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James R. Trotter Jr.

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vague, and therefore may well form the basis for disagreements as to the result of its application in specific situations. Indeed, the decision in the instant case might easily have been the same had the new rule been used by the court. But it would seem that, although the North Carolina Supreme Court is not alone in speaking in terms of "corporate presence" and "mere solicitation,"²⁷ it would have a fairer and more effective means of approaching future cases of this type if it employed the rule and language of the *International Shoe* case.

JOHN G. GOLDING.

Sheriffs—Relationship to and Liability for Deputy

The office of deputy sheriff is ". . . coeval in point of antiquity with the sheriff"¹ and as such is one of the oldest in the common law system of jurisprudence.² Although some states provide for deputies sheriff by statute,³ in North Carolina it remains a common law office.⁴

The exact relationship between the sheriff and his deputy was not clearly defined until *Styers v. Forsyth County*,⁵ in which Stacy, C. J. stated:

"Under our law a deputy is authorized to act only in ministerial matters, and in respect of these matters he acts as vice principal or alter ego of the sheriff, for the sheriff 'and his deputy be, in the contemplation of law, one person.' . . . In short, a deputy is a lieutenant, the sheriff's right hand man. . . . To call him an under sheriff . . . is more nearly correct than to style him an employee."⁶

²⁷ *E.g.*, *Westerdale v. Kaiser-Frazer Corp.*, 6 N. J. 571, 80 A. 2d 91 (Sup. Ct. 1951); *Vassallo v. Slomin*, 105 N. Y. S. 2d 60, 278 App. Div. 949 (2d Dept. 1951); *Allentown Record Co., Inc. v. Agrashell, Inc.*, 101 F. Supp. 790 (E. D. Penn. 1951). See also note 24 *supra*.

¹ *Lanier v. Greenville*, 174 N. C. 311, 316, 93 S. E. 850, 853 (1917).

² 1 ANDERSON ON SHERIFFS §2 (1st ed. 1941); Boland, *The Ancient Office of Sheriff*, 211 L. T. 177 (1951), ". . . the office of sheriff is, except for kingship, the oldest office in the country and the only secular office remaining from Saxon times."

³ 47 AM. JUR. §154 (1943); 1 ANDERSON ON SHERIFFS §60 (1st ed. 1941).

⁴ There is no provision for the office of deputy sheriff in either the constitution (*Gowans v. Alamance County*, 216 N. C. 107, 3 S. E. 2d 339 (1939)), or the statutes (*Borders v. Cline*, 212 N. C. 472, 193 S. E. 286 (1937); *Jamesville & Washington R.R. v. Fisher*, 109 N. C. 1, 13 S. E. 698 (1891)), except where modified by public-local law. See note 10 *infra*.

⁵ 212 N. C. 558, 194 S. E. 305 (1937).

⁶ 212 N. C. at 564, 194 S. E. 308. The court describes the deputy by four terms, the total of which would seem to embrace the definition of the office: ". . . he acts as 'vice-principal'" (one to whom the employer has confided the entire charge of the business or a district branch of it, or one to whom the master has delegated a duty of his own which is a direct personal and absolute obligation. *Black's Law Dictionary* (4th ed., 1951)); "alter ego" ("second self." *Webster's Collegiate Dictionary*, 5th ed. (1945)); "a lieutenant" ("one who holds the post or office of another, in the place and stead of the latter." *Black's Law Dictionary* (4th ed., 1951)); "the sheriff's right hand man" ("one chiefly relied on." *Webster's Collegiate Dictionary* (5th ed., 1945)).

Prior to that case the deputy had been inaccurately classified as an "agent,"⁷ "servant and agent,"⁸ and "employee."⁹

Except where regulated by local laws,¹⁰ North Carolina follows the common law in that appointments of deputies sheriff are made by the sheriff.¹¹ Despite this, the North Carolina court considers the charge a public office.¹² A deputation need not be in writing; it is sufficient to show that the deputy acted with the consent and privity of the sheriff.¹³ Other than general constitutional restrictions,¹⁴ qualifications for the office seem to be within the discretion of the sheriff "under the general principles of agency."¹⁵ Generally, the deputy begins his tenure upon being deputized and holds the office for the incumbency of the sheriff unless relieved by the sheriff,¹⁶ or county commissioners where local law empowers them to do so.¹⁷ A deputy may not be removed from office by the direct action of the public for he is not amenable to

⁷ *Somers v. Commissioners*, 123 N. C. 582, 31 S. E. 873 (1898); *Brinson v. Thomas*, 55 N. C. 414 (1856); *Horne v. Allen*, 27 N. C. 36 (1844).

⁸ *Jamesville & Washington R.R. v. Fisher*, 109 N. C. 1, 13 S. E. 698 (1891); *Willis v. Melvin*, 53 N. C. 62 (1860).

⁹ *Styers v. Forsyth County*, 212 N. C. 558, 194 S. E. 305 (1937): "... in some of the cases a deputy is loosely spoken of as an employee of the sheriff. . . ."

¹⁰ Some local laws permit county commissioners to appoint deputies sheriff, e.g., N. C. Public-Local Laws 1931 Ch. 128; others authorize appointment by the sheriff within the discretion of the county commissioners, e.g., N. C. Public-Local Laws 1935 Ch. 576. In at least one instance, N. C. Public-Local Laws 1937 Ch. 382, a deputy sheriff was appointed by the General Assembly.

¹¹ *Towe v. Yancey County*, 224 N. C. 579, 31 S. E. 2d 754 (1944); *Jamesville & Washington R.R. v. Fisher*, 109 N. C. 1, 13 S. E. 698 (1891); *Willis v. Melvin*, 53 N. C. 62 (1860).

¹² *Towe v. Yancey County*, 224 N. C. 579, 31 S. E. 2d 754 (1944); *Blake v. Allen*, 221 N. C. 445, 20 S. E. 2d 552 (1942); *Gowens v. Alamance County*, 216 N. C. 107, 3 S. E. 2d 339 (1939); *Styers v. Forsyth County*, 212 N. C. 558, 194 S. E. 305 (1937); *Lanier v. Town of Greenville*, 174 N. C. 311, 93 S. E. 850 (1917); *State v. Alston*, 127 N. C. 518, 37 S. E. 137 (1900). *But cf. Potts v. United Supply Co.*, 222 N. C. 176, 22 S. E. 2d 255 (1942). The court held that there were cases or dicta which would suggest that a deputy is not a public officer within the meaning of N. C. GEN. STAT. §1-77 (1943), citing *Blake v. Allen*, 221 N. C. 445, 20 S. E. 2d 552 (1942); *Styers v. Forsyth County*, 212 N. C. 558, 194 S. E. 305 (1937); and *Borders v. Cline*, 212 N. C. 472, 193 S. E. 826 (1937).

¹³ *Jamesville & Washington R.R. v. Fisher*, 109 N. C. 1, 13 S. E. 698 (1891); *Willis v. Melvin*, 53 N. C. 62 (1860); *Horne v. Allen*, 27 N. C. 36 (1844); *Buchanan v. McIntosh*, 24 N. C. 52 (1841).

¹⁴ N. C. CONST., Art. VI, §8; Art. XIV, §2. These restrictions apply to the qualifications for all public offices within the state.

¹⁵ *Jamesville & Washington R.R. v. Fisher*, 109 N. C. 1, 13 S. E. 698 (1891). In holding the appointment of an infant as deputy sheriff valid the court said: "... the sheriff is civilly responsible for the unlawful acts of his deputy . . . he selects and appoints his agents at his own hazard. . . ."

¹⁶ *Somers v. Commissioners*, 123 N. C. 582, 31 S. E. 873 (1898) (court held that a deputy's tenure terminated upon the sheriff's being declared insane); *Willis v. Melvin*, 53 N. C. 62 (1860).

¹⁷ N. C. Public-Local Laws 1929 Ch. 451. Where the sheriff has the tax list in his hands when his tenure of office expires, any resistance to his deputy who thereafter attempts to collect the taxes is considered resistance to an officer. *State v. Alston*, 127 N. C. 518, 37 S. E. 137 (1900). However, collecting taxes is considered a mere incident to the office and does not terminate with the other duties. *State v. Alston*, *supra*; *Perry v. Campbell*, 63 N. C. 257 (1869).

them for his misfeasance.¹⁸

Deputies are divided into two classifications, general and special. The general deputy is an officer who has the authority to execute all of the ordinary ministerial duties of the sheriff. The special deputy has been defined as an officer of specific limited duties, usually employed to execute a particular writ on a particular occasion.¹⁹ This definition does not seem adequate in the light of present day practices. It would perhaps be better to expand the definition to include officers who perform *particular duties* as well as execute particular writs.²⁰ Although the acts of the deputy are representative and are done in the name of the sheriff,²¹ the sheriff may not delegate a part of the authority of his office to his deputy and thus relieve himself of obligation, for he alone is responsible for the incumbencies of his office.²² Nor may a general or special deputy delegate his duty to another unless authorized to do so by the sheriff,²³ though a general deputy has it within his power as the general "acting arm" of the sheriff to appoint a special deputy.²⁴ If the law requires that an act be done by the "sheriff of the county," if ministerial, it may be performed by his deputy since the direction refers to the office and not the man.²⁵

The deputy, like the sheriff, is territorially confined to the boundaries of his county.²⁶ At common law the only exception to this was where the sheriff or his deputy was in "hot pursuit" of a fleeing felon in which case the boundaries could be crossed. North Carolina has limited this "extra-territorial" jurisdiction to bonded deputies,²⁷ but as to them has expanded it to include violators of the state's prohibition laws.²⁸ In some few cases local laws permit deputies to pass from

¹⁸ Willis v. Melvin, 53 N. C. 62 (1860).

¹⁹ Borders v. Cline, 212 N. C. 472, 193 S. E. 826 (1937); Lanier v. Town of Greenville, 174 N. C. 311, 93 S. E. 850 (1917).

²⁰ See note 48 *infra*.

²¹ Blake v. Allen, 221 N. C. 445, 20 S. E. 2d 552 (1942); Styers v. Forsyth County, 212 N. C. 558, 194 S. E. 305 (1937); Borders v. Cline, 212 N. C. 472, 193 S. E. 826 (1937); Lanier v. Town of Greenville, 174 N. C. 311, 93 S. E. 850 (1917).

²² Lanier v. Town of Greenville, 174 N. C. 311, 93 S. E. 850 (1917); Cansler v. Penland, 125 N. C. 578, 34 S. E. 683 (1899). The duties and authority of the sheriff are prescribed and directed by law and are not within his discretion. However, the sheriff does have the administration of his deputies within his discretion. Blake v. Allen, 221 N. C. 445, 20 S. E. 2d 552 (1942); Borders v. Cline, 212 N. C. 472, 193 S. E. 826 (1937). Although the sheriff has judicial as well as ministerial duties, the deputy may act for him only in the latter. Blake v. Allen, *supra*; Styers v. Forsyth County, 212 N. C. 558, 194 S. E. 305 (1937); Borders v. Cline, *supra*; Lanier v. Town of Greenville, 174 N. C. 311, 93 S. E. 850 (1917); Yeargin v. Siler, 83 N. C. 348 (1880).

²³ Blake v. Allen, 221 N. C. 445, 20 S. E. 2d 552 (1942).

²⁴ 1 ANDERSON ON SHERIFFS §74 (1st ed. 1941).

²⁵ Lanier v. Town of Greenville, 174 N. C. 311, 93 S. E. 850 (1917).

²⁶ Wilson v. Mooresville, 222 N. C. 283, 22 S. E. 2d 907 (1942).

²⁷ N. C. GEN. STAT. §15-42 (1943).

²⁸ N. C. GEN. STAT. §18-45(0) (1943).

one county into another.²⁹

Generally, a sheriff is held liable for the wrongful acts or omissions of his deputy committed under color of office.³⁰ The basis for this responsibility is the principle that "the hand that does or procures the act [to be done] is liable."³¹ Thus, the receipt of claims by the deputy is regarded as the same as receipt by the sheriff;³² a demand on a defaulting deputy for money collected is equivalent to a demand on his superior,³³ and admissions or declarations of a deputy may be used as evidence against the sheriff.³⁴ The deputy, on the other hand, is liable to the sheriff for his misfeasance of office, and where he gives a bond to the sheriff for the faithful discharge of his duties, it is for the sheriff's protection and not the public at large.³⁵ At common law the sheriff alone could be sued by the injured party, and he in turn would recover from his deputy,³⁶ whereas today the suit may be against the deputy as well as the sheriff.³⁷

It is a fairly common practice in North Carolina for a deputy sheriff to be engaged in private employment while also serving as deputy.³⁸ In

²⁹ N. C. Public-Local Laws 1941 Ch. 23.

³⁰ *Cain v. Corbett*, 235 N. C. 33, — S. E. 2d — (1952); *Towe v. Yancey County*, 224 N. C. 579, 31 S. E. 2d 574 (1944); *Blake v. Allen*, 221 N. C. 445, 19 S. E. 2d 871 (1942); *Davis v. Moore*, 215 N. C. 449, 2 S. E. 2d 366 (1939); *Styers v. Forsyth County*, 212 N. C. 558, 194 S. E. 305 (1937); *Borders v. Cline*, 212 N. C. 472, 193 S. E. 826 (1937); *Jamesville & Washington R.R. v. Fisher*, 109 N. C. 1, 13 S. E. 698 (1898); *McClellan v. Buchanan*, 53 N. C. 444 (1862); *Martin v. Martin*, 47 N. C. 285 (1855); *Horne v. Allen*, 27 N. C. 36 (1844); *Satterwhite v. Carson*, 25 N. C. 549 (1843); *Spencer v. Moore*, 19 N. C. 264 (1837). As to the extent of the liability of the sureties in the sheriff's bond, the present view imposes liability for any wrong committed under color of office, whether negligent or willful. *Dunn v. Swainson*, 217 N. C. 279, 7 S. E. 2d 563 (1940); *Price v. Honeycutt*, 216 N. C. 270, 4 S. E. 2d 611 (1939). Previously, the sureties had been held responsible for the performance of only those duties incumbent upon the sheriff by virtue of his office. For a discussion of the old view see 12 N. C. L. Rev. 394 (1934).

Generally, a sheriff may not be held criminally liable for the act of his deputy, though when a sheriff made a false return on a writ based entirely on the false return of his deputy, he was held liable to a criminal charge. *State v. Johnson*, 2 N. C. 293 (1796).

³¹ *Styers v. Forsyth County*, 212 N. C. 558, 194 S. E. 305 (1937).

³² *State v. McGhee*, 29 N. C. 377 (1847); *Horne v. Allen*, 27 N. C. 36 (1844); *Lyle v. Wilson*, 26 N. C. 227 (1844); *State v. Roane*, 24 N. C. 144 (1841).

³³ *Lyle v. Wilson*, 26 N. C. 227 (1844).

³⁴ *Horne v. Allen*, 27 N. C. 36 (1844).

³⁵ *Blalock v. Peake*, 56 N. C. 324 (1857); *Brinson v. Thomas*, 55 N. C. 414 (1856); *Lyle v. Wilson*, 26 N. C. 227 (1884). If the sheriff is held liable for the acts of his deputy and his sureties are compelled to indemnify, the sureties, under the principles of subrogation, may bring action against the sureties of the deputy to recover sums paid out.

³⁶ *Brinson v. Thomas*, 55 N. C. 414 (1856); *Willis v. Melvin*, 53 N. C. 62 (1860); *Martin v. Martin*, 47 N. C. 285 (1855); *Hampton v. Brown*, 35 N. C. 18 (1851); *Tarkington v. Harsell*, 27 N. C. 359 (1845) (where a deputy promised to make good a default the sheriff was not held liable); *Lyle v. Wilson*, 26 N. C. 227 (1844).

³⁷ *Cain v. Corbett*, 235 N. C. 33, — S. E. 2d — (1951); *Davis v. Moore*, 215 N. C. 449, 2 S. E. 2d 366 (1939).

³⁸ Such functions include serving as special town policeman, peace officers in and around amusement centers, and as guards and night watchmen for municipal,

such cases the question of liability for the wrongful acts of the deputy takes on dual aspects: is the sheriff responsible, the private employer responsible, or are they jointly liable? In most cases the question would seem to depend upon whose employ the deputy was in at the time the wrong was committed, the issue being one for the jury.³⁹ The difficulty comes where it is found that the deputy was in the employ of both the sheriff and the private employer. Should the liability be joint, and if so, should it also be several? Apparently, North Carolina has not passed upon the point; but since generally the deputy is in the relationship of principal and agent with his private employer,⁴⁰ and in a comparable relationship with the sheriff,⁴¹ the general rules of agency should be followed.

North Carolina needs to clarify its position as to the liability of the sheriff for his deputy and also to provide answers to other questions involving the office. If the deputy sheriff is a public officer, does he come within the statutory requirements of public officers respecting dual office holding, oath of office, official bond and similar requirements?⁴² Is on-the-spot deputization still possible or is it necessary that there be a ceremony and written appointment? Can a sheriff limit his liability for the wrongs of his special deputies by specific instructions? Are all deputies *actually* within the existing classifications of general and special deputies?

Clearly, there is a need in North Carolina for legislation to provide for the office of deputy sheriff and to define its limits and obligations. In addition, the varied and often conflicting local provisions pertaining to this office serve no apparent purpose, and should be eliminated and replaced by uniform requirements.

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industrial and other locations. See *e.g.*, *Cain v. Corbett*, 235 N. C. 331, — S. E. 2d — (1952).

³⁹ Where a special police officer, appointed by the governor as a railroad guard, but paid by the railroad, killed another in the exercise of his duties, the court held that if the guard was engaged in the performance of a duty owed his employer by reason of his employment, then the railroad would be liable; otherwise, he would be held in his capacity as a public officer. The question was one of fact for the jury. *Tate v. Southern R.R.*, 205 N. C. 51, 169 S. E. 816 (1933). In a similar case in which the question was one of joinder of parties, the court held that it was proper to join the private employers with the sheriff, the deputy and their sureties, on the premise that if the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants to determine which is liable, the question of whether the deputy was acting as a servant or public officer again being one for the jury. *Cain v. Corbett*, 235 N. C. 33, — S. E. 2d — (1952).

⁴⁰ It is conceivable that the deputy could be an independent contractor. In such a case the liability would be different, depending upon the circumstances. Such a relationship is beyond the scope of this note.

⁴¹ While the deputy is not an agent of the sheriff, the relationship is closely akin to agency, and in many cases the liability of the sheriff for his deputy has been based on agency. *Styers v. Forsyth County*, 212 N. C. 558, 194 S. E. 305 (1937).

⁴² N. C. GEN. STAT. §128-1 through §128-41 (1943).