

SHERIFF-CORONER'S CURRENT JOB STATUS

December 11, 2007

Current Status

The Sheriff has stated that he has delegated his duties to Undersheriff Galisky. Undersheriff Galisky consults with him on a regular basis concerning department business, and the Sheriff is available to return to the office immediately should the need arise. He continues to collect his salary.

Does the Sheriff have the authority to select to whom he delegates his duties while he is on a voluntary leave of absence?

Yes (Gov't Code § 24101.) The Board has no power to control the manner in which the Sheriff assigns personnel. (77 Op. Cal. Att'y Gen. 82 (1994).)

May the Undersheriff perform all the Sheriff's duties in his absence?

Yes, the Undersheriff possesses all the powers and may perform the Sheriff's duties unless restricted by statute, charter, ordinance, regulation or by the Sheriff himself.

Is the Undersheriff the “Acting Sheriff”?

- No, the Undersheriff is not the “Acting Sheriff” because Sheriff Carona still holds the office of Sheriff-Coroner.
- There is no formal title “Acting Sheriff.” Sheriff Carona still holds the office and the title of the office. His sixty-day absence is voluntary and is not a legal impediment to his ability to exercise his duties as Sheriff. Sheriff Carona retains the complete discretion to return to his duties at any time during this voluntary “leave of absence.”

What is the difference between leave of absence and administrative leave?

Administrative leave is taken at the employer's direction without any finding that the employee committed wrongdoing. The employee is asked to not report to work. Since it is not punitive, administrative leave is with pay. There is no legal provision to put an elected official on administrative leave.

What does it mean for an elected official to take a leave of absence?

There is no “leave” provision in County employment rules for elected officials. There is no procedure for an elected official to take a leave of absence (with an exception as to judges).

May the Sheriff be involuntarily deprived of his salary during his self-imposed leave of absence?

There are no minimum hours for an elected official to work. (See, 33 Op. Cal. Att’y Gen. 62, 63 (1959); Article I, Section 9 of the California Constitution provides: “A bill of attainder, ex post facto law, or law impairing the obligations of contracts may not be passed.” This has been interpreted to prevent decreasing the salary of a public officer once he has entered into a term. *Olson v. Cory*, 27 Cal. 3d 532 (1980).

Procedural Rights

In any event, the Peace Officer Bill of Rights (“POBRA”) applies to the sheriff. Penal Code sections 830.1, *et seq.* Therefore, any change to the Sheriff’s salary would require compliance with POBRA’s procedural requirements.

When does a vacancy in office occur?

An incumbent elected officer holds that office until the occurrence of an event that creates a vacancy. (See Gov't Code § 1770.) Apart from resignation, there are several ways a vacancy in office may occur.

Failure to discharge duties

Government Code section 1770(g) provides that an office becomes vacant before the expiration of the term if the officer “ceas[es] to discharge the duties of his or her office for a period of three consecutive months, except when prevented by sickness, or when absent from the state with the permission required by law.”

Conviction of a felony

Government Code section 1770(h) provides that an office becomes vacant if the officer is “convict[ed] of a felony or of any offense involving a violation of his or her official duties. An officer shall be deemed to have been convicted under this subdivision when trial court judgment is entered. For the purposes of this subdivision, ‘trial court judgment’ means a judgment by the trial court either sentencing the officer or otherwise upholding and implementing the plea, verdict, or finding.”

Grand Jury proceeding

If a public official engages in conduct that falls within the statutory definition of willful or corrupt conduct, the Grand Jury is authorized, with the assistance of the District Attorney, to initiate, by accusation, the removal of that officer from office.

Grand Jury proceeding

The accused is entitled to a jury trial in Superior Court. The allegation must be proven beyond a reasonable doubt. (Gov't Code § 3070.) The sole penalty is removal from office. There can be no jail time or monetary fine imposed, no probation, and no restitution ordered.

Recall

An office will become vacant if the incumbent is recalled by the voters in accordance with the provisions of the Elections Code. (See, Elec. Code § 11200, *et seq.*) The recall process may be commenced only with a voter-signed recall petition.

**May an elected official suspend
his or her leave and return to
work?**

Yes, the elected official may return to work
at any time.

What is the Sheriff's current job status?

The Sheriff has taken a voluntary, 60-day “leave of absence,” *as he has termed it*. Technically, the Sheriff is not on a leave as that term is used in the Personnel and Salary Resolution. He continues to exercise the authority of his office by delegating his duties and responsibilities to Undersheriff Galisky.