WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-805

COUNTIES:
Deputy Sheriffs -
Right to Unionize

Honorable Richard J. Doyle
State's Attorney
Vermilion County
Courthouse
Danville, Illinois 61832

Dear Mr. Doyle:

I have your letter in which you state in part:

"* * * Specifically, the question is whether the Deputy Sheriffs of Vermilion County, as officers, hired and working under the merit commission provisions of the Illinois State Statutes, may become members of the teamster's union. If so, is there any prohibition against the County Board of Vermilion County recognizing that union as a sole bargaining agent on questions of salary rates, working conditions, disciplinary procedures and other contractual employment related matters? * * * "

In order to answer your first question, it is necessary to consider constitutional and legislative provisions and judicial decisions in the field of labor relations. Neither

the United States Constitution nor the Illinois Constitution of 1970 contain provisions dealing specifically with the right of public employees to unionize. While the Federal government has enacted laws in the field of labor relations (Labor Management Relations Act, 29 U.S.C. §141 et seq. (1947); National Labor Relations Acts, 29 U.S.C. 3151 et seq.), these Acts exclude States and their political subdivisions from the definition of the term "employer". There are no Illinois statutes pertaining to the right of public employees to unionize.

The existence of a right of public employees generally to belong to a labor union under the first and fourteenth amendments has, however, been recognized by the United States Courts of Appeals for the Seventh and Eighth Circuits. (McLaughlin v. Tilendis, 398 F. 2d 287 (7th Cir. 1968); American Federation of State, County, and Municipal Employees, AFL-CIO v. Woodward, 406 F. 2d 137 (8th Cir. 1969).) In Classroom Teachers Association v. Board of Education, 15 Ill. App. 3d 224, a case dealing with the right of collective bargaining in public employment, an Illinois appellate court cited McLaughlin as standing for the principle that public employees in Illinois have the right to join a union. In McLaughlin, plaintiffs, who were teaching in Cook County, Illinois, filed a civil rights action alleging they

had been dismissed and not rehired because of their association with the American Federation of Teachers, AFL-CIO. The court, in reversing the lower court's decision dismissing the complaint for failure to state a claim, found that the first amendment confers the right to form and join a labor union and stated at page 288-89:

> "It is settled that teachers have the right of free association, and unjustified interference with teachers' associational freedom violates the Due Process clause of the Fourteenth Amendment. Shelton v. Tucker, 364 U.S. 479, 485-487, 81 S.Ct. 247, 5 L.Ed.2d 231. Public employment may not be subjected to unreasonable conditions, and the assertion of First Amendment rights by teachers will usually not warrant their dismissal. Keyishian v. Board of Regents, 385 U.S. 589, 605-606, 87 S.Ct. 675, 17 L.Ed. 2d 629; Garrity v. State of New Jersey, 385 U.S. 493, 500, 87 S.Ct. 616, 17 L.Ed.2d 562; Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811. Unless there is some illegal intent, an individual's right to form and join a union is protected by the First Amendment. Thomas v. Collins, 323 U.S. 516, 534, 65 S.Ct. 315, 89 L.Ed. 430; see also Hague v. C.I.O., 307 U.S. 496, 512, 519, 523-524, 59 S.Ct. 594, 83 L.Ed. 1423; Griswold v. State of Connecticut, 381 U.S. 479, 483; 85 S.Ct. 1678, 14 L.Ed.2d 510; Stapleton v. Mitchell, 60 F.Supp. 51, 59-60, 61 (D.Kan.1945; opinion of Circuit Judge Murrah), appeal dismissed, Mitchell v. McElroy, 326 U.S. 690, 66 S.Ct. 172, 90 L.Ed. 406. As stated in N.A.A.C.P. v. State of Alabama, 357 U.S. 449, 460, 78 S.Ct. 1163, 1171, 2 L.Ed.2d 1488:
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> > 'It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.'"

The right of public employees to unionize has been interpreted to include law enforcement officials such as policemen and deputy sheriffs. In Cook County Police Association v. City of Harvey, 8 Ill. App. 3d 147, a case involving the issue of whether a city could be compelled to recognize and bargain with an association representing its policemen, the appellate court acknowledged the right of policemen to unionize by stating in a footnote at page 150:

> "There was a time when public employees were denied the right to organize. This is no longer true. See Perez v. Board of Police Comrs. of City of Los Angeles (1947), 78 Cal.App.2d 638, 178 P.2d 537; Annot. 40 A.L.R.3d 728 (1971); compare Tremblay v. Berlin Police Union (1968), 108 N.H. 416, 237 A.2d 668; United Federation of Postal Clerks v. Blount (D.D.C. 1971), 325 F.Supp. 879, aff'd 404 U.S. 802, 92 S.Ct. 80, 30 L.Ed.2d 38; Sheldon v. Tucker (1960), 364 U.S. 479, 81 S.Ct. 247, 5 L.Ed.2d 231."

In Lontine v. VanCleave, 483 F. 2d 966 (10th Cir. 1973), a case involving an appeal in a civil rights action of the lower court award of damages and injunctive relief to plaintiff who had been dismissed by the defendant from his position as a deputy sheriff for membership in a policemen's union, the court stated at page 967-8:

> "* * * The trial court held that Lontine had a constitutional right under the First Amendment to join a labor union and could not be discharged from his employment for joining or continuing membership in a union, absent a showing of compelling state interest. VanCleave apparently did not assert

> or otherwise offer to show any such compelling state interest in the belief that he had an unfettered right to hire and fire his employees at will, even for the exercise of their constitutional rights. The district court was correct in its holding that sheriff's deputies have such a First Amendment right to participate and retain membership in a union. Thomas v. Collins, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430; American Federation of State, Co. & Mun. Emp. v. Woodward, 406 F.2d 137 (8th Cir.); Melton v. City of Atlanta, Georgia, 324 F.Supp. 315 (N.D.Ga.) (three-judge court); Atkins v. City of Charlotte, 296 F.Supp. 1068 (W.D.N.C.) (three-judge court); cf. Bruns v. Pomerleau, 319 F.Supp. 58 (D.Md.). * * * *

While it is therefore clear that public employees, including deputy sheriffs, have a constitutionally protected right to unionize, it is still necessary to ascertain whether there is any compelling or paramount public interest which, in the case of deputy sheriffs, justifies limiting such right. In McLaughlin, the court, in concluding that Illinois had no paramount public interest which warranted the limiting of plaintiffs' rights of association, noted, among other things, that Illinois had not attempted to prohibit membership in teachers' unions and that it even permitted automatic deduction of union dues from the salaries of employees of local governmental agencies.

It has been argued, however, that in other classes of public employees, such as firemen and policemen, paramount public interests do exist. In Atkins v. City of Charlotte,

296 F. Supp. 1068 (W.D.N.C. 1969) defendant city, in contending that the State statute prohibiting public employee unionization was constitutional, argued that the State had a valid interest in forbidding firemen to unionize. That argument, as paraphrased by the court at page 1076, stated:

> "It is said that fire departments are quasi-military in structure, and that such a structure is necessary because individual firemen must be ready to respond instantly and without question to orders of a superior, and that such military discipline may well mean the difference between saving human life and property, and failure. The extension of this argument is, of course, that affiliation with a national labor union might eventuate in a strike against the public interest which could not be tolerated, and the very existence of which would imperil lives and property in the City of Charlotte."

The court went on to say:

> "'[E]ven though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.' Shelton v. Tucker, 364 U.S. 479, 488, 81 S.Ct. 247, 256, 5 L.Ed.2d 231, 237 (1960)." (296 F. Supp. 1068, 1077.)

The court held the statute involved unconstitutional because it went beyond the State's valid interest by striking down indiscriminately the right of association in a labor union - even one whose policy is opposed to strikes. The court noted

that the State's interest could be more narrowly protected by its power to prohibit strikes against the public interest.

More analogous to the factual situation you pose is the case of Malton v. City of Atlanta, 324 F. Supp. 315 (N.D.Ga. 1971), where the statute which was challenged as unconstitutional read:

> "Membership of policemen in labor unions prohibited.- It is hereby declared to be the public policy of the State of Georgia that peace officers who may be called in time of labor strikes to protect lives and property and to preserve the peace should be fair and impartial as between both employers and employees. That to insure an impartial police force in the State of Georgia no person employed by any city or county within the State of Georgia or by the State of Georgia as a policeman shall join or belong to any labor union." (324 F. Supp. 315, 316 n.2.)

The court, though acknowledging the existence of a valid State interest sought to be promoted by the statute in question, nevertheless held the statute unconstitutional for over-breadth, stating at 320:

> "* * * [W]e are faced with the problem of weighing the plaintiffs' interests in their First Amendment rights and the defendants' interest in securing and having an impartial police force. While the statutes here undoubtedly tend toward securing the desired impartiality, their practical effect in that direction would not appear so efficacious or certain as to offset or outweigh the obvious impairment in plaintiffs' First Amendment rights. This is particularly true here

> where, as we are informed by plaintiffs, the FOP has no members outside the Atlanta Police Department, and no affiliation with any organizations other than the national FOP. We accept those assurances in ruling as we do."

Also relevant is the case of County of Gloucester v. Public Emp. Rel. Com'n, 107 N.J. Super. 150, 257 A. 2d 712, aff'd. 55 N.J. 333, 262 A. 2d 1, in which the court at page 715, stated:

> "The critical problem posed on this appeal is whether the decision of the Commission, that county correction officers are not policemen and therefore may be represented by the Teamsters Union, is consistent with the intendment of N.J.S.A. 34:13A-5.3 which provides that 'no policeman shall have the right to join an employee organization that admits employees other than policemen to membership.'"

After quoting the language of another statute which vested correction officers with the power to act as officers for the detection, apprehension, arrest and conviction of offenders against the law, the court, at page 716, stated:

> "The quoted language is unambiguous and plainly vests in correction officers specific powers and duties commonly exercised by the police. When that statute is read with the aforementioned provision of N.J.S.A. 34:13A-5.3, we think it to be apparent that the Legislature was seriously concerned with preventing law enforcement officers, authorized to make detections, apprehensions and arrests, from joining an employees' union which might place them in a conflicting position and create circumstances for possible divided loyalty

> or split allegiance. Compare the analogous policy fostered by 29 U.S.C.A. §159(b), which precludes guards from joining a labor union if that organization includes member employees other than guards. National Labor Relations Bd. v. American Dist. Tel. Co., 205 F. 2d 86, 89 (3 Cir. 1953)."

While it is therefore clear that there exists public policy grounds which would justify a State's limiting the first amendment rights of police officers, the question remains whether Illinois has expressed any such public policy.

As to the proper sources from which a State's public policy can be ascertained, it has been stated:

> "The public policy of a State is to be found embodied in its constitution and its statutes, and when these are silent on the subject, in the decisions of its courts." (Routt v. Barrett, 396 Ill. 322, 340.)

Illinois does have a public policy of insuring impartiality on the part of deputy sheriffs; deputy sheriffs are public officers (County of Winnebago v. Industrial Commission, 39 Ill. 2d 260) upon whom the legislature may impose conditions in order to secure the prompt, efficient, faithful and impartial discharge of their public duties (People v. Murray, 307 Ill. 349); the legislature has imposed a condition that deputy sheriffs take an oath (Ill. Rev. Stat. 1973, ch. 125, par. 9) swearing to faithfully discharge the duties of their offices which, in my opinion, includes an obligation to act impartially.

Illinois, however, has not declared through any constitutional or statutory provision or judicial decision that this policy of maintaining impartiality would be endangered if deputy sheriffs were allowed to join unions not composed solely of or affiliated with unions composed solely of deputy sheriffs. Consequently, it is not against the public policy of Illinois to so unionize. Therefore, I am of the opinion that the deputy sheriffs of Vermilion County may join the Teamsters Union.

Although I am of the opinion that joining the Teamsters Union, in this instance, is legally permissible, it should be kept in mind that:

> "[I]t is the duty of the judiciary to refuse to sustain that which is against the public policy of the State, when such public policy is manifested by the legislation, or fundamental law of the State. (Female Academy v. Sullivan, 116 Ill. 375). By chapter 28 of our Revised Statutes it is provided, that 'the common law of England so far as the same is applicable and of a general nature * * * shall be the rule of decision and shall be considered of full force until repealed by legislative authority.' Public policy is that principle of the law which holds, that no subject or citizen can lawfully do that which has a tendency to be injurious to the public, or against the public good. This principle owes its existence to the very sources from which the common law is supplied." (People ex rel. Peabody v. Chicago Gas Trust Company, 130 Ill. 268, 294.)

Any resulting obligations incurred by deputy sheriffs upon joining the Teamsters Union should be carefully examined since:

> "[P]rinciple, analogy, and authority unite in declaring contracts which have an apparent tendency to corrupt, bias, tempt, or draw away public officials from the honest discharge of their duties as void, because in contravention of public policy. Such conduct, if tolerated, would sap the foundation on which official honesty rests, and legalize temptations which would lead from duty many an official who, without such inducements, might perform his duty." (Lucas v. Allen, 80 Ky. 681.)

In your second question, you ask whether there is any prohibition against the County Board of Vermilion County recognizing the Teamsters Union as a sole bargaining agent for deputy sheriffs on questions of salary rates, working conditions, disciplinary procedures and other contractual employment related matters.

It is clear from the decision in Chicago Division, Ill. Education Assn. v. Board of Education, 76 Ill. App. 2d 456, that a county would not require specific legislative authority to enter into a collective bargaining agreement with a sole collective bargaining agent selected by its employees. In said case, the Chicago Board of Education argued that specific legislation was not needed to authorize it to collectively bargain since existing legislation (not related specifically to education or collective bargaining) was sufficient; and that the Board would not bargain away its legislative discretion in collective bargaining. The intervenor-defendant, Chicago Teachers Union, argued

that collective bargaining was a fundamental right; that while employment by government does present the occasion for a limitation of rights, rights remain unfettered until so limited; and that the Board of Education's power to employ permitted them to select the method to be used in determining contract terms of its employees.

The appellate court, in affirming the trial court opinion and decree, stated at page 472:

> "On the 'central question,' the right of collective bargaining in public employment in the absence of legislative authority, the briefs show exhaustive research, which has been of great assistance to this court, and the contentions of all parties are well stated. We conclude that the Board of Education of the City of Chicago does not require legislative authority to enter into a collective bargaining agreement with a sole collective bargaining agency selected by its teachers, and we hold that such an agreement is not against public policy."

It is also clear that a county, in addition to its constitutional powers, possesses only those powers expressly granted by statute (Ill. Const., art. VII, sec. 7), or those that arise by necessary implication from those powers granted. Heidenreich v. Ronske, 26 Ill. 2d 360.

Section 58.1 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 859.1) provides in part:

> "§58.1 The county board in any county having a population of less than 1,000,000 may, by ordinance, provide for all deputies other than special deputies, employed on a full time basis in the office of Sheriff to be appointed, promoted, disciplined and discharged pursuant to recognized merit principles of public employment and for such employees to be compensated according to a standard pay plan approved by the board. Such ordinance shall provide for the appointment of a Merit Commission. * * * Such Commission shall promulgate rules, regulations and procedures for the operation of the merit system and administer the merit system."

When enacted in 1965, said section (Ill. Rev. Stat. 1965, ch. 34, par. 859.1) contained an additional sentence which stated:

> "All rules and regulations shall be submitted to and approved by the county board before becoming effective."

This sentence, however, was deleted in 1967. (House Bill 333, 75th General Assembly, Laws of Illinois, 1967, p. 3083.) It is therefore my opinion that the employment matters of appointment, promotion, discipline and discharge are beyond the control of the county board and therefore cannot be subjected to collective bargaining by the county board.

As to salary provisions, a county board has limited authority. A county board is empowered under the above quoted section to "approve" a standard pay plan. The court in Hammer v. Jefferson Oil & Gas Corp., 38 Ill. App. 2d 136, stated at page 138:

> "The verb, 'approved', does not mean to select. It means, according to ordinary dictionary definition, 'to confirm, ratify, sanction or consent to some act or thing of another.'"

It can therefore be seen that in regard to pay plans, a county board's power under section 58.1 of said Act (Ill. Rev. Stat. 1973, ch. 34, par. 859.1) is relatively inflexible. A county board is only empowered to approve or disapprove a pay plan submitted by the merit commission. It is not empowered to approve a pay plan submitted by some person or body other than the merit commission, nor is it empowered to amend a pay plan submitted by the merit commission. Consequently, the scope of collective bargaining that can occur between the county board and the Teamsters Union in regard to pay plans is limited. The county board, through collective bargaining, could agree to approve a pay plan desired by the Teamsters Union if such a plan were submitted by the merit commission, or could agree to disapprove any pay plan submitted by the merit commission that differed from that desired by the Teamsters Union, but in any event, the plan eventually adopted must be one submitted by the merit commission unaltered by the county board.

As to other employment related matters, it is impossible, absent specification, to determine under whose jurisdiction they belong. I would point out, however, in addition to the statutory material previously discussed, two other provisions which may

offer some guidance.

The first provision is section 26 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 432) which provides:

> "§26. It shall be the duty of the county board of each county:
> First - To 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 other necessary county buildings, and to provide proper rooms and offices for the accomodation of the county board, State's attorney, county clerk, county treasurer, recorder and sheriff, and to provide suitable furniture therefor. * * *
> Second - To provide and keep in repair, when the finances of the county permit, suitable fireproof safes or offices for the county clerk, State's attorney, county treasurer, recorder and sheriff.
> Third - To provide reasonable and necessary expenses for the use of the county board, county clerk, county treasurer, recorder, sheriff, coroner, State's attorney, superintendent of schools, judges and clerks of courts, and supervisor of assessment. * * * " (emphasis added.)

The second provision is section 7 of "AN ACT to revise the law in relation to sheriffs" (Ill. Rev. Stat. 1973, ch. 125, par. 7) which provides:

> "§7. Each sheriff may appoint one or more deputies, not exceeding the number allowed by rule of the circuit court of his county, and take bond or security from the same for his indemnity. * * * "

In opinion No. S-422 (March 13, 1972), I construed said section in conjunction with section 58.1 of "AN ACT to revise the law in

relation to counties" (Ill. Rev. Stat. 1973, ch. 34, par. 859.1), dealing with deputy sheriffs' merit commissions, and concluded:

> "* * * I am of the opinion that the statute provides that the Sheriff is the person who appoints deputies. If the county has provided for a Merit Commission, then the Sheriff may choose any person who is named on the eligibility list. He is not required to choose the person whose name heads the list. Requiring the Sheriff to appoint from a previously approved list of persons does not limit the Sheriff's discretion in selecting his appointees. Such a procedure does not constitute a prior approval of the appointment by the Merit Commission. It merely constitutes a method of determining qualifications in advance. * * * "

An examination of the statutory provisions cited and discussed above lead to two conclusions concerning jurisdiction over employment related matters. One is that jurisdiction may be exclusive with either the sheriff, county board or merit commission. The other is that jurisdiction may be concurrent between the county board and sheriff, the county board and merit commission, or the merit commission and sheriff. Again, as to employment matters not specified, I reiterate that conclusive determinations would require a consideration of specific employment related matters.

In conclusion, I am of the opinion that the deputy sheriffs of Vermilion County, hired and working under the merit

commission provisions of the statutes, may join the Teamsters Union; that in regard to a pay plan, the County Board of Vermilion County may collectively bargain with said union only as to approval or disapproval of a pay plan submitted by the merit commission unaltered by the County Board; and that a conclusive determination as to other employment related matters would require specification of each such matter and a consideration of each such matter in conjunction with an examination of the powers and duties of merit commissions, county boards and sheriffs.

Very truly yours,

ATTORNEY GENERAL