



United Counties Council of Illinois
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W. Michael McCreery, Executive Director

Officers/Executive Committee Members

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- Matthew Prochaska
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February 24, 2020

To: UCCI Membership

Re: Authority of Sheriff to Restrict Access to Portions of Courthouse

Issue:

Can the County Sheriff restrict access of County Board Members to a maintenance shop in the basement or other portion of the courthouse as that access relates to maintenance purposes?

Analysis:

The scenario posed in this request is that a sheriff has denied pass cards to County Board Chairman, the Chairperson of the Properties Committee, and Public Safety Committee Chairperson. These pass cards would allow easier access to a maintenance shop in the basement of the County Courthouse through certain doors that are inaccessible to those without pass cards.

This office has offered several opinions related to the authority of the Sheriff and the County Board as it relates to the Courthouse or other county property. Attached hereto are two such opinions. As has been previously stated, at common law, the care and custody of the county jail and courthouse was within the powers and duties of the sheriff.¹ The common law has been codified at section 3-6017 of the Counties Code which states that the sheriff "shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided."² The phrase "except as is otherwise provided" means except as is otherwise provided by statute and not as is otherwise provided by county ordinance.³

"As real estate simply, the court house is in the care and custody of the county board. As a court house, it is in the custody and care of the sheriff. As real estate, the county board controls the title, and keeps the building and its furniture in repair. As a court house, the sheriff, who is himself an

¹ Dahnke v. People, 168 Ill. 102, 111 (1897) ("One of the common law powers of the sheriff is, that he shall be custodian of the county jail"); see also County of McDonough v. Thomas, 84 Ill. App. 408, 412-413 (3rd Dist. 1899) (discussing common law right of sheriff as custodian of courthouse and jail).

² 55 ILCS 5/3-6017.


³ Ill. Att'y Gen. Op. No. S-1282, at pg. 3 (July 26, 1977).

officer of court, guards and cares for it.”⁴ [W]ith that custody comes the authority to issue reasonable rules for maintaining the safety and decorum of the building.”⁵


Conclusion:

It is the opinion of this office that because the current County Courthouse is the building to which access is sought and in which the maintenance shop is located, the Sheriff has custody and control and can issue and implement rules related to safety and access. This would include restricting use of security pass cards and access for safety reasons.

At the request and direction of UCCI this opinion was prepared by
GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



Jason E. Brokaw

Encs.

⁴ Dahnke v. People, 168 Ill. 102, 114 (1897).

⁵ Ryan v. Cty. of DuPage, 45 F.3d 1090, 1092 (7th Cir. 1995).

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen and Bodewes, P.C., at the request of UCCI and is to be used solely by UCCI and its members. The State’s Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State’s Attorney.



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May 29, 2019

To: UCCI Membership

Re: Opinion re Authority over County Administrative Building Security

Issue:

Who has authority for security in an administrative building that formerly served as the county courthouse?

Analysis:

The scenario posed in this request is that the county has an old building that previously served as the county courthouse until about 20 years ago when the county built a new courthouse across the street. The old courthouse now serves as an office building and houses the treasurer, assessor, county clerk, the county's information technology department, county administrative offices, and serves as a meeting place for the county board and its committees. The county sheriff has locked several doors for security purposes so that the public would only be able to enter the building on one side of the building. There are no metal detectors or guards at the doors that remain accessible. There is a consensus among department heads that they would like to leave the entrances unlocked so that the public can have more access for entry into the building. The question is who has authority over the administrative building that used to be the old courthouse.

Each county has the power to (1) purchase and hold the real and personal estate necessary for the uses of the county and (2) make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate powers.¹ The "county board may take and have the care and custody of all the real and personal estate owned by the county."²

Additionally, county boards have the duty to "provide when necessary, and the finances of the county will justify it, and keep in repair, a suitable court house, jail and other necessary county buildings, and to provide proper rooms and offices for the accommodation of the county board, State's attorney, county clerk, county treasurer, recorder and sheriff, and to provide suitable

¹ 55 ILCS 5/5-1005(1), (3).

² 55 ILCS 5/5-1015.

furniture therefor.”³ The Sheriff “shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided.”⁴ [W]ith that custody comes the authority to issue reasonable rules for maintaining the safety and decorum of the building.”⁵

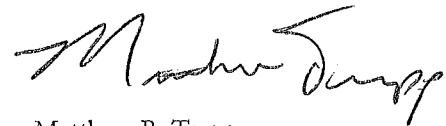
However, we are unaware of any authority for the Sheriff to maintain custody or control of county buildings that are not a courthouse or jail. In fact, the Illinois Supreme Court stated a long time ago, that should a “building cease to be a court house, it would revert to the care and custody of the county board like the other real estate.”⁶

Conclusion:

In our opinion, a county administrative building which does not house the county jail or county courthouse is under the care and custody of the county board. Therefore, while the county board may want to consider the Sheriff’s input on security issues, there does not appear to be authority for the Sheriff to dictate what entrances remain accessible to the public and which entrances are locked.

At the request and direction of UCCI this opinion was prepared by
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³ 55 ILCS 5/5-1106.

⁴ 55 ILCS 5/3-6017.

⁵ *Ryan v. Cty. of DuPage*, 45 F.3d 1090, 1092 (7th Cir. 1995).

⁶ *Dahnke v. People*, 168 Ill. 102, 114 (1897).

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November 17, 2014

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Mr. Michael McCreery
United Counties Council of Illinois
217 East Adams Street, Suite 101
Springfield, IL 62701

RE: Sheriff as Custodian

Dear Mike:

Question:

Are the maintenance and custodial staff and the department budget therefor necessarily under the direct control of the county sheriff, or could the maintenance department operate separately from the Sheriff with its own department head reporting directly to the county board?

Analysis:

At common law, the care and custody of the county jail and courthouse was within the powers and duties of the sheriff.¹ The common law has been codified at section 3-6017 of the Counties Code which states that the sheriff "shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided."² The phrase "except as is otherwise provided" means except as is otherwise provided by statute and not as is otherwise provided by county ordinance.³

In Opinion No. S-1282, the Attorney General addressed an inquiry concerning the power of the county board to take custody and care of the courthouse away from the sheriff and vest it

¹ Dahnke v. People, 168 Ill. 102, 111 (1897) ("One of the common law powers of the sheriff is, that he shall be custodian of the county jail"); see also County of McDonough v. Thomas, 84 Ill. App. 408, 412-413 (3rd Dist. 1899) (discussing common law right of sheriff as custodian of courthouse and jail).

² 55 ILCS 5/3-6017.

³ Ill. Att'y Gen. Op. No. S-1282, at pg. 3 (July 26, 1977).

in a committee of the board.⁴ The Attorney General analyzed the former versions of what are now section 3-6017 of the Counties Code, section 5-1087 of the Counties Code⁵, section 5-1015 of the Counties Code⁶, and section 4(d) of article VII of the Illinois Constitution of 1970.⁷

Section 5-1087 of the Counties Code states that “[n]o county board may alter the duties, powers and functions of county officers that are specifically imposed by law. A county board may alter any other duties, powers or functions or impose additional duties, powers and functions upon county officers. In the event of a conflict State law prevails over county ordinance.”

Section 5-1014 states that “[a] county board may take and have the care and custody of all the real and personal estate owned by the county.” The Attorney General cited County of McDonough v. Thomas⁸, a case in which the court held that the language of section 5-1014 does not curtail the common law powers of the sheriff as custodian of the courthouse and jail.

Section 4(d) of article VII of the Illinois Constitution states as follows:

County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.

After reviewing these statutory provisions and the County of McDonough v. Thomas decision, the Attorney General opined as follows:

“[S]ince the sheriff exercises possession of the courthouse as a building in a custodial capacity, it follows that any jobs normally recognized to be custodial in character would be within the power of the sheriff to fill. In answer to your specific inquiries, I conclude that the sheriff, having the custody and control of the courthouse, has the authority to hire janitors as well as courthouse switchboard operator and courthouse elevator operators, and to prescribe their duties and responsibilities.”⁹

This is consistent with the court’s decision in People ex rel. Walsh v. Board of Comm’rs, where the court noted that case law establishes that “the sheriff of a county has, as an incident to his

⁴ Ill. Att’y Gen. Op. No. S-1282, at pg. 1 (July 26, 1977).

⁵ 55 ILCS 5/5-1087.

⁶ 55 ILCS 5/5-1015.

⁷ Illinois Const., Art. VII, § 4.

⁸ 84 Ill. App. 408, 412-13 (1899).

⁹ Ill. Att’y Gen. Op. No. S-1282, at pg. 6 (July 26, 1977).

official duties, the custody of the courthouse and has the right to engage janitors to assist him in the performance of that duty.”¹⁰ Moreover, section 3 of the County Jail Act provides that the “[s]heriff shall also be responsible for the hiring and training of all personnel necessary to operate and maintain the jail.”¹¹

Conclusion:

In our opinion, the above cited authorities make clear that, as part of the duty to have custody and care of the courthouse and jail, the sheriff has the authority to hire custodial staff for those buildings. Therefore, the custodial staff for the courthouse and jail is necessarily under the direction of the sheriff and appropriate amount should be included in the sheriff’s budget.

However, nothing in the Counties Code gives the sheriff responsibility for or authority over the janitorial staff of other county facilities. Therefore, custodial staff for buildings other than the courthouse and jail could operate in a department that is separate from the sheriff’s office and has a separate budget. However, the question posed to us indicated that the employees of the “maintenance and custodial department” are members of a collective bargaining unit. This opinion does not address potential issues that could arise if the county tried to change the structure of its “maintenance and custodial department.” Some issues may have to be resolved through collective bargaining.

Finally, it should be noted that an argument can be made that there is a conflict between sections 3-6017 and 5-1106 of the Counties Code. While any potential conflict does not impact the sheriff’s custodial/janitorial powers since that issue has been clearly decided, such conflict could impact in the area of maintenance. As stated, section 3-6017 of the Counties Code provides that the sheriff “shall have the custody and care of the courthouse and jail of his or her county, except as is otherwise provided.” Section 5-1106 of the Counties Code provides, in part, that it is the duty of the county board “[t]o erect or otherwise provide when necessary, and the finances of the county will justify it, and keep in repair, a suitable court house, jail, and ...” In O’Connor v. County of Cook, the court cited several cases and noted that any apparent conflict between the authority of the county and that of the sheriff to exercise custodial power over the courthouse and grounds had been resolved in favor of the sheriff. However, an issue could arise as to whether “maintenance” is synonymous with “custodial.” The cases seem to lump the two together. However, in Dahnke, a case cited by other cases and the Attorney General for support of the sheriff’s custodial powers over the courthouse and jail, the court stated it concurred with the view that “As real estate simply, the court house is in the care and custody of the county board. As a court house, it is in the custody and care of the sheriff. As real estate, the county board controls the title, and keeps the building and its furniture in repair. As a court house, the sheriff, who is himself an officer of court, guards and cares for it.”¹²

¹⁰ 397 Ill. 293, 300 (1948).

¹¹ 730 ILCS 125/3.

¹² Dahnke v. People, 168 Ill. 102, 114 (1897).

Mr. Michael McCreery

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In conclusion, it is clear the county board cannot interfere with the sheriff's ability to hire custodial staff for the courthouse and jail. The sheriff clearly has the power to hire custodial staff to assist with the duty of having custody and care over those buildings. It is less clear whether maintenance duties would fall under the sheriff's power to have custody and control under section 3-6017 of the Counties Code and the power to hire all people necessary to operate and maintain the jail under section 3 of the County Jail Act or whether maintenance would fall under the county board's duty to erect and keep in repair a courthouse and jail under section 5-1106 of the Counties Code. The maintenance issue may be ripe for a request to the Attorney General for an opinion. In any event, the question posed shows that because the custodial and maintenance workers are in bargaining units, any changes affecting those in the bargaining units may have to be collectively bargained.

Please feel free to call if you should have any questions.

Very Truly Yours,

GIFFIN, WINNING, COHEN
& BODEWES, P.C.



Matthew R. Trapp



Herman G. Bodewes

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