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DATED: January 10, 1992

SUBJECT: Request of Legal Opinion Regarding the Identification of the Persons Constituting Membership of the Classified Service pursuant to Neb.Rev.Stat. 23-1721 to 23-1737

REQUESTED BY: Senator Jennie Robak, Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Kenneth W. Payne, Assistant Attorney General

This letter is in response to your correspondence directed to Attorney General, Don Stenberg in reference to the above caption.

The following are our responses to your specific questions in the order as you presented them:

QUESTION (1): Do any of these changes alter the scope of the existing law with regard to who is included in the Classified Service?

ANSWER: Yes

QUESTION (2): If so, which ones?

ANSWER: See discussion below

QUESTION (3): If all three of the proposed changes alter the scope of the existing law, could you give me guidance as to who should be included in the classified service under the existing statute?

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ANSWER: We are unable to give you guidance as to who should be included in the classified service as presented in this question. This is a policy matter rather than a question of law.

QUESTION (2): Does the existing Neb.Rev.Stat. §§ 23-1721 to 23-1737 include employees other than deputy sheriffs as part of the classified service?

ANSWER: The composition of the classified service pursuant to Neb.Rev.Stat. §§ 23-1721 to 23-1737 originally intended to include only deputy sheriffs. Civilian employees were not intended to benefit from the sections.

DISCUSSION: A reading of the legislative history of the sections suggests that the Supreme Court in Freese v. County of Douglas, 210 Neb. 521, 315 N.W.2d 638 (1982), correctly determined that the purpose of the bill was "to insulate deputy sheriffs in the designated counties from the hazards of politics which a career deputy sheriff might suffer each time a new sheriff was elected to office." Id.

Neb.Rev.Stat. §§ 23-1721 to 23-1737 originally created in 1969 by LB 784, was a merit program for the sheriffs' division of the county employees. At the same time LB 784 was introduced, a similar type of bill, LB 783 was introduced which would effect all county employees, including the sheriff's office (Hearing LB 783 and 784, 1969).

LB 783 was never passed, and during the hearing on the two bills, it was agreed that the reason LB 784 pertaining to the sheriff's office needed to be passed was because of the dangers and hard work of law enforcement as opposed to doing office work like other county employees (Hearing LB 783 and 784, 1969, pp. 15-16). One speaker noted that the importance of LB 784 was to "improve the professional competency of the law enforcing officer" (Hearing, 1969, p. 12). Also, there were concerns that because other service organizations such as the Highway Patrol and Omaha Police have a thirty-year age limit, deputies who were fired after an election would be too old to find another job in their field (Hearing, 1969, p. 17).

Subsequently, bills have been passed amending the sections. These amendments were introduced to extend the scope of the sections to include smaller counties. A review of the history on these bills also indicates the concern of protecting deputy sheriffs. "Our purpose was to provide some security for deputies who have selected law enforcement as their profession . . . this would provide an equal opportunity for individuals seeking employment as deputy sheriff" (Hearing LB 1093, 1972). In 1982, it was suggested that the sections would reduce costs to counties because after an election, thousands of dollars are spent training new deputies (Hearing LB 782, 1982, p. 4).

CONCLUSION: It can clearly be argued that the original intent of the bills was to protect only deputy sheriffs. It is also clear that civilian employees are not considered part of the classified service. The history does not indicate exactly where matrons and jailers fall. However, if deputy sheriffs are classified service and civilian personnel are not, it follows that the question of whether jailers and matrons are included becomes a question of whether they are also deputy sheriffs. If so, they comprise part of the classified service.

Consequently, applying the impact of existing law as interpreted by this opinion to the three drafts of proposed legislation:

1. Proposal No. 1 would result in including jailers and matrons as part of the classified service. Notwithstanding, you would need to carry through and amend Neb.Rev.Stat. §23-1730 to reflect the desired change of including jailers and matrons.

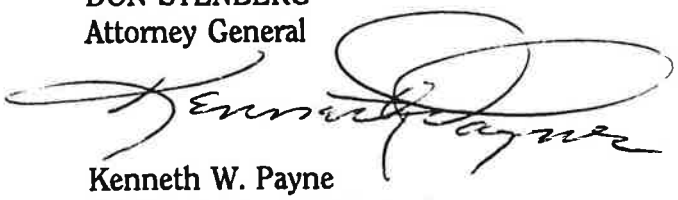
2. The term "County Corrections Employees" is vague. Again it would appear that there would be a problem as to who would be included in this broad definition.

3. This change in language eliminates the confusion that apparently exists as to whether jailers and matrons are to be included in Neb.Rev.Stat. §23-1726. This change would make Neb.Rev.Stat. §23-1726 consistent with Neb.Rev.Stat. §23-1730, i.e., excluding jailers and matrons.

If you have any additional questions related to this request, please feel free to contact me.

Very truly yours,

DON STENBERG
Attorney General



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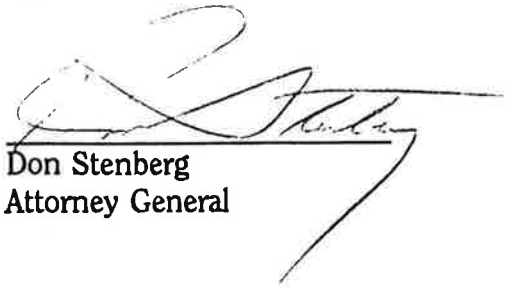

Don Stenberg
Attorney General

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