

Exempt Positions in the Sheriff's Office, and Other Tales

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“I can’t really explain it, Joe. But I just know that we’re bound up in something bigger than any one of us and that running away is the one thing that would be worse than whatever might happen to us.”

--Jack Schaefer, *Shane* (1949)
(Also our attitude about really hard opinion requests)



Overview

- Attorney General Opinions Process
- Substance of AGO 2017 No. 2
 - The Sheriff’s Authority to Designate Exempt Positions
 - Budgeting authority of County Commissioners vs. Independence of Separately-Elected Officials
 - Implications for cities

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Attorney General’s Opinions

- They begin with a request from an “authorized requester”
 - Meaning a statewide elected official, state agency head, member of the legislature, or county prosecuting attorney
- Must relate to the requester’s official duties
- Common reasons to decline:
 - Question in litigation
 - Question about constitutionality of statute

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Attorney General's Opinions

- Can be either formal or informal
- Formal opinions are published; informal opinions are public records but not published
- Formal opinions state the official legal position of the Attorney General; informal opinions are carefully considered, but not official
- Formal opinions are personally approved by the elected Attorney General; informal opinions are usually approved by the Solicitor General

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Attorney General's Opinions

- First step is to assign an author
 - May be Either:
 - A deputy solicitor general, or
 - A Member of the AGO Opinions Committee; or
 - Somewhat rarely, the author is another subject matter expert in the Attorney General's Office
 - This was the case with AGO 2017 No. 3
 - Civil Service laws are specialized

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Attorney General's Opinions

- Author produces a draft
- That draft is reviewed by the opinions chief and at least two other attorneys in the office (often more)
 - Reviewing attorneys may be experts in the subject matter
 - Drafts are never shared outside the Attorney General's Office
- A revised draft is reviewed by the Solicitor General

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Attorney General's Opinions

- If the opinion is informal, the Solicitor General's approval is final and the opinion is issued
- If the opinion is formal, then the draft as approved by the Solicitor General is reviewed personally by the elected Attorney General
- Formal opinions are published only with the Attorney General's approval

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Attorney General's Opinions

- Courts are not bound by Attorney General's Opinions, but they give deference to them
- The Legislature Sometimes Changes or Clarifies the Law In Response to an Attorney General's Opinion

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- County civil service law: RCW 36.16
- Sheriff's civil service law: RCW 41.14
- Questions relate to balance of authority between the county commissioners and the sheriff
- Questions are highly interrelated (like singing the "Twelve Days of Christmas," every verse recalls the others)

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Questions 1-4: Sheriff's Authority to Choose Exempt Positions

- Ques. 1: RCW 41.14.140 requires the consent of the county commissioners to fill certain positions.
- This applies to positions made exempt under RCW 41.14.070, but not necessarily in the same way that it applies to other positions.
- This is essentially just a statement about the scope of the statute.
- But if the answer was different, it would affect the answers to later questions.

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Questions 1-4: Sheriff's Authority to Choose Exempt Positions

- Ques 2 & 3: Does the designation of exempt positions require county commissioner approval? No.
- The authority to create new positions is vested with the county commissioners. RCW 36.16.070.
- But the authority to designate positions as exempt is vested in the sheriff, with no role for county commissioners. RCW 41.14.070. Number of positions determines the number exempt.
- **Civil service commissioners** receives notice of initial designation, but later changes require agreement of civil service commissioners.

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Questions 1-4: Sheriff's Authority to Choose Exempt Positions

- Ques 4: Is the consent of the county commissioners required to change job titles and job descriptions?
- Well, no. Neither RCW 36.16.070 nor RCW 41.14.070 address changes in job titles or job descriptions.
- RCW 41.14.070 lists positions by name from which exempt positions can be chosen, but that's as close as the statute comes.
- The concept of job descriptions does not seem related to the statutes.

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Questions 5-6, 8-9: County Commissioners Fix Compensation

- Ques 5: If changing a job title or job description results in a change in salary, does this mean county commissioner approval is required?
- Well, no, because the statutes don't connect those.

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Questions 5-6, 8-9: County Commissioners Fix Compensation

- Ques 6: Who fixes the compensation for exempt positions?
- The county commissioners do, not the sheriff. Key is that RCW 41.14.140 neither grants nor denies salary-setting authority to sheriffs. It just says whatever authority the sheriff has, RCW 41.14 doesn't change it. But RCW 36.16.070 vests that authority in county commissioners.
- There's a case on this. Clallam County Deputy Sheriff's Guild v. Bd of Clallam County Commissioners.

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Questions 5-6, 8-9: County Commissioners Fix Compensation

- Ques 8: If the county commissioners fix compensation for an exempt position, can the sheriff pay less?
- Well, no. This follows from the conclusion that the county commissioners fix compensation.
- Ques 9: Are there any deputy positions to which RCW 36.16.070 would not apply?
- No, there are not.

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Questions 7, 10: *Osborn* and *Crossler*

- Here we get into two questions relating to two significant cases about the division of authority between county commissioners and independently-elected officials.
- *Osborn* was about a decision by a county clerk to temporarily hire a person who had been suspended from a permanent position in another office. The county commissioners refused to pay her. Held: County clerk gets to decide which specific people to hire, and county commissioners can't control that by refusing to pay them.

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Questions 7, 10: *Osborn* and *Crossler*

- *Crossler* was about a district judge who fired a deputy clerk. The employee tried to appeal to the county commissioners because an employee handbook provided for that.
- Held: As a separately-elected official, the judge wasn't governed by the employee handbook unless the judge agreed to be.

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Questions 7, 10: *Osborn* and *Crossler*

- Ques 7: If the creation, selection, or change in job title or description requires the consent of county commissioners, what factors may they consider in light of *Osborn* and *Crossler*?
- The two cases really don't come into play because those cases don't address the creation of new positions.
- And the authority to designate or change exempt positions, or job titles or descriptions, don't require county commissioner consent.

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Questions 7, 10: *Osborn* and *Crossler*

- Ques 10: Asks about the continued validity of a prior Attorney General's Opinion in light of *Crossler*. We conclude the case doesn't change the opinion. This is about county government more generally.
- The issue is about the authority of county commissioners to adopt a county personnel system that would apply to all county employees, including those if independently elected officials. We concluded they couldn't, but could determine the total number of positions and set the budget.
- *Crossler* was consistent; commissioners set the budget but elected officials make their own hiring decisions.

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Questions 11-14: County Commissioners Write Budgets

- Ques 11: Are county commissioners required to fund exempt positions?
- This question is worth some time. We say nothing compels the county commissioners to fund each and every authorized position. Think about what happens during budget crunches.
- State law vests budgeting authority in the county commissioners.
- Number of exempt positions comes from statutory table based on number of authorized positions. But sheriff (and **civil service commissioners**) pick which ones are exempt.

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Questions 11-14: County Commissioners Write Budgets

- County commissioners have the authority to set the overall budget.
- But once the budget is established, separately elected officials, like the sheriff, have broad discretion with regard to personnel of the office.
- This fits with the *Osborn* and *Crossler* cases.
- Filling positions within the purview of RCW 41.14 require the consent of the commissioners. Includes exempt positions because they're governed by RCW 41.14. Budgeting authority of commissioners is not restricted.

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Questions 11-14: County Commissioners Write Budgets

- Ques 12: Do the county commissioners or the **civil service commissioners** have the authority to review job descriptions for exempt positions before they can be filled.
- No. RCW 41.14.070 doesn't provide for such review. But job descriptions might affect the county commissioners' decisions on fixing compensation. And might affect inclusion in or exclusion from a bargaining unit.

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Questions 11-14: County Commissioners Write Budgets

- Ques 13: Does the budget authority of the county commissioners supersede the sheriff's authority to create or rename unclassified positions under RCW 41.14.070?
- It does not. RCW 36.40.100 prohibits the sheriff from overspending the budget. But the number of exempt positions and the choice of which ones to make exempt are not governed by that statute.

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Questions 11-14: County Commissioners Write Budgets

- Ques 14: If a county budget includes job descriptions as line items, does it require an amendment to the budget to change job descriptions?
- No. We concluded previously that county commissioners do not have a role in determining job descriptions.
- Given our understanding of what a job description entails, this would seem an odd practice.

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Cities

- RCW 41.12 covers civil service for city police
- Forms of government for cities vary.
 - Charter cities (aka first class cities)
 - Optional Municipal Code Cities
 - Mayor/council
 - Council/Manager
 - Second class cities
 - Town

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Cities

- They all differ from counties in that, unless provided by charter, they don't have departments headed by independently-elected officials
- But RCW 41.12.050, like the parallel county statute, determines the number of exempt positions in the police department based on the number of total positions.
- And like the county law, the decision of which positions to make exempt is vested in the police chief, with a similar dynamic with the **civil service commission**. And the mayor and council also get a role, which is different.

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Shane, Shane, come back Shane



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Robert W. Ferguson

Attorney General of Washington

COUNTY COMMISSIONER—SHERIFF—EMPLOYERS AND EMPLOYEES— BUDGET—COMPENSATION—LAW ENFORCEMENT OFFICERS—Designation And Compensation Of Unclassified Employees Of The County Sheriff's Office

1. **RCW 41.14.140 applies to the unclassified positions within the sheriff's office. But RCW 41.14 applies differently to unclassified than to classified positions.**
2. **The creation of new positions in the sheriff's office requires the consent of the county commissioners, but the designation of specific positions as unclassified does not require commissioners' consent.**
3. **Changes to job titles and job descriptions in the sheriff's office do not require the consent of the county commissioners, whether or not such changes might be accompanied by salary adjustments.**
4. **The county commissioners, and not the county sheriff, fix the compensation for unclassified positions in the sheriff's office. The sheriff may not pay an unclassified employee a lower amount than the compensation set by the county commissioners.**
5. **RCW 36.16.070 generally vests the authority to authorize "deputy" positions in county offices in the county commissioners. We have not identified any exceptions to RCW 36.16.070.**
6. ***Crossler v. Hille*, 136 Wn.2d 287, 961 P.2d 327 (1998), does not alter our prior analysis in AGO 1982 No. 8.**
7. **County commissioners are not required to fund every position they have authorized, but the budgetary authority of the county commissioners does not supersede the ability of the sheriff to designate positions as unclassified under RCW 41.14.070.**
8. **Neither the county commissioners nor the county civil service commission have the authority to review job descriptions for unclassified positions in the sheriff's office.**
9. **If a county budget includes job descriptions in budgetary line items, the budget does not need to be amended in order for the sheriff to change a job description.**

March 20, 2017

The Honorable James L. Nagle
Walla Walla County Prosecuting Attorney
240 W Alder Suite 201
Walla Walla, WA 99362-2807

Cite As:
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Dear Prosecutor Nagle:

By letter previously acknowledged, you have requested our legal opinion on 14 questions relating to unclassified service in county sheriffs' offices. Your questions are paraphrased below, along with brief versions of our answers. More detail follows in the body of the opinion.

1. Does RCW 41.14.140 apply to the unclassified service (exempt) positions authorized by RCW 41.14.070?

Brief Answer: Yes. RCW 41.14.140 applies to positions "within the purview" of RCW 41.14. The designation of positions as unclassified is authorized by RCW 41.14.070, and are therefore within the purview of that chapter. This does not mean that RCW 41.14 applies to classified and unclassified positions in the same ways, however.

2. Does the creation of new unclassified service (exempt) positions pursuant to RCW 36.16.070 and RCW 41.14.140 require the county commissioners' consent?

3. Does RCW 41.14.070 require the county commissioners' consent for the county sheriff's designation of specific positions as unclassified service (exempt)?

Brief Answer: Questions 2 and 3 are closely related, and we combine our answers to them. We conclude in response to question 2 that the creation of new positions in the sheriff's office requires the consent of the county commissioners. We also conclude in response to question 3 that the county commissioners' consent is not required when the sheriff designates specific positions as unclassified. The distinction between these two answers is that question 2 addresses the decision to create new positions, while question 3 relates to the choice of which positions will be unclassified.

4. If the sheriff, with the consent of the civil service commission, makes changes to the job titles and job descriptions of one or more of the already existing unclassified service positons authorized by RCW 41.14.070, are such new job titles and job descriptions subject to the "consent" of the county commissioners under RCW 36.16.070 or RCW 41.14.070?

Brief Answer: No. The statute does not contemplate the involvement of the county commissioners in the sheriff's modifications to job titles and job descriptions of preexisting unclassified positions.

5. Does the answer to question number 4 depend on whether the change in job title or job description may result in a salary adjustment to the position?

Brief Answer: No. Neither RCW 41.14.070 nor RCW 36.16.070 suggest that a resulting salary adjustment would make a change in job title or job description subject to county commissioner consent.

6. **If an adjustment to salary is required, are the county commissioners still required to “fix the compensation” pursuant to RCW 36.16.070?**

Brief Answer: Yes. RCW 36.16.070 vests the authority to fix compensation in the county commissioners. RCW 41.14.140 does not deprive the commissioners of that authority or vest it in the sheriff.

7. **If the creation, selection, or change in job title or job description does require the “consent” of the county commissioners, what factors may the commissioners consider, in light of the holdings of *Osborn v. Grant County*, 130 Wn.2d 615, 926 P.2d 911 (1996), and *Crossler v. Hille*, 136 Wn.2d 287, 961 P.2d 327 (1998)?**

Brief Answer: We concluded in response to question 2, 3, and 4 that the consent of the county commissioners is required for the creation of positions, but not for the selection of unclassified positions or for changes in the job titles or job descriptions of such positions. Neither *Osborn* nor *Crossler* address the creation of new positions, and therefore those decisions are inapplicable.

8. **If the county commissioners have set compensation for an unclassified position previously, may the sheriff pay an individual less than the compensation the county commissioners have set?**

Brief Answer: No. Having concluded in response to question 6 that the county commissioners fix the compensation, the sheriff is precluded from paying less.

9. **Are there any “deputy” positions in any of the county elected offices that RCW 36.16.070 would not apply to?**

Brief Answer: We concluded in response to question 6 that RCW 36.16.070 applies to the sheriff’s office. We have not identified any statute that would exempt other county offices from it.

10. **Does the holding in *Crossler v. Hille*, 136 Wn.2d 287, 961 P.2d 327 (1998), change the analysis in AGO 1982 No. 8?**

Brief Answer: No. *Crossler* does not change our analysis in AGO 1982 No. 8.

11. **Are the county commissioners required by statute to fund an unclassified service position in the sheriff’s office created by RCW 41.14.070?**

Brief Answer: No. By determining the total staff positions for the sheriff’s office, the county commissioners also affect the number of those positions that the sheriff can designate as unclassified under RCW 41.14.070. It might ordinarily follow that by

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providing for a certain number of staff positions the commissioners also commit themselves to funding the number of unclassified positions that follow from that decision. We see nothing in statute, however, that would affirmatively obligate the county commissioners to fund every otherwise-authorized position in any particular budget cycle.

- 12. Do the county commissioners or the civil service commission have the authority to review job descriptions for unclassified service positions in the sheriff's office created by RCW 41.14.070 before they can be filled?**

Brief Answer: No. State law makes no provision for the county commissioners or the civil service commission to review job descriptions for unclassified positions before the positions may be filled.

- 13. Do the budget authority of the county commissioners and the limitations imposed on county officials in RCW 36.40.100 supersede the ability of the sheriff to create or rename an unclassified service position in the sheriff's office created by RCW 41.14.070?**

Brief Answer: No. RCW 36.40.100 prohibits all county officers, including the sheriff, from spending in excess of the budget adopted by the county commissioners under RCW 36.40.080. While the sheriff's office is limited by an overall budgetary cap, nothing in RCW 36.40.100 supersedes the authority vested in the sheriff by RCW 40.14.070 to designate unclassified positions.

- 14. Does a budget adopted pursuant to RCW 36.40.080 that includes job descriptions in the line items require a hearing and amendment approved by the county commissioners before adopting any changes in job descriptions proposed by the head of that county department, such as the sheriff's office?**

Brief Answer: No. We concluded in response to question 12 that neither RCW 36.16.070 nor RCW 41.14.070 vest authority in the county commissioners to write job descriptions for specific positions. The county commissioners may not vest themselves with that authority by writing job descriptions into budget items.

BACKGROUND

Your questions mostly focus on the interplay between two chapters of the Revised Code of Washington, RCW 36.16 and RCW 41.14. They also raise questions about how laws governing the county's budget may impact these issues.

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RCW 36.16 generally covers civil service rules governing all elected county officers and their employees. Your questions revolve around RCW 36.16.070,¹ which allows county elected officials to employ deputies and “other necessary employees” to help the elected officials carry out their duties, subject to the consent of the county commissioners. This statute also provides that the county commissioners sets the deputies’ compensation.

The second relevant chapter is RCW 41.14, which sets forth civil service laws specifically applicable to sheriffs’ offices. Your questions address the interplay between the county commissioners and the sheriff’s office, directly implicating RCW 41.14.070 and .140. RCW 41.14.070 outlines how many positions a sheriff may designate as exempt from civil service rules depending on the size of the office and what the titles of those positions can be.²

¹ RCW 36.16.070 reads:

In all cases where the duties of any county office are greater than can be performed by the person elected to fill it, the officer may employ deputies and other necessary employees with the consent of the board of county commissioners. The board shall fix their compensation and shall require what deputies shall give bond and the amount of bond required from each. The sureties on deputies’ bonds must be approved by the board and the premium therefor is a county expense.

A deputy may perform any act which his or her principal is authorized to perform. The officer appointing a deputy or other employee shall be responsible for the acts of his or her appointees upon his or her official bond and may revoke each appointment at pleasure.

² RCW 41.14.070 reads:

(1) The classified civil service and provisions of this chapter shall include all deputy sheriffs and other employees of the office of sheriff in each county except the county sheriff in every county and an additional number of positions, designated the unclassified service, determined as follows:

Staff Personnel	Unclassified Position Appointments
1 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 through 250	6
251 through 500	8
501 and over	10

(2) The unclassified position appointments authorized by this section must include selections from the following positions up to the limit of the number of positions authorized: Undersheriff, inspector, chief criminal deputy, chief civil deputy, jail superintendent, and administrative assistant or administrative secretary. The initial selection of specific positions to be exempt shall be made by the sheriff, who shall notify the civil service commission of his or her selection. Subsequent changes in the designation of which positions are to be exempt may be made only with the concurrence of the sheriff and the civil service commission, and then only after the civil service commission has heard the issue in open meeting. Should the position or positions initially selected by the sheriff to be exempt (unclassified) pursuant to this section be under the classified civil service at the time of such selection, and should it (or they) be occupied,

RCW 41.14.140 requires consent of the county commissioners to fill positions falling under the purview of RCW 41.14. RCW 41.14.140 also specifically notes that nothing in RCW 41.14 can infringe on the power of the appointing authority (here, the sheriff) to set salaries and compensation of his or her employees.³

ANALYSIS

With that general backdrop, we turn to your specific questions. Your questions are individually narrow, but taken together they call for a comprehensive analysis of the relative authority of county commissioners and county sheriffs regarding unclassified positions in the sheriff's office. We therefore take each question in turn, but implications of conclusions we reach with regard to earlier questions may be more thoroughly considered in response to later questions. We therefore caution against reading our answers to individual questions in isolation, without also considering our analysis of questions appearing elsewhere in this opinion.

Our task in construing statutes is to "ascertain and carry out the Legislature's intent." *Darkenwald v. Emp't Sec. Dep't*, 183 Wn.2d 237, 244, 350 P.3d 647 (2015). When a topic is addressed through multiple statutes, those statutes "must be construed together." *Hallauer v. Spectrum Props., Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540 (2001) (internal quotation marks omitted). "[S]tatutes which stand in pari materia are to be read together as constituting a unified whole, to the end that a harmonious, total statutory scheme evolves which maintains the integrity of the respective statutes." *Id.* (internal quotation marks omitted).

the employee(s) occupying said position(s) shall have the right to return to the next highest position or a like position under classified civil service.

(3) In counties with a sheriff's department that operates the 911 emergency communications system, in addition to the unclassified positions authorized in subsections (1), (2), and (4) of this section, the sheriff may designate one unclassified position for the 911 emergency communications system.

(4) In addition to the unclassified positions authorized in this section, the county legislative authority of any county with a population of five hundred thousand or more operating under a home rule charter may designate unclassified positions of administrative responsibility not to exceed twenty positions.

³ RCW 41.14.140 reads:

All offices, places, positions, and employments coming within the purview of this chapter, shall be filled by the appointing power with the consent of the board of county commissioners, and nothing herein contained shall infringe upon such authority that an appointing power may have to fix the salaries and compensation of all employees employed hereunder.

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1. Does RCW 41.14.140 apply to the unclassified service (exempt) positions authorized by RCW 41.14.070?

You first ask whether RCW 41.14.140, which requires the consent of the county commission to fill certain positions, applies to unclassified positions provided for by RCW 41.14.070. We conclude that it does.

RCW 41.14.140 applies by its own terms to positions “coming within the purview of this chapter.” “This chapter” references RCW 41.14, which governs civil service for county sheriff employees. *See* RCW 41.14.010. “The classified civil service and provisions of this chapter shall include all deputy sheriffs and other employees of the office of sheriff in each county *except* the county sheriff in every county and *an additional number of positions, designated the unclassified service*, determined as follows[.]” RCW 41.14.070(1) (emphases added). But RCW 41.14.070(2) is also the source of authority for each sheriff to designate a number of unclassified positions.

Unclassified positions are therefore “positions . . . coming within the purview of this chapter” because the designation of positions as unclassified is authorized by one of the sections in the chapter, even if they do not fall within the merit system otherwise addressed by that chapter. RCW 41.14.140, .070. This not mean that RCW 41.14 applies to unclassified positions in the same way that it applies to classified ones.

2. Does the creation of new unclassified service (exempt) positions pursuant to RCW 36.16.070 and RCW 41.14.140 require the county commissioners’ consent?

3. Does RCW 41.14.070 require the county commissioners’ consent for the county sheriff’s designation of specific positions as unclassified service (exempt)?

Your second and third questions are closely related, so we combine our response. Your second question is whether the consent of the county commissioners is required to *create* new unclassified service positions. Your third question asks whether it is necessary to obtain the county commissioners’ consent for the sheriff’s *designation* of specific positions as unclassified. We conclude that the consent of the county commissioners is required to create a position, but it is not required when the sheriff chooses which positions to designate as unclassified.

Our response to these two questions turns upon the distinction between *creating* a position and *designating* that position as unclassified. Your second question addresses the creation of positions, and RCW 36.16.070 governs that action. Your third question, in contrast, is about choosing from among the positions that have been created which ones should be designated as unclassified, a choice that is governed by RCW 41.14.070.

RCW 36.16.070 provides for the creation of deputy positions by the county commissioners. RCW 41.14.140 reiterates that deputy positions within the scope of the chapter are filled with the consent of the county commissioners. We concluded in response to question 1 that unclassified positions are within the scope of the chapter. RCW 41.14.070 authorizes a

certain number of positions to be designated as unclassified. The number of unclassified positions flows from the decision of the county commissioners to create a certain number of total staff positions under RCW 36.16.070. Specifically, RCW 41.14.070(1) allows the sheriff to designate a specific number of positions as unclassified, based on the total number of staff personnel. For example, if the county commissioners have created a total of 15 staff positions in the sheriff's office, then the sheriff may designate 3 positions as unclassified. RCW 41.14.070(1).

RCW 41.14.070(2) vests in the sheriff the decision to designate specific positions—from among those created by the county commissioners—as unclassified. “The initial selection of specific positions to be exempt shall be made by the sheriff[.]” RCW 41.14.070(2). The only further requirement is that the sheriff must “notify” the civil service commission. RCW 41.14.070(2). Later changes to the designations of exempt positions can only occur with the agreement of the civil service commission, after it hears the matter in an open meeting. RCW 41.14.070(2). So the initial designation is vested in the sheriff alone, but later changes require the concurrence of the civil service commission. At neither stage does RCW 41.14.070 provide any role for the county commissioners.

Taking your second and third questions together, the county commissioners *create* positions under RCW 36.16.070, but the sheriff is the one who *designates* positions as unclassified under RCW 41.14.070. That is, the commissioners create the positions but they do not *per se* create unclassified positions. Rather, they create the positions and then the sheriff decides which ones are unclassified.

4. If the sheriff, with the consent of the civil service commission, makes changes to the job titles and job descriptions of one or more of the already existing unclassified service positons authorized by RCW 41.14.070, are such new job titles and job descriptions subject to the “consent” of the county commissioners under RCW 36.16.070 or RCW 41.14.070?

You next ask whether changed job titles and job descriptions are subject to consent by the county commissioners. Neither RCW 36.16.070 nor RCW 41.14.070 address changes in job titles or job descriptions, and therefore the answer to this question is, no.

This question asks about both job titles and job descriptions. Several later questions also ask about job descriptions. We therefore clarify what we mean by these two phrases before answering your fourth question.

RCW 41.14.070(2) lists by name a number of positions within the sheriff's office from which the sheriff can select positions to designate as unclassified. That is, the sheriff is allotted a certain number of unclassified positions based on the number of total staff personnel under RCW 41.14.070(1), but must choose those designations from among the positions of: under sheriff, inspector, chief criminal deputy, chief civil deputy, jail superintendent, and administrative assistant or administrative secretary. RCW 41.14.070(2). These are examples of

job titles. They name the job, but provide no further explanation as to what duties the person holding the job might perform.

A “job description” is defined as “[a]n official listing of the responsibilities required of someone holding a particular employment position.” *Black’s Law Dictionary* 964 (10th ed. 2014). A job description can be a detailed account of what qualifications a person must have to hold a job and the duties he or she would perform. One recent case, for example, described a particular job description as including a “general definition” of the position at issue, along with a detailed “itemization of characteristic duties and responsibilities[.]” *Fey v. State*, 174 Wn. App. 435, 455, 300 P.3d 435 (2013). The job description considered in that case also identified the “required competencies” for the position, and described its “conditions of employment.” *Id.* at 456.

Taking job titles first, your fourth question seems to be subsumed within your third. The only reference to job titles in either of the statutes you ask about occurs in RCW 41.14.070(2). That provision lists a series of job titles the sheriff can choose from in designating unclassified positions. As we concluded in response to question 3, the sheriff’s designation under that provision does not require the consent of the county commissioners. For example, if the sheriff previously designated the position of chief criminal deputy as unclassified and wished to make the position of jail superintendent unclassified instead, that change would not really be a change in a job title, but rather a change in the designation of which position is unclassified. As we concluded in response to question 3, the consent of the county commissioners would not be necessary. And RCW 36.16.070 does not mention job titles. We therefore conclude that neither statute requires the consent of the county commissioners to a change in job title.

Turning to job descriptions, neither RCW 41.14.070 nor RCW 36.16.070 make any mention of them. We therefore conclude that neither statute requires consent of the county commissioners to change them.

5. Does the answer to question number 4 depend on whether the change in job title or job description may result in a salary adjustment to the position?

No. Neither RCW 41.14.070 nor RCW 36.16.070 suggest that a resulting change in salary would mandate the consent of the the county commissioners to a change in job title or description. As concluded in response to question 4, neither cited statute contemplates the involvement of the county commissioners in the determination of job titles and job descriptions. That said, we recognize that a change in a job description might make a salary adjustment appropriate, but this would be a matter for the county commissioners to consider in fixing compensation.

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6. If an adjustment to salary is required, are the county commissioners still required to “fix the compensation” pursuant to RCW 36.16.070?

We construe this question as asking who fixes the compensation of unclassified employees in the sheriff’s office. We conclude that salaries in the sheriff’s office are fixed by the county commissioners, not by the sheriff.⁴

The general rule is that salaries in county government are fixed by the county commissioners. RCW 36.16.070. That statute provides generally that county officers “may employ deputies and other necessary employees with the consent of the board of county commissioners.” RCW 36.16.070. The statute goes on to provide: “The board [of county commissioners] shall fix their compensation[.]” RCW 36.16.070.

RCW 41.14.140 begins by providing that the sheriff fills positions in his or her office “with the consent of the board of county commissioners.” In this regard, RCW 41.14.140 is like RCW 36.16.070. But, unlike RCW 36.16.070, RCW 41.14.140 does not simply state that the county commissioners fix the salary. Instead, RCW 41.14.140 provides “nothing herein contained shall infringe upon such authority that [the sheriff] may have to fix the salaries and compensation of all employees employed hereunder.”

The last passage of RCW 41.14.140 is key to your question. It neither grants the sheriff nor the county commissioners the authority to fix salaries. As we explained in a prior opinion, RCW 41.14.140 thus “does not purport to *affirmatively vest* the county sheriff . . . with the authority to fix the compensation of those personnel who he appoints.” AGO 1984 No. 9, at 2. Rather, the statute merely preserves whatever authority the sheriff might otherwise have to set salaries. AGO 1984 No. 9, at 2. We reasoned that RCW 36.16.070, not RCW 41.14.140, determines who has the authority to fix salaries. “We therefore conclude that it is the board of county commissioners, and not the county sheriff, which is lawfully empowered to fix the compensation of deputy sheriffs.” AGO 1984 No. 9, at 3; *see also Clallam County Deputy Sheriff’s Guild v. Bd. of Clallam County Comm’rs*, 92 Wn.2d 844, 850, 601 P.2d 943 (1979) (noting that the county commissioners must consent to salaries paid to deputy sheriffs).

7. If the creation, selection, or change in job title or job description does require the “consent” of the county commissioners, what factors may the commissioners consider, in light of the holdings of *Osborn v. Grant County*, 130 Wn.2d 615, 926 P.2d 911 (1996), and *Crossler v. Hille*, 136 Wn.2d 287, 961 P.2d 327 (1998)?

This question asks what factors county commissioners may consider in the light of two named cases, if the creation, selection, or change in job title or job description requires their consent. We concluded in response to your prior questions that the consent of the county

⁴ This is not to suggest that the county commissioners would be precluded from delegating authority to the sheriff to determine salaries for various unclassified positions within overall budgetary limits set by the commissioners, an issue that your question does not present.

commissioners is required only for the creation of new positions. But neither *Osborn* nor *Crossler* address the creation of new positions. Given those conclusions, the decisions in *Osborn* and *Crossler* suggest no factors for consideration.

In *Osborn*, the elected county clerk hired an employee into a temporary position in the clerk's office. That employee, however, had been suspended from her permanent job with the district court, and the temporary position provided her with employment while suspended from her permanent job. The county commissioners objected to the county clerk's decision to hire the employee for the duration of a disciplinary suspension and expressed the intention not to pay her. *Osborn*, 130 Wn.2d at 618. The court held that the county commissioners could not interfere with the clerk's decision of *whom* to hire for a budgeted position in the clerk's office. "Once the board has created and funded the positions for needed deputies or employees, the county officer is the party who names the individuals to fill those positions." *Id.* at 622 (discussing RCW 36.16.070). Similarly in *Crossler*, the facts involved a personnel decision by a separately-elected official. In that case, a district judge terminated the employment of a deputy clerk, and the employee contended that she had a right to a hearing on her termination before the county commissioners. *Crossler*, 136 Wn.2d at 290. The court again concluded that "[a]bsent specific authority to the contrary, a board of county commissioners has no authority to interfere with an elected official's hiring decision." *Id.* at 293 (citing *Osborn*, 130 Wn.2d at 623). As in *Osborn*, the court concluded that the county commissioners have the authority to fund a position, but not to make specific personnel decisions. *Id.* at 294.

With regard to the "creation" of unclassified positions, we concluded in response to question 2 that RCW 41.14.070 authorizes a specific number of unclassified positions in the sheriff's office depending on the total number of other staff positions in the office. We also concluded in response to question 3 that the sheriff does not need the consent of the county commissioners to select certain positions as unclassified. And we concluded in response to question 4 that the county commissioners' consent is not required to change job titles or job descriptions. In contrast, we concluded in response to question 6 that the county commissioners do have the authority to fix the compensation for unclassified positions in the sheriff's office, and so our opinion is consistent with *Osborn* and *Crossler*.

8. If the county commissioners have set compensation for an unclassified position previously, may the Sheriff pay an individual less than the compensation the county commissioners have set?

You next ask whether a past practice in which the county commissioners set compensation for unclassified positions might preclude the sheriff from paying less than the compensation set by the commissioners. We concluded in response to question 6 that the county commissioners, and not the sheriff, have the authority to fix the compensation of unclassified positions. It therefore follows that the sheriff may not pay an individual less than the compensation that the county commissioners have set. RCW 36.16.070.

9. Are there any “deputy” positions in any of the county elected offices that RCW 36.16.070 would not apply to?

Your ninth question asks whether there are other “deputy” positions in any of the county elected offices to which RCW 36.16.070 does not apply. We concluded in response to question 6 that RCW 36.16.070 *does apply* to vest authority in the county commissioners to fix compensation for unclassified positions in the sheriff’s office. The legislature has authorized other county officers to hire deputies. RCW 36.27.040 (county prosecutors); RCW 36.21.011 (county assessors). County auditors are also authorized to appoint certain deputies and assistants, and additional qualifications are required for some of them. RCW 36.22.220. None of these statutes contain any statutory language that would make RCW 36.16.070 inapplicable. We also examined other statutes addressing the authority of other county elected officials and found no provisions suggesting that RCW 36.16.070 does not apply to them. *See generally* RCW 36.23 (county clerks); RCW 36.29 (county treasurers); RCW 36.24 (county coroner).

10. Does the holding in *Crossler v. Hille*, 136 Wn.2d 287, 961 P.2d 327 (1998), change the analysis in AGO 1982 No. 8?

This question pertains to county government more generally, and not to the sheriff’s office in particular. Our analysis in AGO 1982 No. 8 was based on RCW 36.16.070, which read then much as it reads now. We conclude that *Crossler* does not change our analysis.

AGO 1982 No. 8, at page 1, considered whether county commissioners of a noncharter county have the authority to adopt a county personnel system that would apply to all county employees, including those employed by other county officers. We concluded that the county commissioners lacked the authority to establish such a county-wide system, but that they did have the authority to determine the number of positions in county government and the salaries attached to each. AGO 1982 No. 8, at 2. We also concluded that independently-elected county officers have the authority to hire and fire individual employees. AGO 1982 No. 8, at 2-3.

At issue in *Crossler* was the authority of the county commissioners to bind a district court judge to the terms of a county personnel handbook with regard to the judge’s personnel decisions regarding a court clerk. *Crossler*, 136 Wn.2d at 288. The court drew a distinction between the authority to determine the number of employees county offices could hire and the amount of money those positions would be paid, and the authority to decide which specific people to hire. County commissioners have the authority to authorize and fund a position, including fixing compensation, but not the authority to make specific personnel decisions. *Id.* at 293-94.

The court’s analysis in *Crossler* and our analysis in AGO 1982 No. 8 are consistent. Both reached the conclusions that county commissioners have the authority to determine the number and the salaries of county employees, but that individual personnel decisions are the province of the various county elected officials as to their own offices. We therefore conclude that *Crossler* does not alter our analysis in AGO 1982 No. 8.

11. Are the county commissioners required by statute to fund an unclassified service position in the sheriff's office created by RCW 41.14.070?

You next ask whether the county commissioners are required to fund an unclassified position in the sheriff's office created by RCW 41.14.070. We conclude nothing compels the county commissioners to fund every position authorized by RCW 41.14.070 in any particular budget.

State law vests the final authority to adopt a county budget in the county commissioners. RCW 36.40.080. Each county officer submits budget proposals to the county auditor, who assembles them into a preliminary budget for submission to the county commissioners. RCW 36.40.040. The county commissioners then revise the preliminary budget, "making any revisions or additions it deems advisable." RCW 36.40.050. Following a public hearing on the budget, the county commissioners then "fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined[.]" RCW 36.40.080. The adopted final budget "shall constitute the appropriations for the county for the ensuing fiscal year[.]" RCW 36.40.100. "[E]very county official shall be limited in the making of expenditures or the incurring of liabilities to the amount of the detailed appropriation items or classes respectively[.]" RCW 36.40.100.

The designation of unclassified positions in the sheriff's office is determined by statute. RCW 41.14.070(1). As we described in response to your second question, the statute authorizes a number of unclassified positions based on the total staff personnel authorized for the sheriff's office by the county commissioners. The county commissioners therefore indirectly determine the number of unclassified positions by determining the total number of staff positions. RCW 41.14.070(1); *see also* RCW 41.14.140 (requiring the consent of the county commissioners to fill classified positions). Within those allotted numbers, the sheriff may select from a menu of positions to designate as unclassified—with the concurrence of the civil service commission. RCW 41.14.070(2).

The balance of authority between the county commissioners and the sheriff therefore is that the county commissioners have the authority to determine the overall budget (including fixing compensation), but once the budget is established the sheriff has broad discretion with regard to the personnel of the office. RCW 36.40.080 (county commissioners' authority to set the budget); RCW 41.14.070(2) (sheriff's discretion in deciding which positions are unclassified). This is consistent with prior case law as well, in which the court has recognized the general budgetary authority of the county commissioners, including the authority to fix compensation, while also deferring to the authority of separately elected county officials regarding specific personnel decisions. *See Osborn*, 130 Wn.2d at 620-22 (once the county commissioners established a budget for the county clerk they could not interfere with the elected clerk's hiring decisions); *Crossler*, 136 Wn.2d at 294 (same regarding district judge's decision to terminate an employee). The court has interpreted RCW 36.16.070 to mean that the county commissioners' budgetary authority does not extend to specific hiring or disciplinary decisions of other county officers. *Osborn*, 130 Wn.2d at 622. Indeed, the court has recognized this demarcation of

authority for over a century, dating back to an early dispute between county commissioners and a sheriff with regard to the sheriff's selection of specific individuals to serve as deputies. *Thomas v. Whatcom County*, 82 Wash. 113, 143 P. 881 (1914). The court held that while the county commissioners could determine the number of deputies the sheriff needed, they could not interfere with the sheriff's choice of the specific individuals to fill them. *Id.* at 124.

One more consideration affects our answer to this question. RCW 41.14.140 authorizes the sheriff to fill positions "coming within the purview of this chapter" only with the consent of the county commissioners. We concluded in response to question 1 that unclassified positions fall within the purview of RCW 41.14 because they are authorized by RCW 41.14.070. Therefore the sheriff's authority to fill those positions is dependent upon consent of the county commissioners. In any particular year, broader budgetary considerations could affect whether the county commissioners fund positions that are otherwise authorized. We find nothing in statute to limit the commissioners' discretion in this regard.

The county commissioners have the authority to set the budget for the sheriff's office. RCW 36.40.100. This includes the authority to determine the number of deputies in the sheriff's office and to fix their compensation. RCW 41.14.070; RCW 36.16.070. The county commissioners' decision to authorize a certain number of total staff positions in the sheriff's office in turn results in the authorization of a corresponding number of unclassified positions. RCW 41.14.070. But the consent of the county commissioners is required for the sheriff to actually fill those positions. RCW 41.14.140. And none of these statutes restrict the budgetary authority of the county commissioners as to the positions funded in any particular budgetary period.

12. Do the county commissioners or the civil service commission have the authority to review job descriptions for unclassified service positions in the sheriff's office created by RCW 41.14.070 before they can be filled?

Your next question relates to job descriptions for unclassified positions in the sheriff's office. We conclude that neither the county commissioners nor the civil service commission has the authority to review job descriptions for unclassified positions before they can be filled because RCW 41.14.070 does not provide for such review.

RCW 41.14.070(1) provides a mechanism for determining the number of unclassified positions in the sheriff's office based on the total number of existing staff positions. RCW 41.14.070(2) then identifies by name the positions within the sheriff's office from which the sheriff may select positions to designate as unclassified. At no point does the statute mention job descriptions for the positions. RCW 41.14.070(2) suggests the general nature of what the duties of those positions must entail by identifying those positions by name. For example, the sheriff may choose to make the chief civil deputy, the chief criminal deputy, and/or the jail superintendent unclassified positions. This implies that positions with job duties supervising civil deputies, criminal deputies, and the jail respectively are among those available for designation as unclassified.

The job description could, of course, affect the county commissioners' role in fixing compensation for unclassified positions. For example, if a job description was changed to increase (or decrease) the duties of the positions or the qualifications needed to hold it, the county commissioners might appropriately increase (or decrease) the salary. Such changes might also affect other matters, such as whether the position is included within or excluded from a bargaining unit. *See, e.g., In re Petition of Mason County for Clarification of an Existing Bargaining Unit*, 1995 WL 853467 (Wash. Pub. Emp't Relations Comm'n Sept. 19, 1995) (a county's change in the job description for a position resulted in excluding that position from a bargaining unit). And the consent of the civil service commission is required for changes in the designation of which positions are unclassified. RCW 41.14.070(2). We therefore do not suggest that job descriptions are of no concern to county commissioners or the civil service commission. To the contrary, county officials may desire open communication on such matters because of their potential effect on budgeting and other matters of mutual concern.

13. Do the budget authority of the county commissioners and the limitations imposed on county officials in RCW 36.40.100 supersede the ability of the sheriff to create or rename an unclassified service position in the sheriff's office created by RCW 41.14.070?

You next ask whether the budgetary authority of the county commissioners in any way supersedes the sheriff's authority to create or rename unclassified positions under RCW 41.14.070. It does not.

RCW 36.40.100 prohibits county officers, including the sheriff, from spending more money than the county commissioners provide in the county budget. But the number of unclassified positions in the sheriff's office are determined by statutory formula. RCW 41.14.070(1). And the authority to select which positions are unclassified is, again, vested in the sheriff with the concurrence of the civil service commission. RCW 41.14.070(2). The county commissioners' budgetary authority, while obviously crucial in the larger sense, does not affect these specific matters.

14. Does a budget adopted pursuant to RCW 36.40.080 that includes job descriptions in the line items require a hearing and amendment approved by the county commissioners before adopting any changes in job descriptions proposed by the head of that county department, such as the sheriff's office?

Your last question assumes that the county commissioners adopt a budget that includes job descriptions in line items. We concluded in response to question 12 that neither RCW 36.16.070 nor RCW 41.14.070 vest any authority in the county commissioners to determine specific job descriptions. We therefore find no basis for concluding that the sheriff cannot change a job description without obtaining a budget amendment. That said, we also concluded in response to question 6 that the county commissioners have the authority to fix

ATTORNEY GENERAL OF WASHINGTON

The Honorable James L. Nagle

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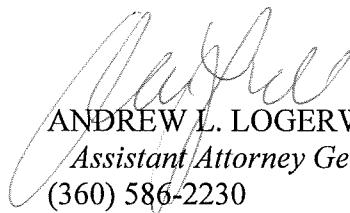
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compensation for unclassified positions, and so the sheriff cannot, in effect, alter the budget by changing job descriptions.

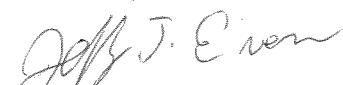
In posing this question, you note that RCW 36.40.080 seems to contemplate that county commissioners can budget to the level of specific positions within the various county offices. That section reads: "Upon the conclusion of the budget hearing the county legislative authority shall fix and determine each item of the budget separately and shall by resolution adopt the budget as so finally determined and enter the same in detail in the official minutes of the board, a copy of which budget shall be forwarded to the state auditor." RCW 36.40.080. Given our understanding of what a job description entails, as articulated in response to question 4, it is hard to imagine a county budget that would contain that level of detail about specific positions in a budget line item. We conclude, however, that if for some reason the county commissioners did so, that choice could not vest them with authority over job descriptions that they do not otherwise have.

We trust that the foregoing will be useful to you.

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Exempt Positions in the Sheriff's Office, and Other Tales

Jeffrey T. Even & Andrew Logerwell
Office of the Attorney General

Speaker Biographies

Jeffrey T. Even, Deputy Solicitor General: Jeff received his B.A. from Whitman College with honors in major study (Political Science) and his J.D. from the University of Montana with high honors. He joined the Attorney General's Office in 1992, and the Solicitor General's Division in 2001. He previously served in the Special Litigation Division (1992-93) and the General Counsel Unit (1993-2001). Jeff served as General Counsel to the Secretary of State from 1994 to 2009. Since 2009, he has served as the Opinions Chief, coordinating the preparation of formal and informal Opinions of the Attorney General. Jeff has defended the state in actions related to elections, state budgets, taxation, marijuana, and the legislative process, among other topics. Jeff has briefed and argued numerous cases in state and federal appellate courts.

Andrew Logerwell, Assistant Attorney General: Andrew has been with the Attorney General's Office for 10 years after a five year stint at the Oregon Department of Justice. His entire legal career has been centered around labor and employment issues in both offices.