

DELEGATE MOSER: It would, Mr. Chairman, if this is truly a state function.

THE CHAIRMAN: Is not the exercise of police power a state function?

DELEGATE MOSER: I suppose it is, and I would have to say yes to your question.

THE CHAIRMAN: Delegate Raley.

DELEGATE RALEY: Would Delegate Moser yield to a question?

THE CHAIRMAN: Delegate Moser.

DELEGATE MOSER: I yield.

THE CHAIRMAN: Delegate Raley.

DELEGATE RALEY: Under the local government article, could each county not set up a sheriff under its own inherent power given it if it so desired? Could it set up a sheriff in each county if it so desired, through its instrument of government?

THE CHAIRMAN: Delegate Moser.

DELEGATE MOSER: Yes.

THE CHAIRMAN: Delegate Grant.

DELEGATE GRANT: Will Delegate Moser yield to a question?

THE CHAIRMAN: Delegate Moser.

DELEGATE MOSER: I continue to yield.

THE CHAIRMAN: Delegate Grant.

DELEGATE GRANT: In the granting of power to the counties, judicial power is excluded. They may exercise every power except judicial power. If there is anything judicial that this office would apply, it would be beyond the power of the county to grant it, would it not?

THE CHAIRMAN: Delegate Moser.

DELEGATE MOSER: Your suggested answer is correct, that the counties could not provide for judicial power in the sheriff. However, presumably the court by rule could do this, even if the sheriff is a county office. The court could assign judicial functions to the office.

THE CHAIRMAN: Delegate Willoner.

DELEGATE WILLONER: I do not want to debate the local government article.

The police power is part of the shared powers of counties isn't that correct?

THE CHAIRMAN: Delegate Moser.

DELEGATE MOSER: That is correct.

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: Mr. Chairman, I am probably out of order here, but you are so adept at doing this, could the Chair state for the benefit of the Committee just how he understands the powers of the local government versus the state, vis-a-vis the creation of the office of sheriff?

I must confess Delegate Moser got me so confused I do not know whether the state can or cannot do it.

THE CHAIRMAN: The Chair will be glad to state it with one qualification. The Chair has views on one aspect of the law he happens to know is not in accord with all other delegates. Feel free to dissent, and I will indicate the area in which I think that such a dissent could occur.

Under the local government article adopted by the Convention to the extent that the sheriff is designated as a state agent or agency performing state functions, he could clearly be brought into existence by an act of the legislature and the act of the legislature could provide for his appointment, or his election, or, if there is some other way of election, could provide for his selection in any other way.

DELEGATE JAMES: A point of inquiry. Would it not have to be a uniform law?

THE CHAIRMAN: That is what I am coming to. To the extent that it is a state agency, in the opinion of the Chair under section 7.06 which I have read, it would not have to be a public general law, that is one of uniform application.

To the extent that it was deemed not to be a state agency, and hence not within the exception of section 7.06, it is the opinion of the Chair, and this is just a private opinion as a lawyer, that a public general law need not necessarily have absolute uniform application in every county.

I think you could have a public general law providing for sheriffs that would provide a different salary for sheriffs in localities of different populations for instance. There are some who do not agree with that view. There are some who feel that a public general law must apply without deviation in every county in the State. In other words, to sum it up, in my personal opinion, what is sought to be accomplished by this section could be accomplished by the legislature in the absence of this section.