



TO: Rick Hodsdon, Assistant County Attorney – Washington County Attorney's Office

FROM: Stuart Vincent Campbell, Legal Intern – Washington County Attorney's Office

Date: 3/5/2012

RE: Washington County Sheriff's Obligations in the Absence of a § 436.05 Contract

I. INTRODUCTION AND FACTUAL BACKGROUND

Local governments in Washington County ("the County") have historically provided law enforcement services by operating their own city police departments and or paying the Washington County Sheriff ("the Sheriff") for extra protection through a contract formed under the authority of Minn. Stat. § 436.05 ("§ 436.05 contract"). Budgetary concerns have led some of these city governments to contemplate cutting costs by both eliminating the city police and refusing to pay the Sheriff for extra law enforcement. Those who advocate completely cutting law enforcement protection from the city budget have argued that "we already pay county taxes", and that Minn. Stat. § 436.05 does not relieve the Sheriff of law enforcement duties with regard to municipalities that refuse to contract. Minn. Stat. § 436.05 Subd. 3 (stating that "sheriff shall not by virtue of this section be relieved of any duties imposed by law"). Therefore, these cities reason that no extra payments are necessary to receive law enforcement services since the Sheriff is subject to various statutory duties to enforce laws throughout the County.

This memorandum addresses the minimum obligations of the Washington County Sheriff to those cities that refuse to contract with the Sheriff for law enforcement services, and fail to provide any local law enforcement for their citizens. Statutes governing the Sheriff, common law duties to which the office is subject, and persuasive authorities interpreting the role of sheriffs reveal that the Sheriff is legally obligated to enforce the law in municipalities that refuse to contract to pay for extra law enforcement service. *See infra* Parts II, III, and IV. If the Sheriff refused to enforce the law in certain municipalities this would likely be considered nonfeasance of duty and could be grounds for the initiation of the statutory mechanism to remove the sheriff from office. *See infra* Part III C. In some cases, the Sheriff could even be liable in tort for damage caused by the failure to enforce certain types of laws. *See infra* Part III B.

This obligation does not imply that the Sheriff is bound to provide the same level of service to every municipality regardless of whether it carries a § 436.05 contract or not. Instead, the Sheriff's obligations are highly context-dependent and vary depending on the type of law creating the duty and the context in which enforcement occurs. *See infra* Part III. In any event, it is extraordinarily unlikely that the Sheriff could be held liable in tort or removed from office for a strategic decision regarding the allocation of limited law enforcement resources. *See infra* Parts III A, III B, and III C. Citizens of cities that had previously enjoyed the benefits of a § 436.05

contract might be distressed or even tangibly harmed by the fact that they will encounter reduced law enforcement service, but their recourse for this injury is political and unenforceable by law.

II. ATTORNEY GENERAL'S OPINIONS

The Minnesota Attorney General's official opinions offer persuasive authority suggesting that the Sheriff has a statutory and possibly common law duty to enforce the law, and that nonfeasance of this duty could result in the Sheriff's removal from office. When presented with a question of general applicability or interest by a local government officer, the Minnesota attorney general's office issues official opinions that are not legally binding in Minnesota courts, *Billigmeier v. Hennepin County*, 428 N.W.2d 79, 81-82 (Minn. 1988), but are considered persuasive authority, *See, e.g., Governmental Research Bureau, Inc. v. St. Louis County*, 258 Minn. 350, 357, 104 N.W.2d 411, 416 (1960); *Mankato Citizens Tel. Co. v. Comm'r of Taxation*, 275 Minn. 107, 112, 145 N.W.2d 313, 317 (1966). Attorney General's opinions are entitled to especially "careful consideration where they are of long standing and accompanied by administrative reliance thereon." *Star Tribune v. Regents*, 683 N.W.2d 274 (Minn. 2004).

The most recent relevant Attorney General's opinion was issued in response to the question "Does the County Sheriff have any jurisdictional limits when investigating criminal conduct occurring in a municipality in the Sheriff's county which employs its own police force?" Op. Atty. Gen., 2681, 390a-6 (1997). The 1997 opinion is attached to this memorandum as "Exhibit 1". The Attorney General responded by citing an Attorney General's opinion from 1947 that said that a "sheriff has a general responsibility for enforcing the criminal laws throughout his county". Op. Atty. Gen., 2681, 390a-6 (1997) *citing* Op. Atty. Gen., 733, July 14, 1947. Thus, the opinion concluded that municipal boundaries were irrelevant and "the sheriff is responsible for ensuring that criminal laws are enforced and the peace is maintained - - regardless of any municipal borders within the county and regardless of whether any of these municipalities employ independent police forces." Op. Atty. Gen., 2681, 390a-6 (1997). Therefore, persuasive authorities have interpreted Minnesota law to oblige all sheriffs to enforce the law without regard for municipal boundaries.

On its face this opinion could be interpreted to suggest that the Sheriff might be obligated to provide the same level of service to all County cities regardless of whether they contract for extra service or not. However, a more thorough review of the document referenced in the 1997 opinion reveals that this is probably not a valid interpretation. The 1947 opinion was issued in response to a writer asking "Am I not correct in stating that the law makes the sheriff the chief law enforcement officer of his county, and that in the event of failure upon the part of police officials to enforce the law, that it becomes the duty of the sheriff to do so?" Op. Atty. Gen., 733, July 14, 1947. The 1947 opinion is attached to this memorandum as "Exhibit 2". Material not quoted in the 1997 opinion clarifies that a sheriff's duty to enforce the law throughout the county is not absolute but instead conditional. The complete paragraph selectively quoted in the 1997 opinion states:

The Sheriff has the general responsibility for enforcing the criminal laws throughout his county. It is his duty, *so far as available means permit*, to take the initiative in law enforcement without waiting for complaints, to investigate conditions respecting observance of the laws, to take such action as circumstances may require for the prevention of violations, to arrest offenders when sufficient grounds appear, to swear to

criminal complaints when he has sufficient knowledge of the facts, and to investigate criminal cases and secure evidence for the prosecution thereof. Any one may report a law violation to the sheriff, who *should* make such investigation and take such action *as the case may require*. Op. Atty. Gen., 733, July 14, 1947 (emphasis added).

This suggests that the Sheriff would not be liable for reducing service to municipalities that cut their § 436.05 contracts in two ways. First, a municipality that cuts its contract reduces the Sheriff's budget and therefore limits the "means" available to engage in the law enforcement duties enumerated in detail in the opinion. If it was argued that the Sheriff's budget simply does not allow units to be dedicated to enforcing laws in cities that do not compensate the Sheriff for this extra coverage, then it is likely that under the 1947 and 1997 Attorney General's opinions the Sheriff is not obligated to provide the same level of service to all cities. Second, the opinion states that the sheriff "should" make only those investigations justified by the case. It could be argued that this opinion leaves discretion over the scope and depth of any investigation in the Sheriff's hands. Under the 1947 opinion the Sheriff therefore likely has the discretion to place investigations in cities without § 436.05 contracts on the same priority level as investigations in areas without any city government, since that seems to be a policy judgment on the level of investigation required by different cases.

The 1947 opinion says that it is quoting a 1939 "memorandum of law enforcement duties" written by the Minnesota Attorney General that may contain further context helpful for interpreting the Sheriff's duties, as renewed by reference in the 1997 opinion. However, this 1939 memorandum is not in the possession of the Attorney General's Law Library, and may be at the Minnesota Historical Society instead. Email from Anita Anderson, Law Library Director, Minnesota Attorney General's Law Library, to author (2/28/2012 2:56 PM CST). The Minnesota Attorney General's Law Library email is attached to this memorandum as "Exhibit 3" along with a printout of the attachment. The Minnesota Historical Society confirmed that they might have the document and suggested several sets of historical government files that might contain it. Email from Jennifer McElroy, Reference Librarian, Minnesota Historical Society Library, to author (2/29/2012 3:31 PM). The Minnesota Historical Society email is attached to this memorandum as "Exhibit 4". If the additional context that this historical document may contain has sufficient potential value to justify the time it would take to retrieve it, then the information necessary to do so can be found in the Minnesota Historical Society email.

The next most recent discussion of a sheriff's duties was issued in 1994 in response to a letter asking if it was legal for the Pope County sheriff to be employed to perform law enforcement work during his off-duty hours. Op. Atty. Gen. 390a, October, 31, 1994. The 1994 opinion is attached to this memorandum as "Exhibit 5". While arguing that such off-duty work was illegal the Attorney General stated that while "with finite resources a sheriff ... can provide but a limited degree of protection from crime, the duty nonetheless remains to provide that degree, as appropriate, throughout the ... county with[ou]t unjustifiably deploying protective services in one area at the expense of another." Op. Atty. Gen. 390a, October, 31, 1994. In this opinion, the Attorney General specifically interpreted Minn. Stat. § 436.05 Subdivision 3 to "not relieve the sheriff of any of the duties imposed by law". This clearly supports the argument that the Sheriff must enforce the law throughout the county. However, the opinion is helpful in several ways. First, it recognizes that the Sheriff's obligation to enforce the law is contingent on funding levels. Second, the Attorney General's opinion could be interpreted to say that the Sheriff is allowed or

even required to reduce service to municipalities that drop their § 436.05 contracts. Arguably, a sheriff that provided more service to cities, without a § 436.05 contract as a justification, would be unjustifiably deploying protective services in the cities at the expense of law enforcement in rural areas.

Numerous other opinions issued by the Attorney General have suggested that failure to perform a duty could form the basis for removal through the statutory procedure. *See e.g.*, Op. Atty. Gen., 390a-13, July 22, 1927, Op. Atty. Gen., 390 and 475B-9, August, 25, 1931. The July 22, 1927 and August 25, 1931 opinions are attached to this memorandum as "Exhibit 6" and "Exhibit 7" respectively. Many such opinions were issued in the context of prohibition, and questioned whether a sheriff could be removed for what might have been characterized as an ideological decision to refuse to enforce prohibition laws. *See e.g.* Op. Atty. Gen. 475b-8, October 19, 1929. The October 19, 1929 opinion is attached to this memorandum as "Exhibit 8". The Attorney General even once suggested that the statutory removal scheme may not be exclusive and that the governor may have some inherent power to remove officers such as sheriffs, though this memorandum disregards that possibility since no opinion of the Attorney General from the last seventy years has renewed this curious assertion. Op. Atty. Gen. 390a-13, October 17, 1927. The October 17, 1927 opinion is attached to this memorandum as "Exhibit 9". Some other opinions have stated that a sheriff can be liable for damages flowing from a failure to execute process delivered to him for execution. *See e.g.* Op. Atty. Gen., 390 a-13, June 11, 1924. The June 11, 1924 opinion is attached to this memorandum as "Exhibit 10".

Therefore, highly persuasive secondary authority has interpreted Minnesota law as requiring the Sheriff to enforce state laws throughout the County regardless of whether a § 436.05 contract is in place or not. However, these persuasive interpretations do suggest that the Sheriff is empowered or even legally required to reduce the law enforcement resources allocated to providing protection to cities that refuse to continue paying for increased service.

III. EVALUATION OF POTENTIAL MECHANISMS FOR ENFORCING THE SHERIFF'S LEGAL DUTIES

Understanding the Sheriff's duties, as laid out in Part IV below, requires an appreciation of the potential mechanisms available for their enforcement. This section addresses potential mechanisms for enforcing the Sheriff's legal obligations including federal and state tort law, removal from office, and action against the Sheriff's performance bond. A review of these potential enforcement mechanisms reveals that the most substantial danger that the Sheriff needs to consider is potential removal from office, though the failure to discharge certain types of statutory duty could form the basis for tort liability under Minnesota law and ignoring a court order could result in sanctions for contempt.

A. The Sheriff's Office Is Unlikely To Be Subjected To Federal Tort Liability For Failure To Enforce The Law.

The Sheriff's Office probably cannot be subjected to federal tort liability for failure to enforce the law for two reasons. First, the Sheriff is protected by the fact that there is no general common law duty to protect others from the criminal acts of third parties. Second, attempts to use federal statute to hold law enforcement officers responsible for the consequences of crime have failed in cases where the circumstances resembled those faced by the Sheriff.

First, in the common law there is no law enforcement duty to protect others from the criminal acts of third parties. Restatement (Second) of Torts § 315. Various grounds have been stated for a "special" law enforcement duty to protect, such as a when an informant or witness is harmed while assisting the police. *Id.* These exceptions all fall outside the scope of this memorandum because they are not implicated by a Sheriff's office generally failing to provide extra law enforcement to towns that refuse to pay for such service, though it may be prudent to consider the danger of a "special" duty before making statements on which municipalities may rely upon by cutting their § 436.05 contracts since reliance on such a statement may form a special duty. If necessary, the various potential bases for a "special" duty in tort law could form the basis for a future research memorandum.

Second, in the circumstances faced by the Sheriff, attempts to use federal statute to hold law enforcement officers responsible for crime have been unsuccessful. Plaintiffs have tried to use section 1983 of the Civil Rights Act of 1871 as the basis for claims that local and federal law enforcement officials have failed to prevent a crime that lead to the deprivation of certain constitutional rights, such as the right to life. *See e.g.* *Martinez v. State of California*, 100 S.Ct. 553 (1980). However, these claims have been rejected where they merely allege a Due Process violation since "nothing in the language of the Due Process clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors." *Id.* That is to say that there is no constitutional violation when the "most that can be said of . . . state functionaries . . . is that they stood by and did nothing when suspicious circumstances dictated a more active role." *Deshaney v. Winnebago*, 109 S.Ct. 1001, 1007 (1989).

In order for a claim to be brought under Section 1983, an Equal Protection violation must be alleged, since the government "may not . . . selectively deny its protective services to certain disfavored minorities without violating the Equal Protection Clause." *Deshaney v. Winnebago County DSS*, 109 S.Ct. 998, 1004 note 3 (1989). Therefore, as long as a county government does not discriminate against racial or religious minority groups that are protected under federal case law interpreting the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution then it is highly unlikely to be subjected to federal tort liability for the failure to provide sufficient law enforcement services. Therefore, it is highly improbable that the Sheriff faces any potential federal tort liability based on any contemplated reaction to the § 436.05 contract cuts.

B. Under Minnesota Tort Law The Sheriff Is Protected From Liability For The Discretionary Distribution Of Law Enforcement Resources And Can Only Be Liable For The Failure To Discharge Statutory Duties Owed To Particular Individuals Or Groups.

Under Minnesota tort law the Sheriff cannot be held liable for exercising discretion in the distribution of limited law enforcement resources and can only be held liable in tort for the failure to discharge statutory duties owed to particular individuals or groups. While the Minnesota Supreme Court has abolished municipal tort immunity, *Spanel v. Mounds View School District No. 621*, 264 Minn. 279 (1962), there are two other limitations on liability of municipal government that are likely to substantially protect the Sheriff from being financially responsible for the damage caused by crime. First, the Sheriff cannot be held liable for the exercise of discretionary authority over the distribution of law enforcement resources. Second, the Sheriff cannot be held liable for the failure to discharge statutory obligations owed to the public as a whole.

First, Minnesota statutes insulate government entities, including county governments, from liability for "performance or failure to perform a discretionary duty, whether or not the discretion is abused", Minn. Stat. § 466.03 Subd. 6, which has been interpreted to include any planning-level decisions that involve political, economic, or social factors, *See e.g.*, *Schroeder v. St. Louis County*, 708 N.W.2d 497, 514 (Minn. 2006). It is black letter law that a sheriff's decisions about how to deploy officers within the county is a matter left to the sheriff's discretion and judgment. 80 C.J.S. Sheriffs and Constables § 71 (2012). Therefore, it is likely that the Sheriff's exercise of discretion over how to use the limited law enforcement resources at his disposal is protected from any possible state tort liability.

Second, the Minnesota Supreme Court has also created an additional limitation on liability that prevents a government agency from being liable for the failure to meet statutory duties owed to the entire public rather than a specific class of persons. *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801, 804 (Minn. 1979). In *Cracraft* the Court held that the defendant municipality's statutory duty to inspect and correct fire code violations was a general duty to the public, and therefore could not form the basis in tort law for a duty of care with regard to a particular individual who was injured in a fire caused by fire code violations that an inspector had failed to correct. *Id.* Dicta in *Cracraft* suggested that this rule applies to "law enforcement activities", and that in this context municipal liability could only be predicated upon a statute that "sets forth mandatory acts clearly for the protection of a particular class of persons rather than the public as a whole", or when a particular person reasonably relied upon the representations by government agencies that they would undertake the duty to prevent the class of harm suffered. *Id.* at 807.

Other jurisdictions have rejected this limitation on liability, *See e.g.*, *Muthukumarana v. Montgomery County*, 270 Md. 447 (Md. 2002), and it has been criticized extensively in dissenting opinions within Minnesota. *See Hage v. Stade*, 304 N.W.2d 283, 289 (Minn. 1981) (Scott, J., dissenting) (the "majority opinion reintroduces into Minnesota law the proposition that 'the king can do no wrong' under the guise of the public-duty rule"); *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801, 808-12 (Minn. 1979) (Kelly, J., dissenting). However, subject to a few limitations, municipal immunity from liability for failure to discharge duties to the public as a whole is good law in Minnesota and underlies the organization of the statute tables discussed in Part IV below.

Therefore, under Minnesota law the Sheriff has the authority to allocate scarce law enforcement resources without fear of liability to those who may experience a reduction in service as a result of a city's decision not to enter into a 436.05 contract. Furthermore, the Sheriff need not consider the danger of tort liability for the failure to enforce the law except with regard to the subset of statutes that are designed to prevent harm to particular individuals.

C. Minnesota State Statutes Create A Mechanism By Which The Sheriff Could Be Removed From Office For Nonfeasance. But Only If The Sheriff Willfully Refused To Enforce The Law.

The Constitution of the State of Minnesota Article 8 § 5 empowers the legislature to provide for the removal of "inferior officers for malfeasance or nonfeasance in the performance of their duties", which the legislature has done by creating a statutory mechanism that allows the removal of county officials based on a petition subject to judicial review. Minnesota Statutes

Chapter 351 lays out this method, which applies to all removal proceedings against county officials, including the Sheriff.

Statutory removal proceedings may be brought upon allegations of malfeasance or nonfeasance of duty. Malfeasance is defined as the "willful commission of an unlawful or wrongful act in the performance of a public official's duties which is outside of the authority of the public official and which infringes on the rights of any person or entity." Minn. Stat. § 351.14 Subd. 2. Nonfeasance is defined as "the willful failure to perform a specific act which is a required part of the duties of the public official." Minn. Stat. § 351.14 Subd. 3. The same conduct cannot be both malfeasance and nonfeasance of duty, and mere failure to act can only constitute nonfeasance. *In re Proposed Petition to Recall Hatch*, 628 N.W.2d 125, 126 (Minn. 2001). Therefore, the Sheriff could only be removed from office of the "willful" failure to perform a specific act that is an enumerated part of that official's duties. If the Sheriff completely cut law enforcement services for cities that allowed their § 436.05 contracts to lapse, that willful refusal to act would probably be considered nonfeasance of duty.

However, as previously noted, it is black letter law that the allocation of scarce law enforcement resources is a matter left within the discretion of a sheriff. 80 C.J.S. Sheriffs and Constables § 71 (2012). The removal statute specifically states that "an elected county official is not subject to a removal election on the ground ... of disagreement with actions taken that were within the lawful discretion of the elected county official." Minn. Stat. § 351.16 Subd. 4. Therefore, the Sheriff could exercise the discretion vested in that office and re-distribute officers designated to particular cities to general duty throughout the County. This decision would likely reduce the level of law enforcement service that people in these cities received, but could not form the basis for a valid removal proceeding against the Sheriff since it is not malfeasance or nonfeasance of duty. Furthermore, the Minnesota Supreme Court has refined the statutory definition of nonfeasance to describe the refusal "without sufficient excuse", to discharge a duty. *Claude v. Collins*, 518 N.W.2d 836, 842 (Minn. 1994). It could be argued that budgetary concerns that force the Sheriff to reallocate resources away from cities that cut their § 436.05 contracts are a "sufficient excuse" for the reduced service these cities would experience.

If the Sheriff were accused of malfeasance or nonfeasance, then any registered voter could petition the county auditor to request a special removal election in a complaint setting out allegations of misconduct. Minn. Stat. § 351.16. The petitioner would need to attach documents to the removal application containing the signatures of removal supporters who are registered voters residing in the County totaling at least 25 percent of the number of people who voted in the last Sheriff's election. *Id.* The signatures of the supporters would need to appear on forms provided by the county auditor. *Id.* If the petition did not contain enough signatures, then it would need to be denied. *Id.* If the petition had the requisite number of signatures then the county auditor would be obligated to forward the petition, but not the signatures, to the clerk of appellate courts within 15 days after receiving it. *Id.*

The clerk of the appellate courts would then submit the petition to the chief justice, who would review it to decide whether the petition alleged facts that, if proven, would constitute malfeasance or nonfeasance in the performance of official duties. Minn. Stat. § 351.17. If the case contains factual allegations of malfeasance or nonfeasance, then the chief justice assigns the case to a special master for a public hearing. *Id.* The chief justice could also issue an order denying the petition if it does not contain allegations that constitute malfeasance or nonfeasance

of official duties. *Id.* At the public hearing the special master would conduct a factual inquiry into the allegations and determine whether anything proven constituted malfeasance or nonfeasance of public office, and render a decision that would be subject to Minnesota Supreme Court review if demanded within 30 days. Minn. Stat. § 351.19. The public official could also waive the public hearing in which case the process would jump straight through to the special removal election requested by the petitioner. Minn. Stat. § 351.18.

Therefore, a sheriff accused of not discharging the duties of office could be subject to Minnesota's statutory removal procedure. This procedure would require a petition calling for the Sheriff's removal signed by about 17,370 resident of the County. ELECTION SUMMARY REPORT 2010 GENERAL ELECTION, Washington County Minnesota (11 03 10) available at <http://www.co.washington.mn.us>, "Information for Residents", "Elections", "Election Results" (2010) (listing the "Total Votes" for "County Sheriff" as "69480" which when multiplied by .25 is equal to 17370). The petition would be subject to legal review to determine whether it contained statutory allegations of nonfeasance. The Sheriff does have a general duty to enforce the law, even in cities that eliminate their § 436.05 contracts. *See infra* Part IV. A refusal to do so might qualify as nonfeasance of duty and justify the Sheriff's removal from office. However, it is unlikely that any discretionary reallocation of law enforcement resources could possibly constitute nonfeasance or otherwise justify the Sheriff's removal from office.

D. It Is Unlikely That The Failure To Enforce The Law Could Produce Liability Enforceable Against The Sheriff's Performance Bond.

It is unlikely that any reallocation of law enforcement services or failure to enforce the law in certain areas could result in liability to the Sheriff's statutory performance bond. Minnesota statutes require that "every sheriff shall give bond to the state in a sum not less than \$25,000 in counties whose populations exceeds 150,000, and not less than \$5,000 in all other counties." Minn. Stat § 387.01. The failure of a person elected or appointed to the office of sheriff to post this bond is considered "refusal to serve". Minn. Stat. § 387.02. The terms of the bond are designed to secure the lawful performance of the sheriff's legal duties.

The bond's terms require the official to:

[F]aithfully and impartially, in all things, during continuance in office, perform the duties thereof without fraud, deceit or oppression, and pay over without delay to the officer entitled by law thereto all moneys which shall come into the hands of by virtue thereof, then this obligation shall be void; otherwise to remain in full force and effect. Minn. Stat. §574.13.

It seems unlikely that even a complete refusal to enforce the law in cities that cut their § 436.05 contracts could be construed as "fraud", "deceit", or "oppression", and a discretionary reallocation of services is nearly certain to fall outside the definition of these terms. Therefore, the Sheriff is unlikely to encounter any liability to the performance bond resulting from any likely reaction to cities that cut their § 436.05 contracts.

E. The Sheriff Could Be Sanctioned For Contempt Of Court For The Failure To Execute Legal Duties Or Court Orders.

The Sheriff could be sanctioned for contempt of court for the failure to execute any legal duty or order issued by a court. Various statutes give courts the power to impose duties to act upon sheriffs, and allow sheriffs to be sanctioned for contempt of court for failure to execute such a duty. Minn. Stat. § 588.01. Under Minnesota law it is constructive contempt of court for a sheriff to engage in "misbehavior in office, or other willful neglect or violation of duty", "disobedience of any lawful . . . order or process of the court". *Id.* Therefore, if in reacting to cities that elect to discontinue § 436.04 contracts, the Sheriff willfully neglects legal duties or ignores an order or process of the court, then the office could be subject to liability for constructive contempt of court.

IV. THE SHERIFF'S LEGAL DUTIES

This section addresses federal and state statutes and common law principals regarding the obligations of sheriffs.

A. No Federal Statutes Or Common Law Principals Govern The Duties Of Sheriffs.

The research performed in the drafting of this memorandum did not uncover any federal statute or common law principal that requires counties to maintain a sheriff's office, or that lists the duties which such an office must discharge. Indeed, some states simply do not have sheriffs. COSNER, JAMES ET AL., LAW ENFORCEMENT IN THE UNITED STATES 83 (2013). Therefore, federal law does not govern the duties which a county sheriff's office must discharge.

B. Under Minnesota Common Law The Sheriff Has A Duty To Be "Reasonably Alert" In Enforcing Criminal Laws.

Under Minnesota common law the Sheriff has a duty make reasonable efforts to enforce the law. The office of sheriff is a statutory creation whose duties are primarily laid out in statute, but Minnesota Supreme Court case law also suggests that the office of sheriff may also bear a more general common law duty to enforce the law.

The factual background of *In re Olson* developed when religious groups in Scott County complained that illegal slot machines were common in the area, but that the Scott County Sheriff feigned an inability to find those operating such facilities and claimed he had no "duty to snoop around" to look for the offenders. *In re Olson*, 211 Minn. 114, 117, 300 N.W. 399 (1941). The governor exercised a legal power of removal that he then held, citing the sheriff's nonfeasance of duty. *Id.* The sheriff claimed "it was the primary duty of the mayors and the police officers of each municipality to enforce the law", so he had not breached any legal duty and his removal was illegal. *Id.* The Supreme Court of Minnesota upheld the sheriff's removal. *Id.*

In discussing the sheriff's duty, the Court mentioned that the statute banning gambling devices said that "every sheriff shall summarily arrest any person found violating any provisions of this Act", and said that statute imposed an obligation on the sheriff that could not be avoided by willful ignorance of its violation. *Id.* The Court also suggested that there may be a more general common law obligation of the sheriff to enforce the law, arguing that the sheriff "is made responsible by common and statutory law as conservator of the peace within his jurisdiction". *Id.* The Court did not impose an absolute obligation to catch every lawbreaker or face sanction for nonfeasance, but instead merely created a duty to be "reasonably alert" to possible violations of the law since every sheriff "has a duty to be active and vigilant and to use all proper efforts to

secure obedience to the law.” *Id.* at 400. Therefore, under Minnesota common law the Sheriff has a general duty to enforce laws that prohibits the refusal to enforce laws in particular cities. However, it seems extraordinarily unlikely that any discretionary reallocation of resources could possibly breach this duty.

C. Minnesota State Statutes Require The Establishment Of A County Sheriff And Create Obligations Which The Sheriff Must Discharge.

Minnesota statutes require the creation of the office of the sheriff and elaborate on the sheriff’s common law enforcement duty by creating specific obligations which the sheriff must discharge. Minnesota law requires that each county elect a sheriff every four years. Minn. Stat. § 382.01. Other statutes and administrative rules create legal obligations that bind the Sheriff to perform various duties. These statutes and rules appear in tables 1 through 4 attached to this memorandum. These tables represent a comprehensive listing of statutes and rules that create obligations for the Sheriff, subject to minor limitations noted below.

These tables are limited in that they do not include any statutory obligations shared by peace officers generally, and is instead entirely focused on statutes that make a specific textual reference to the “sheriff”. The tables also do not include duties that are contingent upon the prior exercise of discretionary authority by the sheriff (e.g. § 373.041 creates obligations for the Sheriff, but these obligations are only triggered by the County’s prior exercise of the power to establish a radio broadcasting station to be used for public safety purposes). The tables do not include statutes that specifically reference sheriffs of counties other than Washington County, such as Minn. Stat. 626.91, which is textually limited to apply only to the Redwood County sheriff. The tables also do not include limitations on the powers of sheriffs such as Minn. Stat. §642.12, which prohibits sheriffs from giving or selling contraband to prisoners unless it has been prescribed by a doctor.

Table 1 attached to this memorandum contains the duties that the Sheriff always has to the general public, as opposed to specific entities. The Sheriff cannot be liable in tort for a breach of a duty owed to the general public. *See supra* Part III. Instead, any breach of a duty owed to the general public is likely only enforceable by removal from office. *Id.*

Table 2 attached to this memorandum contains the duties that the Sheriff has to particular individuals or entities. A breach of these duties that produces damage would have a higher probability of resulting in tort liability for the Sheriff and could also result in removal from office for nonfeasance of duty if caused by the Sheriff’s willful decision not to act. *Id.*

The categorization of duties as being to the general public or to particular individuals should not be considered precise since it is not grounded in the decisions of Minnesota courts or even a review of the relevant legislative history. Instead, it merely represents the judgment of this author based solely on a review of the statutory text and guided by the black letter rule that a sheriff’s general duty to enforce the laws of the county is one owed to the public generally and not to particular individuals. 80 C.J.S. Sheriffs and Constables § 71 (2012).

Table 3 attached to this memorandum contains duties that the Sheriff only has in areas of the County not under the jurisdiction of any chief of police. These obligations all relate to firearm transfer permits.

Table 4 attached to this memorandum contains duties that the Sheriff must discharge or face specific statutory penalties.

V. CONCLUSION

Cities that refuse to provide a police department or enter into a § 436.05 contract with the County are entitled to the law enforcement protection of the Sheriff. A sheriff that refused to enforce the law within the legal jurisdiction of the office would likely be judged to commit nonfeasance of duty and could be removed. This should not imply that a city's refusal to pay for the Sheriff's services need be without consequence, since the Sheriff has substantial discretion in the allocation of law enforcement resources. As long as the Sheriff understands the potential for tort liability if certain statutory duties are not discharged, then law enforcement resources can be allocated based on an exercise of the Sheriff's discretion.