

# OFFICE OF THE ATTORNEY GENERAL

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MAY 31 1991

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Honorable J. Harold Richards  
Sheriff, DeKalb County  
Ft. Payne, Alabama 35967

Sheriffs - Deputies - Liability -  
Immunity

The Sheriff of DeKalb County may deputize city police officers, who are in compliance with the requirements for minimum standards for applicants and appointees for employment as law enforcement officers as set out in Code of Alabama 1975, § 36-21-46, as special deputies to assist the sheriff and his deputies. Any immunity which these police officers may have in § 1983 litigation, which arises out of assisting deputies, must be determined on a case-by-case basis.

Dear Sheriff Richards:

This opinion is issued in response to your request for an opinion from the Attorney General.

### QUESTION

May the Sheriff of DeKalb County deputize municipal police officers in the small towns of the county under the common-law deputy theory or some other theory to help grant some protection or immunity to these officers in matters when they assist sheriff's deputies or respond to calls in lieu of the sheriff's deputies?

FACTS AND ANALYSIS

You stated in your request that due to the geographical size of DeKalb County and budget constraints, which have prohibited you from hiring a sufficient number of deputies to adequately serve the county, you frequently call on police officers in the smaller town in the county to provide back-up assistance or to respond to calls. The police officers also assist deputies in serving arrest warrants in their communities. As a result of their assistance, these police officers on occasions have been sued, along with the deputies, in "§ 1983 actions" for monetary damages and violation of the arrestee's civil rights. You believe that these police officers should have some immunity from lawsuits when assisting your deputies.

In the absence of constitutional or statutory restrictions, a sheriff may appoint deputies and assistants under common-law principles. McGhee v. Eastis, 3 Stew. 307 (1829); 80 C.J.S., "Sheriffs and Constables," § 22; opinion of the Attorney General to Honorable E. Ted Taylor, Prattville, dated June 7, 1978.

It was concluded in an opinion of the Attorney General to Honorable J. F. "Buddy" Glasgow, Sheriff, Shelby County, dated May 8, 1981, that a sheriff may deputize a city police officer as a special deputy to execute search warrants. This opinion was based on the axioms that a sheriff may employ assistants to enable him to discharge his duties, and that general or special deputies may be appointed by the sheriff. Perkins & Hopkins v. Reed, 14 Ala. 536 (1848); Lewis v. State, 178 Ala. 26, 59 So. 577 (1912). Thus, it can be concluded that you, as Sheriff of DeKalb County, may deputize city police officers as special deputies to assist you and your deputies.

Turning to the question of any immunity belonging to the police officers who are deputized, in general, the acts of a deputy sheriff are those of the sheriff and such deputy is the sheriff's alter ego. Mosely v. Kennedy, 245 Ala. 448, 17 So.2d 536 (1944). Deputy sheriffs have the same immunity from suit under Article I, Section 14, Constitution of Alabama, 1901 as is enjoyed by the sheriff. Opinions of the Attorney General to you, as Sheriff of DeKalb County, dated February 10, 1989, and March 4, 1988. These opinions cited Parker v. Amerson, 519 So.2d 442 (Ala. 1987) in which the Alabama Supreme Court responded to a question certified from the United States Court of Appeals for the Eleventh Circuit, as to whether the sheriff of a county is an employee of a county for imposing liability on the county under

the theory of respondeat superior. The Court determined that a sheriff is an executive officer of the state who is immune from suit under Section 14 of the State Constitution. It should be noted that the Supreme Court and the Attorney General's opinions were addressing actions against the sheriff and his deputies under state law. The sheriff and his deputies would not necessarily enjoy the same immunity in federal causes of action.

The Eleventh Circuit Court of Appeals in Parker v. Williams, 862 F.2d 1471 (11th Cir. 1989) concluded regarding the sheriff's liability under 42 U.S.C. § 1983, that the sheriff in his official capacity was immune in that specific case under the Eleventh Amendment. However, the court went on to state that the sheriff could be sued in his individual capacity but recognized that he may be entitled to assert qualified immunity, the availability of which is a question of law. Thus, any immunity which a police officer, who has been deputized, may have in § 1983 litigation arising out of assisting the sheriff or a deputy must be determined on a case-by-case basis.

#### CONCLUSION

The Sheriff of DeKalb County may deputize city police officers, who are in compliance with the requirements for minimum standards for applicants and appointees for employment as law enforcement officers as set out in Code of Alabama 1975, § 36-21-46, as special deputies to assist the sheriff and his deputies. Any immunity which these police officers may have in § 1983 litigation, which arises out of assisting deputies, must be determined on a case-by-case basis.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:

  
JAMES R. SOLOMON, JR.  
Chief, Opinions Division