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FILE NO. S-984

COUNTIES:

Authority of County Board to
Create Auxiliary Police Department

Honorable Martin Rudman
State's Attorney of Will County
Courthouse
Joliet, Illinois 60431

Dear Mr. Rudman:

This is in response to your letter wherein you state that the Will County Board has by ordinance provided for the existence of an auxiliary police department in Will County. This auxiliary force is composed of 60 men who perform their duties on a part-time basis without compensation. You request an opinion as to whether the Will County Board has the power to create an auxiliary police department.

The ordinance that established the auxiliary police department in Will County provides in pertinent part:

Honorable Martin Rudman - 2.

"§ 33.30 Creation of auxiliary police department.

WHEREAS, it is necessary and proper, and for the interests of public safety and welfare, that the County of Will have an auxiliary police department consisting of trained and competent members to supplement and assist the regular members of the sheriff's police in carrying out their duties.

NOW, THEREFORE, it is hereby resolved as follows:

SECTION 1: There is hereby created the Will County Auxiliary Police whose members shall consist of persons of good character and repute who have satisfactorily completed and passed such examinations and qualifications as may be prescribed by the sheriff of Will County and approved by the county board. All members shall have attained at least the age of 21 years.

SECTION 2: It shall be the duty of such auxiliary police to direct traffic and provide such assistance to the regular sheriff's police as may be appropriate and to the best interests of the county's law enforcement.

* * *

This ordinance creates a standing auxiliary force which is charged with carrying out a broad range of police duties. The preamble of the ordinance states that the purpose of the auxiliary force is to assist the regular sheriff's police. Section 2 of the ordinance describes the nature of this assistance.

Honorable Martin Rudman - 3.

Section 2 does not limit the duties of the auxiliary to directing traffic; the auxiliary force is authorized to assist the regular sheriff's police when the assistance of the auxiliary is "appropriate and in the best interest of the county's law enforcement". The assistance that the auxiliary force is authorized to render may require members of the auxiliary to enforce laws and ordinances unrelated to traffic and highway safety. The authorization of the ordinance is broad enough to enable members of the auxiliary to assist the sheriff and his deputies in all aspects of their police work.

Will County is not a home rule unit. Counties which are not home rule units have only those powers granted to them by law (Ill. Const., art. VII, sec. 7) plus those powers that may be implied as necessary to accomplish specific statutory powers. (Heidenreich v. Ronske, 26 Ill. 2d 360.) There is no statutory provision which expressly authorizes a county board to create an auxiliary force charged with carrying out a broad range of police duties. Neither can the power to create such an auxiliary force be implied as necessary to make effective

Honorable Martin Rudman - 4.

the exercise of any of a county's statutory powers. It is, therefore, my opinion that the Will County Board has no power to create an auxiliary police department. The ordinance that established the auxiliary police department in Will County exceeded the authority of the county board and, thus, was invalid.

Since the Will County Board lacked the power to create the auxiliary police department, the sheriff of Will County may not rely upon the auxiliary to assist him. However, the sheriff in his capacity as supervisor of safety may appoint assistant supervisors of safety subject to the approval of the county board. (Ill. Rev. Stat. 1973, ch. 125, par. 31.) The law enforcement function of assistant supervisors of safety is limited to enforcing laws and ordinances which relate to traffic and highway safety. Opinion No. S-853 described the police powers that may be exercised by assistant supervisors of safety. That opinion held that assistant supervisors of safety are peace officers and that while they are enforcing laws and ordinances relating to traffic and highway safety, assistant supervisors of safety

Honorable Martin Rudman - 5.

may exercise the same powers that are granted to all other
peace officers by Illinois law.

Very truly yours,

A T T O R N E Y G E N E R A L