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## OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF IOWA

95-9-2(L)

1995 Iowa AG LEXIS 16

**September 13, 1995**

**CORE TERMS:** deputy, county board, supervisors, hire, clerks, discretionary power, respective counties, county attorney, county officer, county sheriff, treasurer, recorder, appoint, auditor, hiring

**SYLLABUS:**

[\*1]

COUNTIES; SHERIFFS: Power to hire deputy sheriffs. [Iowa Code §§ 331.322, 331.323, 331.652, 331.903](#) (1995). County supervisors have discretionary power to determine the number of deputy sheriffs who shall serve their respective counties. County sheriffs have no power to hire deputy sheriffs without approval from their county boards of supervisors. (Kempkes to Kruse, Appanoose County Attorney, 9-13-95) #95-9-2(L)

**REQUESTBY:**

Mark Kruse  
Appanoose County Attorney  
Courthouse  
Centerville, IA 52544

**OPINIONBY:**

Bruce Kempkes, Assistant Attorney General

**OPINION:**

You have requested an opinion involving the powers of a county board of supervisors over a county sheriff's office. You mention that a county sheriff who recently lost two deputy sheriffs as the result of budget cuts applied to have a federal grant pay 75 percent of wages and benefits for an additional deputy; that he planned to use forfeited property acquired by his office to pay the remaining 25 percent of those wages and benefits; and that, as a result, the county board would not need to appropriate any county funds for wages and benefits paid to the additional deputy. You also mention that after the federal government initially approved this application, [\*2] the county board refused to participate in the grant process.

You ask whether the county sheriff may proceed with his application to receive federal funds and, upon their receipt, to hire the additional deputy without approval from the county board. We conclude that Iowa Code chapter 331 (1995) prohibits him from doing so.

Chapter 331 governs county boards. It generally provides that "[a] power of a county is vested

in [its county] board, and a duty of a county shall be performed by or under the direction of [its] board except as otherwise provided by law." Iowa Code § 331.301(2). See generally Iowa Code § 4.1(3)(a) ("shall" normally imposes a statutory duty). Chapter 331 grants the county board the power to appropriate "the amounts deemed necessary for each of the different county officers and departments" for each fiscal year. Iowa Code § 331.434(6); see Iowa Code § 331.437 (unlawful for county officer to authorize expenditure of sum for his or her department larger than the amount appropriated by county board).

Chapter 331 specifically grants county boards certain powers over the hiring of deputy sheriffs. First, section 331.323(2)(g) provides county boards with the **[\*3]** power to "establish the number of deputies, assistants, and clerks for the offices of auditor, treasurer, recorder, sheriff, and county attorney." Second, section 331.903(1) provides:

The auditor, treasurer, recorder, sheriff, and county attorney may each appoint, with approval of the [county board], one or more deputies, assistants, or clerks . . . . The number of deputies, assistants, and clerks for each office shall be determined by the [county board] and the number and approval of each appointment shall be adopted by a resolution recorded in the minutes of the [county board].

(emphasis added).

Chapter 331 also governs county sheriffs. Sections 331.652 and 331.653 grant various powers and impose various duties upon county sheriffs. Section 331.652(7) specifically provides that subject to the requirements of . . . section 331.903, [county sheriffs] may appoint and remove deputies, assistants and clerks." (emphasis added).




We have previously determined that section 331.903(1) "clearly vests the [county board] with the authority to decide the total number of deputy sheriffs the sheriff may employ . . . ." 1986 Op. Att'y Gen. 92 (#86-4-2(L)). We have no reason **[\*4]** now to depart from this conclusion. The clear import of the plain language in section 331.903(1), as well as sections 331.323(2)(g) and 331.652(7), provides county boards with discretionary power to determine the number of deputy sheriffs who shall serve their respective counties. See 1934 Op. Att'y Gen. 65 (under precursor to section 331.903(1), county boards may order county officer not to employ deputy officer). Nothing indicates any power on the part of county sheriffs to override the power of county boards in this area.


Our analysis need not proceed any further. "When a statute is plain and its meaning is clear, [there is no need to] search for its meaning beyond its expressed language. Resort to rules of statutory construction [or interpretation may take place] only when the terms of the statute are ambiguous." Stroup v. Reno, 530 N.W.2d 441, 443 (Iowa 1995). That the hiring of deputies results in no fiscal outlay by Counties for their wages and benefits is a circumstance having no relevance under sections 331.323(2)(g), 331.652(7), and 331.903(1). See, e.g., State v. Rouse, 290 N.W.2d 911, 915 (Iowa 1980) (generally improper to imply exception or exemption into **[\*5]** statute that restricts its applicability); 1996 Op. Att'y Gen. (#95-5-2(L)).

To summarize: county boards of supervisors have discretionary power to determine the number of deputy sheriffs who shall serve their respective counties, and, accordingly, county sheriffs have no power to hire deputy sheriffs without approval from their county boards of supervisors.

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