

What Is the Legal Meaning of a Sheriff's Oath of Office?
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“The Office of Sheriff is one of the most familiar and most useful to be found in the history of English institutions. With the single exception of kingship, no secular dignity now known to English-speaking people is older.” W. A. Morris, *the Medieval English Sheriff to 1300*, p. 1 (Manchester University Press, 1927).”

Lately, there has been much discussion about the “Oath of Office”¹ taken by any elected sheriff and the legal significance of that oath of office. This article and its attachments provide the history of the oath of office, the legal definition(s) and discusses the factual reality whether an oath of office taken by an elected sheriff confers or imposes special powers, responsibilities or duties on the Office of Sheriff. Moreover, there have been unsubstantiated claims made that elected sheriffs who are “constitutional officers”² have greater powers, duties and responsibilities when compared to other elected governmental officers. While it is true that the elected Office/Department of Sheriff is granted unique law enforcement and public safety duties and responsibilities (i.e. arresting, imprisoning, taking individuals into custody, etc.) which set an Office/Department of Sheriff apart from other elected state and local officers, the Office/Department of Sheriff is bound by judicial review and by the laws of each state as are other elected governmental officers. As a result, the judicial branch of government is responsible in interpreting the law when conflicts arise between individual citizens and federal, state and local governmental entities in enforcing the law.

A national survey undertaken by the National Sheriffs' Association (“Association”) reviewed the current legal status of our nations over 3,000 elected Offices of Sheriff. The research data shows that only 3 states, Alaska, Hawaii and Connecticut, do not have the position of Office/Department of Sheriff. The other 47 states do have an Office of Sheriff, which leads to the question in those 47 states whether or not the Office of Sheriff is deemed to be a “constitutional office”³ created under individual state constitutions.

The data shows that in 33 states the Office of Sheriff is explicitly named in the state constitution. In 13 states the Office of Sheriff is not created by the state constitution but is created by state statutes.⁴ This data demonstrates that the Office of Sheriff is a “constitutional officer,”⁵ in the majority of states; however, in a number of state jurisdictions, particularly states in the Midwest section of our nation, this is not the case.

When the question is raised as to the specific “Oath of Office of Sheriff” taken in each of the 47 states that have traditional Offices/Departments of Sheriff, our Association's research of individual state constitutions and state statutes reveals that the “oath of office” taken by an elected sheriff in 43 states is the *same oath* used by all other state and local public officials, including other members of the executive, judicial and legislative branches of government. In short, an individual sheriff's “oath of office” does not contain any additional or unique language conferring special duties, powers or responsibilities on any Office of Sheriff. As result, an individual sheriff's oath of office is the same or identical oath of office conferred on and taken by all of these other public local, county and state officials.⁶

While there is no doubt that in many states the Office of Sheriff is deemed to be the chief county law enforcement official with significant and special powers and duties, these additional powers and duties do not derive from the oath of office taken by any individual sheriff.⁷

The office of the elected sheriff is a time honored tradition that our nation's sheriffs diligently protect as the Office of Sheriff represents direct democracy through the right of our citizens to choose their local chief law enforcement officer. Our nation's sheriffs protect their citizens' individual rights through the elected Office of Sheriff. However, individual sheriffs should not fall into the mythology that any "oath of office" taken by the man or woman who fills the position of sheriff conveys upon that individual any extraordinary powers or duties that are not otherwise set out under the constitutions and laws of the respective states. Furthermore, a sheriff should always perform his or her duties in accordance with the Constitution of the United States as interpreted by the United States Supreme Court.

¹ "Oath of Office for Sheriffs under the Common Law" article is attached/found at: _____

² "Constitutional Officers" is not a legal term of art. All public officers (federal, state and local officials as "constitutional officers") take an oath to uphold the federal Constitution and/on individual state constitutions

³ The history of the Oath of Office indicates that the Oath of Office is either similar or identical to other state and local public office to pledge allegiance to uphold state and federal constitutions, regardless of whether an Office or Department of Sheriff is created by state statute or by state constitution

⁴ In the remaining states, it appears the status of a sheriff as a constitutional officer is uncertain and is in active dispute

⁵ The term "Sheriff" or "Office of Sheriff" is not mentioned in the United States Constitution

⁶ See attached information/attachments on the "History of the Oath of Office" and "10 Common Elements Found in all Oaths of Office"

⁷ A designation of chief law enforcement office is derived from enabling legislation dictated by respective state legislatures granted to an Office of Sheriff