure (N.J.S.A. 45:19-12) provides in pertinent part as follows:

"No license shall be issued to a person under the age of twenty-five years nor to any person, firm, association or corporation unless such person or at least one member of the firm and one officer or director of the association or corporation has had at least five years' experience as an investigator or as a police officer with an organized police department of the State or a county or municipality thereof, or with an investigative agency of the United States of America or any State, county or municipality thereof."

The sheriff is a constitutional elective officer (Article VII, Sec. 2, para. 2) serving the State within a county. *Doyle v. County of Warren*, 15 N.J. Misc. 434 (Cty. Cir. Ct. 1937). He retains his common law powers and duties except as they are specifically removed by statute. Cf. *Wilentz v. Hendrickson*, 133 N.J. Eq. 447, 455 (Chan. 1943), *aff'd.* 135 N.J. Eq. 244 (E. & A. 1944); *Public Utility Commissioners v. Lehigh Valley Railroad Co.*, 106 N.J.L. 411, 418 (E. & A. 1930); *State v. DeLorenzo*, 81 N.J.L. 613, 623 (E. & A. 1911). The undersheriff is vested with the common law and statutory authority of the sheriff, subordinate to him and qualified to act in his stead in his absence. *State v. Lombardo*, 18 N.J. Super. 511, 520 (Law Div. 1952); *Allen v. Smith*, 12 N.J.L. 159, 163 (Sup. Ct. 1831).

The most recent extensive discussion of the sheriff's powers and duties is in *State v. Winne*, 12 N.J. 152 (1953) at 167, 168, 185 and 186. Contrasting the primary responsibility of the county prosecutor with the diminished responsibility of the sheriff in law enforcement, Chief Justice Vanderbilt wrote in *State v. Winne*:

"In contrast, the sheriff, although he possesses by the common law broad powers of law enforcement in his county, is not given the right to incur expenses in the prosecution of criminals that has been granted to the county prosecutor. The inevitable result of this is that his work as a law enforcement officer has been rendered less effective than that of the county prosecutor, without, however, any diminution of his powers or responsibilities."

The office of sheriff thus has declined in law enforcement responsibility in this State. Despite the anomaly of the survival of all the sheriff's common law duties, except as expressly divested by statute, most of the counties of New Jersey have failed to include any appropriation in sheriff's budgets for investigative or other law enforcement activity. That responsibility has been entrusted to the county prosecutor, the county detectives and investigators subordinate to the county prosecutor, and State and local police. See also *Morse v. Forbes*, 24 N.J. 341 (1957).

The sheriff retains manifold duties, most of them unrelated to investigation in connection with law enforcement. He is responsible for, for example, service of process, for the levy of execution and conduct of sheriff's sales, for the seizure of chattels to aid a distraint for rent and for other activities in conjunction with the administration of civil justice. A major segment of his responsibility is in the safeguarding of prisoners, their transportation to the State Prison and the custody of the county jails. Another surviving responsibility is to restrain riots and unlawful assemblies by the reading of the Riot Act and to arrest those who disobey the Riot Act.

My opinion must be, therefore, that an undersheriff is not per se entitled to a private detective's license based upon his experience in that office; his services and functions may have been wholly unrelated to investigative work in law enforcement. He must establish that he has been predominantly engaged in criminal or related investigative work in order to meet the statutory standards set forth in N.J.S.A. 45:19-12. The absence of any appropriations for such activities by the sheriff and his subordinates within a county would be conclusive evidence that the undersheriff in question was not eligible based upon his experience as an undersheriff for a private detective's license.

Very truly yours,

DAVID D. FURMAN
Attorney General

OCTOBER 25, 1961

MR. GEORGE C. SKILLMAN
Director of Local Government
Department of the Treasury
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-30

DEAR DIRECTOR SKILLMAN:

We have been asked whether a member of a municipal sewerage authority forfeits his office under N.J.S. 2A:135-9 because of his conviction for bribery and conspiracy to commit bribery or whether it is necessary that the incumbent be removed from office under R.S. 40:14A-5(c).

N.J.S. 2A:135-9 provides as follows:

"Any person holding an office or position, elective or appointive, under the government of this state or of any agency or political subdivision thereof, who is convicted upon, or pleads guilty, non vult or nolo contendere to, an indictment, accusation or complaint charging him with the commission of a misdemeanor or high misdemeanor touching the administration of his office or position, or which involves moral turpitude, shall forfeit his office or position and cease to hold it from the date of this conviction or entry of plea."