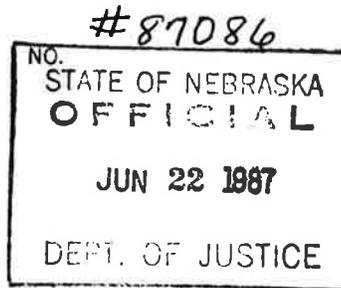


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: June 19, 1987

SUBJECT: Whether a County Sheriff Under Contract with a Village Must Serve on the Village Board of Health; Whether the Nebraska Statutes Require Appointment of a Village Marshal.

REQUESTED BY: Randy R. Stoll  
Seward County Attorney

WRITTEN BY: Robert M. Spire, Attorney General  
Dale Comer, Assistant Attorney General

Neb.Rev.Stat. §17-208 (Reissue 1983) provides, in pertinent part:

The village board of trustees may appoint a village clerk, treasurer, attorney, overseer of the streets, and marshal. It shall also appoint a board of health consisting of three members: the chairman of the village board, who shall be chairman, the marshal, who shall be secretary and quarantine officer, and one other member.

In addition, Neb.Rev.Stat. §19-3801 (Reissue 1983) states:

Any city of the first or second class or any village may, under the provisions of the Interlocal Cooperation Act, enter into a contract with the county board of its county for police services to be provided by the county sheriff; provided, the county board shall enter into such a contract when requested by a village to do so. Whenever any such contract has been entered into, the sheriff shall, in addition to his other powers and duties, have all the powers and duties of peace officers within and for the city or village so contracting.

You now ask whether a sheriff who is under contract with a village pursuant to §19-3801 becomes a member of the village board of health and quarantine officer. You also ask whether

L. Jay Bartel  
Martel J. Bundy  
Janie C. Castaneda  
Elaine A. Catlin  
Dale A. Comer  
Laura L. Freppel

Lynne R. Fritz  
Yvonne E. Gates  
Royce N. Harper  
William L. Howland  
Marilyn B. Hutchinson

Mel Kammerlohr  
Sharon M. Lindgren  
Charles E. Lowe  
Lisa D. Martin-Price  
Steve J. Moeller

Harold I. Mosher  
Fredrick F. Neid  
Bernard L. Packett  
Marie C. Pawol  
Jill Gradwohl Schroeder

LeRoy W. Sievers  
James H. Spears  
Mark D. Starr  
John R. Thompson  
Susan M. Ugai  
Linda L. Willard

Randy R. Stoll  
May 29, 1987  
Page -2-

§17-208 requires a village to appoint a marshal or to contract with the sheriff to perform those duties. Our answer to both questions must be yes.

The term "peace officers" generally includes sheriffs and their deputies, constables, marshals, members of the police force of cities, and other officers whose duty is to enforce and preserve public peace. People v. Carey, 382 Mich. 285, 170 N.W.2d 145 (1969); People v. Bissonette, 327 Mich. 349, 42 N.W.2d 113 (1950). Therefore, we believe that "peace officers" in §19-3801 may be read synonymously with "marshals." In addition, the word "shall" is generally considered mandatory, and inconsistent with the idea of discretion. NC+ Hybrids v. Growers Seed Association, 219 Neb. 296, 363 N.W.2d 362 (1985). As a result, since §19-3801 provides that the county sheriff "shall... have all the powers and duties of peace officers" in a village contracting for police protection under that statute, it appears to us that the sheriff must assume all of the duties of a peace officer/village marshal including service on the village health board as quarantine officer and secretary. We now turn to your second question.

The initial sentence of §17-208 provides that a village board may appoint a village marshal and other officers. The second sentence of that section provides that the village board shall appoint a board of health which shall include the village marshal. These two provisions are obviously inconsistent, and you have asked whether the second sentence requires the village to appoint a marshal so that he may serve on the health board, or, alternatively, to contract with the sheriff to perform those duties.

The word "may" used in a statute generally implies a discretionary function. However, when "may" is used in a statute to impose a duty or delegate a power, the performance of which involves the protection of public or private interests, it will be read as "must" and construed as mandatory. State ex. rel. Rowe v. Emanuel, 142 Neb. 583, 7 N.W.2d 156 (1942); State ex. rel. Cashman v. Carmean, 138 Neb. 819, 295 N.W. 801 (1941). It seems to us that the appointment of a village marshal, both to provide police protection and to serve on the village health board, involves the protection of the public interest. Accordingly, we believe that "may" in the first sentence of §17-208 should be read as "must" as it applies to the village marshal.

Our Supreme Court has also indicated that when there are conflicting provisions in the same statute, or in different statutes, the last provision in point of time or in order of arrangement prevails. Stoller v. State, 171 Neb. 93, 105 N.W.2d 852 (1960); Markel v. Glassmeyer, 137 Neb. 243, 288 N.W. 821

Randy R. Stoll  
May 29, 1987  
Page -3-

(1939). In the case of §17-208, the mandatory language requiring appointment of the village marshal to the village board of health follows the discretionary language in the first sentence of the section which deals with the appointment of village officers. The fact that the mandatory language in the section is last in order of arrangement supports our view that the village board must appoint a village marshal or contract with the sheriff to perform those functions under §19-3108, so that the village marshal or sheriff may sit on the village board of health and act as village quarantine officer.

Sincerely,

ROBERT M. SPIRE  
Attorney General



Dale A. Comer  
Assistant Attorney General

DAC/pa

APPROVED:

  
Attorney General