

BC  
9 7 9 - 2

DVA -88-005-  
2 - 31 00 -1

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

Donald N. Gramke,

Petitioner,

FINDINGS OF FACT.

CONCLUSIONS AND

CONCLUSIONS  
vs.  
RECOMMENDATION

Cass County,

Respondent.

The above-entitled matter came on for hearing before Administrative Law Judge Richard DeLong on December 8, 1987, in the Public Meeting Room, Cass County Courthouse, Walker, Minnesota.

Appearances: Earl Maus, Cass County Attorney, Courthouse, Walker, Minnesota 56484, appeared on behalf of Cass County (Respondent); and Leo M. McDonnell, Attorney at Law, 720 Midwest Federal Building, Duluth, Minnesota 55802, appeared on behalf of Donald N. Gramke (Mr. Gramke or Petitioner).

Shortly after the date of the hearing, Administrative Law Judge DeLong was incapacitated for an indeterminate period. By letter dated January 21, 1988, the Chief Administrative Law Judge, Duane R. Harves, communicated the fact of Judge DeLong's incapacity to counsel for both parties. In that letter, he stated that the case would be assigned to Administrative Law Judge Bruce D. Campbell for the issuance of Findings of Fact, Conclusions and a Recommendation to the Commissioner of Veterans Affairs on the basis of the

existing record unless either counsel requested a rehearing of the case. The Office of Administrative Hearings also caused a transcript of the hearing to be prepared. Ely letter dated March 29, 1988, Administrative Law Judge Bruce D. Campbell took administrative notice of the fact that the population of Cass County, according to the 1980 census, was substantially less than 100,000 and requested that counsel comment on the possible application to this proceeding of Minn. Stat. 387.145 (1986). The opportunity for counsel to contest the Matter of which the Administrative Law Judge took administrative notice was provided in accordance with Minn. Stat. 14.60, subd. 4 (1986), and Minn. Rules pt. 1400.1300, ubp. 4 (1985).

The record herein closed on April 7, 1988, upon receipt by the Administrative Law Judge of the final written comment of counsel regarding Minn. Stat. 387.145 (1986).

This Report is a recommendation, not a final decision. The Commissioner of the Department of Veterans Affairs will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. sec. 14.61, the final decision of the Commissioner shall not be made until this

Report has been made available to the Parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact William J. Gregg, Commissioner, Minnesota Department of Veterans Affairs, 200 Veterans Service Building, 20 West Twelfth Street, St. Paul, Minnesota 55155, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the employment rights of the Petitioner, who had taken the position of Chief Deputy of the Cass County Sheriff's Department, were within the coverage of Minn. Std. 197.46 (1986), at the time of his discharge from employment in 1987.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS -OF

FACT

1. Donald N. Gramke is an honorably discharged veteran of the United States Army. During his Army service, the Petitioner served as an M.P. Upon discharge from military service, Mr. Gramke completed criminal justice training courses at the college level. He then became a patrol officer with the City of the police department of Cincinnati, Ohio. After serving in that capacity for approximately six years, he was employed as

a deputy sheriff for Hamilton County, Ohio. Hamilton County included some of the suburbs of Cincinnati, Ohio. That Sheriff's Department had several hundred employees. During his ill years of service with the Hamilton County Sheriff's Department, the Petitioner serially held the ranks of patrolman, sergeant and fiduciary commander.

2. In 1981, Mr. Gramke left his employment with the Hamilton County Sheriff's Department and relocated in International Falls, Minnesota, where he owned and operated a summer resort. Mr. Gramke also acted as an on-call, part-time peace officer for the City of South International Falls.

3. In 1986, the Petitioner ran in a primary election for the office of Sheriff of Cass County. At the time of the primary election, Mr. Gramke was a resident of Cass County. The Petitioner was eliminated in the primary from running in the general election for the office of Sheriff of Cass County.

4. Sometime after the date of the primary election, Mr. Gramke indicated public support for the candidacy of the present sheriff, James Dowson. On at least one occasion, Mr. Gramke placed an advertisement in the local newspaper endorsing Mr. Dowson's candidacy.

5. James Dowson was elected Sheriff of Cass County in the 1986 general election. He assumed the office of Sheriff on January 2, 1987. Sheriff Dowson had been employed by the Cass County Sheriff's Department for approximately 21 years prior to his election to the position of sheriff in

1986. Sheriff Dowson had served  
as deputy sheriff, lieutenant  
and, finally,  
chief deputy. He had served former  
Sheriff Chalich as his chief deputy  
for  
approximately 12 years prior to the 1986 general election.

6. During the 1986 campaign for the office of sheriff of employees of the Cass County Sheriff's Department did not universally support the candidacy of Mr. Dowson. Shortly before assuming office on January 5, 1987, Sheriff Dowson discussed with Mr. Gramke the position of chief deputy with the Cass County Sheriff's Department. Sheriff Dowson's prime motive in offering the position to the Petitioner was to bring in to the Department from the outside an experienced peace officer who was not identified with the divisiveness that had occurred during the course of the 1986 sheriff's campaign.

7. When Sheriff Dowson discussed with Mr. Gramke the position of chief deputy, he clearly indicated to him that the chief deputy would serve at the pleasure of the sheriff. At the time of those discussions, Sheriff Dowson did not specify, in any detailed fashion, the particular duties that Mr. Gramke would perform as chief deputy. He did state to Mr. Gramke that the chief deputy would act for the sheriff in his absence.

8. The Cass County Sheriff's Department is governed by a county sheriff's civil service system. Only the position of sheriff and chief deputy are exempt from the operation of that system. One other member of the Department, the sheriff's personal secretary, is also exempt from union participation as a consequence of the most recent collective bargaining agreement. She is, however, in all respects, subject to the county civil service system.

9. During Sheriff Dowson's 12 years of service under the previous sheriff as chief deputy, he developed a close working relationship with former Sheriff Chalich. During portions of the previous sheriff's last term in office, Sheriff Dowson was in operational control of the Department, actively managing it on behalf of Sheriff Chalich.

10. Sometime during Mr. Dowson's service as chief deputy under former Sheriff Chalich, a law firm engaged to represent the County in labor matters

prepared draft position descriptions for certain County positions, including that of chief deputy within the Sheriff's Department. Pet. Ex. 4. That draft position description accurately reflects the degree of managerial control Sheriff Dowson exercised over the Department as chief deputy under-former Sheriff Chalich. The draft position description was never adopted by the Cass County Board of Commissioners.

11. There is no evidence in the record that the draft position description contained in Pet. Ex. 4 was discussed with Mr. Gramke as reflecting the duties that Sheriff Dowson intended to assign to him as chief deputy or that Mr. Gramke was aware of its existence when he accepted the position of chief deputy.

12. There is no evidence in the record that Sheriff Chalich, Sheriff Dowson or the County Board sought an opinion from the County Attorney about the application of Minn. Stat. 387.145 (1986), to the position of chief deputy within the Cass County Sheriff's Department after that statute was adopted in 1980.

13. During Sheriff Dowson and Mr. Gramke's discussions in January of 1987, Sheriff Dowson asked Mr. Gramke if he had satisfied the requirements for obtaining certification in Minnesota as a full-time peace officer. Mr. Gramke informed Sheriff Dowson that he had satisfied all requisites for obtaining the

certification. Sheriff Dowson relied upon Mr. Gramke's statement in choosing the Petitioner as his chief deputy.

14. On January 5, 1987, Mr. Gramke accepted the position offered by Sheriff Dowson. Sheriff Dowson executed an Appointment of Deputy Sheriff covering the Petitioner. Pet. Ex. 3. The appointment as a deputy sheriff was signed by Mr. Gramke and filed with the County Clerk.

15. On January 6, 1987, Sheriff Dowson appeared before the Cass County Board of Commissioners at their regular meeting. The minutes of that County Board meeting state that the Sheriff introduced Mr. Gramke as his chief deputy and asked that they ratify his selection. The action by the County Board was to fix the salary of Mr. Gramke at \$30,000 per year, which reflected "Step 9 of the Chief Deputy Classification of the Arthur Young Plan". Resp. Ex. A.

16. Mr. Gramke also executed all of the documents required of an employee of the Cass County Sheriff's Department in January of 1987, including applications for County subsidized life and health insurance and enrollment in the Public Employee's Retirement Association. Resp. Ex. F. On id 1 such forms, the position title indicated for Mr. Gramke is "Chief Deputy". On February 18, 1987, Mr. Gramke mailed to the Minnesota State Sheriff's Association his annual membership dues. On that statement to the Association, he lists his position as "Chief Deputy Sheriff Cass County Sheriff's Dept." and states: "I am a full-time officer, registered with POST and working full-time in the position of Chief Deputy for Cass County Sheriff's Dept." Resp. Ex. D.

17. Shortly after Mr. Gramke assumed his position with the Cass County Sheriff's Department, Sheriff Dowson discovered that the Petitioner had not completed all required classroom instruction to be certified in Minnesota as a full-time peace officer. Sheriff Dowson allowed Mr. Gramke to obtain the requisite instruction at County expense. As a consequence of Mr. Gramke's

misstatement about his qualifications in Minnesota, the trust and confidence that Sheriff Dowson had initially placed in Mr. Gramke began to deteriorate.

18. Because Mr. Gramke had only resided in Cass County for a short period of time prior to 1987, Sheriff Dowson wanted him to become familiar with the geography of the County, its road system and the facilities available to the Sheriff's Department. Cass County, one of the larger counties of the State, includes more than 100 miles of territory. Sheriff Dowson anticipated that Mr. Gramke would spend a significant amount of time in a patrol car with his immediate subordinate, Lieutenant Stein, acquainting himself with the County. Although Mr. Gramke did attempt to acquaint himself with the geography of the County, Sheriff Dowson concluded that the Petitioner spent most of his time in the northern part of the County and did not tour the remaining parts.

19. On one occasion, a deputy assigned to the regular patrol shift did not report for work, as scheduled. Sheriff Dowson suggested to Mr. Gramke that he perform that deputy's patrol duties. Mr. Gramke responded that, because of his age and experience, he would prefer not to patrol in place of the absent deputy. Sheriff Dowson was disturbed with that response because he expected that a chief deputy should be available to perform the duties of an absent deputy, as needed. Sheriff Dowson and Mr. Gramke were the only two employees of the Cass County Sheriff's Department who were paid an annual salary. All other employees were paid an hourly rate, with additional

compensation for overtime work.

20. In 1987, the Sheriff's Department included approximately 5 employees, many of whom worked only on a part-time basis. In addition to the sheriff and chief deputy, the Cass County Sheriff's Department included two lieutenants, two sergeants, five additional deputies available for general duties, several full-time jailers, two investigators, four dispatchers and two full-time clerical employees. At the time of Mr. Gramke's appointment approximately six of the Department's employees served only on a part-time basis. The Hamilton County Sheriff's Department in which Mr. Gramke had previously served had in excess of 300 full-time employees and was subject to a strictly enforced chain of command.

21. With the exception of the sheriff and the chief deputy, all employees of the Cass County Sheriff Is Department who have successfully completed a probationary period are subject to the jurisdiction of a Sheriff Is Civil Service Commission, established by Minn. Stat. 387.33 (1986). All prospective employees other than the chief deputy are selected by the sheriff from a civil service list prepared by the County Sheriff's Civil Service Commission. All major disciplinary actions, including discharge, of employees other than the chief deputy are subject to review by the same Commission, upon the request of the disciplined employee.

22. The sheriff and his staff occupy space in the Cass County Courthouse in Walker, Minnesota. Mr. Gramke was given a key to the public entrance to the sheriff's quarters in the courthouse. He also was given a key to the outer courthouse door and a key to his own office. He was not given a key to the sheriff's personal office where the Department's employment records were kept and he was not given a key to the property room where evidence was maintained in a locked area. Although Mr. Gramke assumed that the reason for his not receiving keys to the sheriff's private office and the property room

was that Sheriff Dowson did not desire that he have access to those areas, the chief deputy never requested such keys and never discussed the matter with the sheriff.

23. Mr. Dowson's regular duties did not include the routine scheduling of work assignments for Department personnel. The actual scheduling was performed by division supervisors who had experience with the personnel and the requirements of each division. Work schedules were given to Mr. Gramke who, on occasion, made scheduling recommendations to the sheriff. Mr. Gramke made such recommendations on an unspecified number of occasions during the six months that he occupied the position and, occasionally, his suggestions were accepted by the sheriff. The final approval of all duty assignments and work schedules for all Department personnel was reserved to the sheriff.

24. Mr. Gramke's duties did not include supervision over budgetary or financial matters relating to the Department. On one occasion when Mr. Gramke raised a budgetary matter affecting the Department with the sheriff's personal secretary, she advised him that he had no reason to review the budget. The sheriff's personal secretary, Deputy Cathy Miller, assisted the sheriff in the preparation of and management of the Department's budget. On at least two occasions, however, Mr. Gramke and the sheriff discussed concerns that Sheriff Dowson had about the fiscal operation of the Department.

25. Mr. Gramke had no fixed role in disciplining employees. On at least

two occasions, however, recommendations from superior officers were made that deputies receive disciplinary treatment. On those two occasions, Mr. Gramke reviewed the recommendations of the field commanders and made a disciplinary recommendation. Sheriff Dowson reviewed Mr. Gramke's disciplinary recommendations and informed him that he, the sheriff, would "handle that." There is no evidence in the record as to whether Mr. Gramke's disciplinary recommendations regarding the two deputy sheriffs were followed by Sheriff Dowson.

26. Mr. Gramke had access to all correspondence received by the sheriff's office. Routinely, however, it was received by Sheriff Dowson. Mr. Gramke was in the habit of allowing Sheriff Dowson to review all office correspondence that he, as chief deputy, sent to members of the public. This was not required by Sheriff Dowson. Mr. Gramke assumed that the practice he adopted was appropriate because the sheriff had final responsibility for the Department. On several occasions Mr. Gramke signed and sent letters as chief deputy on the stationery of the Sheriff's Department to persons dealing with the office. Resp. Ex. B; Resp. Ex. E. On both occasions, the response was prepared and sent at the request of Sheriff Dowson.

27. When Mr. Gramke accepted the position offered, Sheriff Dowson told him, generally, that the chief deputy could act for the Department in the absence of the sheriff. Mr. Gramke's specific authority in the sheriff's absence was undefined and had never been specifically discussed. Sheriff Dowson would usually call the office periodically and leave a telephone number where he could be reached in the event of a serious emergency. The usual practice was for Mr. Gramke to provide the sheriff with a detailed briefing of events when Sheriff Dowson telephoned the office. In the absence of the sheriff, his personal secretary reviewed the sheriff's incoming correspondence and general Departmental correspondence. There is no evidence in the record

that any situation arose during the absence of Sheriff Dowson that required immediate action by the chief deputy.

28. In addition to familiarizing himself with the geography of Cass County and completing the requirements for POST certification, Mr. Gramke performed some routine patrol duty, transported mental patients between Walker and the hospital facility in Brainerd, Minnesota and, on occasion, transported prisoners for the Department.

29. Only Sheriff Dowson and Mr. Gramke signed and issued handgun permits to the public who applied for such authorization.

30. Upon assuming his duties in January of 1987, Mr. Gramke was placed in charge of revising the operational policy manual of the Department. The manual had been initially formulated some years earlier and Sheriff Dowson considered it important that the document be updated for current use by his employees. Mr. Gramke did submit a draft of a revised organizational chart for the Department to Sheriff Dowson for comment and approval. Sheriff Dowson had final authority to accept or reject the suggestions made by Mr. Gramke regarding the organizational structure of the Department and the contents of the revised policy manual.

31. On March 9, 1987, a patrol directive was issued to all Department employees regarding the policy on prisoners and the respective responsibilities of the jailors and deputy sheriffs. That directive was

signed by the chief jailor and Mr. Gramke, as chief deputy. Resp. Ex.

C. The directive resulted from a meeting between the chief jailor, Mr. Gramke and the policy statement was signed by Mr. Gramke and the chief jailor at the direction of Sheriff Dowson.

32. Mr. Gramke's prior service with the Hamilton County Sheriff's Department had included public relations work. On one occasion, at the direction of Sheriff Dowson, Mr. Gramke met with a local property owners' association and made a crime prevention presentation on behalf of the Department. On another occasion, Mr. Gramke was assigned by Sheriff Dowson to determine the traffic control requirements of a local charity event and arrange for the necessary services. That assignment, however, really only required Mr. Gramke to direct traffic at the event.

33. On several unspecified occasions, Sheriff Dowson and Mr. Gramke had conversations about the approach the Sheriff's Department should take to particular law enforcement situations. On those occasions, Mr. Gramke understood that the conversations were not to be repeated even to other employees of the Sheriff's Department. Each morning, Sheriff Dowson and Mr. Gramke would review all initial complaint reports that were generated in the previous 24-hour period. They discussed any such reports that required immediate action by the Department.

34. Because of the small size of the Cass County Sheriff's Department and Sheriff Dowson's prior long experience as chief deputy, he maintained an "open door" policy toward employees. Although Department some employees did initially contact Mr. Gramke with questions and concerns, direct access to Sheriff Dowson Was not only possible but encouraged.

35. There is no evidence in the record that any serious crime or law enforcement situations arose in Cass County during Mr. Gramke's service which required his independent action as chief deputy in the absence of Sheriff Dowson. Mr. Gramke believed that he had the authority to act for the Department in the Sheriff's absence but was never required to do so in a specific situation. Mr. Gramke made few, if any, independent decisions on important matters affecting the Department. He routinely cleared all matters with Sheriff Dowson. This was not at the specific direction of the sheriff. Sheriff Dowson did not, however, clearly define with Mr. Gramke the authority of the chief deputy or employees to communicate the scope of the authority delegated. Other employees of the Department observed that Mr. Gramke's regular duties more closely approximated those of a deputy sheriff as time passed instead of the duties that Sheriff Dowson had exercised as chief deputy under former Sheriff Chalich.

36. On July 16, 1987, Mr. Gramke was orally dismissed from his position

as chief deputy by Sheriff Dowson.  
The reason for his discharge was  
never provided to Mr. Gramke in writing,  
nor was he advised of any rights  
he might have under the Minnesota Veterans Preference Act.

37. By letter dated July 21, 1987, Mr. Gramke requested a I 1 of the rights he might have as a veteran of military service under the Minnesota Veterans Preference Act, as respects his dismissal from his position as "Chief Deputy Sheriff's Department". Pet. Ex. 6.

38. On July 27, 1987, private legal counsel for the County advised Mr.

Gramke that he had been afforded a I 1 rights that pertained to his unclassified position. Pet. Ex. 7. In the course of that letter, Mr. (Gramke was advised that his employment was not within the coverage of the Veterans Preference Act. A copy of that letter was sent to the Veterans Service Office. Pet. Ex. 7.

39. Despite written requests for a statement of the reasons for termination and a request for a hearing, Mr. Gramke never received from the County or the Sheriff's Department any additional written statement about the circumstances of his termination or any right to a hearing under the Minnesota Veterans Preference Act.

40. By letter dated August 25, 1987, received by the Department of Veterans Affairs on August 31, 1987, Mr. Gramke requested relief from the Commissioner of Veterans Affairs, including the scheduling of a hearing regarding his veteran's preference rights under Minn. Stat. 197.46 (1986).

41. On November 13, 1987, the Commissioner of the Department of Veterans Affairs issued a Notice of Petition and Order for Hearing regarding Mr. Gramke's rights under the Minnesota Veteran's Preference Act.

42. The population of Cass County at the time of Mr. Gramke's termination from service with the Sheriff's Department was significantly less than 100,000 inhabitants.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Commissioner of Veterans Affairs and the Administrative Law Judge have jurisdiction herein and the authority to take the action proposed pursuant to Minn. Stat. 14.50 and 197.481 (1986).

2. The Notice of and Order for Hearing issued by the Commissioner on November 13, 1987, was proper and all relevant substantive and procedural requirements of law or rule have been fulfilled by the Department of Veterans

Affairs.

3. The Petitioner is an honorably discharged veteran of the United States military service within the meaning of Minn. Stat. 197.46 (1986).

4. Minn. Stat. 197.46 (1986), excludes from the protections afforded by the Minnesota Veterans Preference Act the position of private secretary, teacher, superintendent of schools, or one chief deputy of any elected official or head of a department, and any person holding a strictly confidential relation to the appointing officer.

5. The burden of establishing the existence of any exemption stated in Conclusion 4, supra, is upon Cass County in this proceeding. Minn. Stat. 197.46 (1986); State v. Mangni, 43 N.W.2d 775, 780 (Minn. 1950).

6. At the time of Mr. Gramke's appointment to the Cass County Sheriff's Department in 1987, Minn. Stat. 387.145 (1986), did not authorize the appointment of a chief deputy sheriff for the County.

7. Employees of a sheriff's department are entitled to the protection of Minn. Stat. 197.46 (1986), unless the appointing officer establishes the existence of a statutorily recognized exception. See Conclusions 4 and 5, supra General Drivers Local 346 v. Aitkin County Board. 320 N.W.2d 695 (Minn. 1982) O'Bert v. Anderson 320 N. W. 2d 712 (Minn. 1982)

8. As a consequence of Conclusion 6, supra, at the time of his separation from service with the Cass County Sheriff's Department, the Petitioner was not the chief deputy of an elected official within the meaning of Minn. Stat. 197.46 (1986). His position was that of a deputy sheriff with the Cass County Sheriff's Department.

9. At the time of his separation from service with the Cass County Sheriff's Department, Mr. Gramke did not occupy a position which involved a "strictly confidential relation to the appointing officer" within the meaning of Minn. Stat. 197.46 (1986).

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Veterans Affairs issue an Order directing the County of Cass to:

(1) Afford the Petitioner, Donald N. Gramke, a Veterans Preference hearing provided for by Minn. Stat. sec. 197.46 (1986), at which the County must establish cause for his discharge; and

(2) Pay to the Petitioner, Donald N. Gramke, the wages he would have earned as an employee of the Cass County Sheriff's Department from the date of his termination, July 16, 1987, to the date the issue of the existence of cause for discharge is determined, less severance payments previously made. During that time, the County of Cass may treat Mr. Gramke as being suspended with pay.

Dated this day of May, 1988.

Judge

BRUCE D. CAMPBELL  
Administrative Law

NOTICE

Pursuant to Minn. Stat. § 14 62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped. Transcript Prepared by  
Karen Toughill  
2019 Laurel Avenue West  
Minneapolis, MN 55405

MEMORANDUM

The primary issue for- determination in this proceeding A whether Mr. Gramke's position was that of the chief deputy of an elected official within the meaning of Minn. Stat. 197.46 (1986). If Mr. Gramke's position was that of chief deputy, his employment would have been exempt from the application of Minn. Stat. 197.455, 197A6 (1986) . The County argues that Mr. Gramke voluntarily accepted an appointment to an unclassified position within the Cass County Sheriff's Department, not subject to the Sheriff's Civil Service System adopted in Cass County, pursuant to Minn. Stat. 387.31 - 387.45 (1986). The title of the position he accepted was stated to Mr. Gramke to be that of chief deputy of the Cass County Sheriff's Department by Sheriff Dowson and the County Board in fixing his salary made a similar reference. See Findings 7 and 15, supra. The County argues that the sheriff, as an elected official, has complete discretion as to the appointment of a chief deputy and the duties that are to be performed by any person so appointed. On the basis of that argument, the County concludes that the Petitioner is not protected by the Veterans Preference Act.

Mr. Gramke argues that, although he had the title of chief deputy, Sheriff Dowson did not delegate to him the degree of control over the operations of the Department that would have been consonant with the title given. Mr. Gramke contends that the presence of a title alone does not establish an exception to the Veterans Preference Act. The Petitioner relies primarily on the application of the criteria stated in *Holmes v. County of Wabasha*, 402 N.W.2d 642 (Minn.App. 1987), to demonstrate that he was not, in fact, the chief deputy of an elected official within the statutory exception.

The only Minnesota decision specifically considering the chief deputy exception to the Veterans Preference Act is *State v. Mangni*, 43 N.W.2d 775 (Minn. 1950). In that case, the Court determined that the position of first assistant city attorney for the City of Minneapolis was not exempt from the Minnesota Veterans Preference Act. Under the charter of the City of Minneapolis, applicable at the time of the decision, the duties of the first assistant city attorney were to be as specified by the city attorney. The first assistant city attorney was authorized to act officially as city attorney in the absence or inability of the City attorney to act. In discussing the application of Minn. Stat. 197.46, the Court stated:

Section 197.46 provides that the act does not apply to "one chief deputy of any elected official or head of a department, or to any person holding a strictly confidential relation to the appointing officer, and the appointing officer has the burden of establishing such relationship.

The first assistant city attorney is not a deputy. A deputy can execute all the ministerial duties to be performed by the incumbent of the office. (Citations omitted). A deputy may act in behalf of his principal in

"a 1 1 matters in which the principa I may act." 43 AM.Jur.,  
Public Officers, 460. A princ ipa I i s 1 iab I e f or the  
acts  
of his deputy. City of Duluth v. Ross, 140 Minn. 161 ,  
167  
N.W. 485. Under Chapter 111, 5, the first assistant  
acts  
as city attorney only in the "absence or inability" of  
the  
city attorney. Otherwise, the first assistant works as  
the  
city attorney "may direct and indicate." it is  
evident  
f rom the above that the f irst ass istant i s not a deputy of  
the city attorney. On the basis of not being a deputy,  
the  
Veterans' Preference Act applies.

43 N.W.2d 775, 779 (Minn. 1950). Hence, to be included within  
the stated  
exception to Minn. Stat 197.46 (1986), the chief deputy of  
an elected  
official must at least possess authority which satisfies the  
definition of a  
deputy, as previously stated.

As respects the elective office of sheriff, any person duly  
appointed as a  
deputy sheriff has the authority to execute the ministerial  
duties of the  
o f f i c e of sheriff and bind the sheriff by that individual's  
actions. Minn.  
Stat. 387.14 (1986); Albrecht v. Long 25 Minn. 163 (1878);  
Kroll v. Moritz  
112 Minn. 270, 127 N.W. 1120 (1910); City\_\_of\_\_Duluth v. \_Ross, 140  
Minn. 161,  
167 N.W. 485 (1918). No special delegation of authority by the  
sheriff is  
required. It was precisely that legal identification of all  
deputy sheriffs  
with the appointing sheriff that led the Attorney General to  
opine that all  
deputy sheriffs were exempt from the application -of the  
Veterans Preference  
Act under the confidential relationship exception contained in  
Minn. Stat.  
197.46. Op. Atty.Gen. - 85-C, July 1, 1965.

In General Drivers,\_Local 346 v. Aitkin County \_Board, 320  
N.W.2d 695, 700  
(Minn. 1982), the Court held that "a deputy sheriff is entitled  
to protection  
under the Veterans Preference Act unless the deputy is a chief  
deputy". The  
Court specifically rejected the Attorney General's conclusion  
that all

deputies hold, necessarily, a confidential relationship with the appointing sheriff so as to exclude them from the coverage of the Veterans Preference Act. *lee, O'Bert v. Anderson*, 320 N.W.2d 712 (Minn. 1982).

Minn. Stat. 387.145 (1986) provides:

Notwithstanding the provision of any law to the contrary the sheriff of any county which has 100,000 or more inhabitants according to the 1980 federal census or the latest federal census thereafter may appoint a chief deputy or first assistant with the approval of the county board.

Minn. Stat. 387.145 (1986) was added to the general law governing the office of sheriff by Laws of 1980, C. 519, 4. The bill that became Chapter 519 was initially introduced as S.F. 1759. The Bill as introduced did not include a provision relating to the appointment of chief deputies. A House Committee acting on S.F. 1759 struck all portions of the Senate File except the enacting clause and substituted the text ultimately contained in Chapter 519. The 1980

House and Senate Journals demonstrate that the bill, as amended, was passed without floor discussion in both Houses of the Legislature. No published report of the House Committee deliberations exists.

Hence, no legislative history is available, to assist in the interpretation of Minn. Stat. 387.145 (1986), or its application to this proceeding. Moreover, Minn. Stat. 147.46 (1986) has never been judicially construed. At the time of the adoption of Minn. Stat. 387.145 (1986), no general or special statute specifically prohibited the creation of the position of chief deputy sheriff in counties with a population of 100,000 or more.

As previously noted, the Administrative Law Judge took administrative notice of the fact that the population of Cass County in 1980 and 1987 was significantly less than 100,000 inhabitants. Although both counsel provided written submissions concerning the possible application of Minn. Stat. 387.145 (1986) to this proceeding, neither disputed that fact.

In the absence of contemporaneous legislative history or judicial construction, the Administrative Law Judge must interpret Minn. Stat.

387.145 (1986) in accordance with the ordinary meaning of the language used, unless such a construction would lead to an unreasonable result. Minn. Stat.

645.16, 645.17 (1986). For the reasons hereinafter discussed, the Administrative Law Judge concludes that, for purposes of Minn. Stat.

387.14, 387.145 (1986), a sheriff may only appoint a chief deputy or first assistant when the population of the county is at least 100,000 inhabitants and the county board specifically approves the appointment.

Although the statute does not literally state that a chief deputy or first assistant may not be appointed when a county has a population of less than 100,000 inhabitants, that result follows from the natural import of the language used. No reason is apparent why legislative authorization would be

required for the appointment of a chief deputy or first assistant in counties with a population of at least 100,000 inhabitants if the general authority of the sheriff to appoint deputies contained in Minn. Stat. 387.14 (1986) is sufficient to create the position of chief deputy or first assistant in counties with a smaller population. The population of the county determines the size of the sheriff's department and the resulting need for an employee

- - - - -

The provision that was ultimately codified as Minn. Stat. 387.145 (1986) was inserted by a motion made during a hearing of the Government Administration and Structures Subcommittee of the House Local and Urban Affairs Committee held on March 11, 1980. The full Committee adopted the Subcommittee report in a hearing held on March 17, 1980. The written records of the Committee and Subcommittee record only the official actions taken on the Bill. Although audio-magnetic recordings of both hearings were prepared and retained, they are currently unuseable because of age and condition.

serving at the will of the sheriff whose function is to provide regular managerial assistance.

The County argues that the position of chief deputy has no associated necessary position responsibilities but is to be defined entirely by the incumbent sheriff. Since any deputy has legal authority to perform the duties of sheriff, the position must include particular responsibilities in addition to acting in the sheriff's absence. In *General Drivers Local 346 v. Aitkin County Board*, 320 N.W.2d 695, 700 (Minn. 1982), the Court indicates that a chief deputy's responsibilities within a sheriff's department would necessarily involve a confidential reporting relationship to the sheriff. The word "chief" implies an executive or directing head. *Stout v. Stinnett*, 197 S.W.2d 564, 565 (Ark. 1946). As applied to the position of chief deputy within a sheriff's department, the position must include the concept of a unified control or supervision of other employees subject only to the ultimate authority of the sheriff.

The Administrative Law Judge does not accept the argument of Mr. Gramke that the tests used by the courts to define the term "head of a department" are controlling. see e.g. *Holmes v. County of Wabasha* 402 N.W.2d 642 (Minn.App. 1987). In the context of Minn. Stat. C. 387 (I), the sheriff is the "head of a department." He does, however, conclude that the position of chief deputy within a sheriff's department does necessarily include the concept of a unified intermediate supervision and control over the office, subject only to final review by the sheriff.

Given that definition of the term, limiting the position of chief deputy to counties with a large population would be appropriate. As evidenced in this proceeding, with an active sheriff little reason exists to create the separate position of chief deputy in smaller counties. Moreover, to the extent that the position is unclassified, it avoids the jurisdiction of the

Sheriff's Civil Service System in those counties in which the system has been established. Minn. Stat. 387.31 - 387.45 (1986). The jurisdiction of a Sheriff's Civil Service Board is to extend to all deputies and employees in the sheriff's department, except special deputies serving without salary. Minn. Stat. 387.35 (1986). In Cass County, a Sheriff's Civil Service System has been adopted, but the position of chief (deputy is unclassified. The Administrative Law judge recognizes that the creation of a Sheriff's Civil Service System within a county is voluntary. When adopted, however, its jurisdiction is statutorily prescribed and the system may only be terminated by a unanimous vote of the county board or by a public referendum. Minn. Stat. 387.43 (1986).

In interpreting Minn. Stat. 387.145 (1986), the Administrative Law Judge may also look to the effect of a particular construction. Minn. Stat. 645.17 (1986). If Minn. Stat. 387.145 (1986) does not limit the counties which may create the position of chief deputy, in every county the sheriff may appoint a person with no specified duties or employment tenure rights under the Veterans Preference Act, Sheriff's Civil Service System, if extant, or even the collective bargaining agreement with the approval of the county board. This would be accomplished under the general statute authorizing the appointment of deputies, Minn. Stat. 387.14 (1986), which does not recognize classes or gradations of deputies, and the position thereby created would be exempted from statutory protections afforded all deputies. This is what has occurred in Cass County. Finally, if Minn. Stat. 387.145 (1986) has no

application, the approval of the county board is not specifically required by statute. Pursuant to Minn. Stat. 387.14 (1986), the county board fixes the number of deputies and the budget for the office. The sheriff selects the appointees. He also determines their duties, subject only to the collective bargaining agreement and Sheriff's Civil Service System, if adopted. Cass County provides no reason why that result is justified or even authorized under Minn. Stat. C. 387 (1986).

In addition to the apparent lack of need for the existence of such a separate position in counties with a population smaller than that specified in Minn. Stat. 387.145 (1986), events contemporaneous with the adoption of the statute are also illustrative. In 1979 and 1980, separate lawsuits were commenced in Minnesota to determine the legal relationships between sheriffs' employees, the county boards and the incumbent sheriffs. The sheriffs asserted that their deputies had no Veterans Preference Act rights, that they had authority under Minn. Stat. 387.14 to dismiss deputies at will, irrespective of Minn. Stat. 387.31 - 387.45, and that they, rather than the county boards, were the employer for purposes of collective bargaining. The district courts reached varying results on the issues presented. In *General Drivers Local 346 v. Aitkin County Board* supra, the disputed issues were resolved in favor of the deputies and county boards.

The construction of Minn. Stat. 387.145 (1986), adopted by the Administrative Law Judge is in accordance with the previous statutory treatment of the position of chief deputy within a county sheriff's department. Prior to the adoption of Minn. Stat. 387.145 (1986), the statutes applicable to the office of sheriff had, for over 100 years, contained no reference to a chief deputy or first assistant. Pursuant to Minn. Stat. 387.14, the county board fixed the number of permanent full-time deputies and other employees and, pursuant to Minn. Stat. 387.20, the budget

for the office of sheriff, subject to a judicial appeal by the incumbent. The sheriff had sole authority to appoint deputies up to the number specified by the county board and to determine the duties of his employees. Minn. Stat.

387.14. As previously noted, any deputy by virtue of his appointment had authority to perform the legal duties of sheriff. Minn. Stat. 387.14. At least the Counties of St. Louis and Ramsey did, however, have special authorizing statutory provisions relating to the position of chief deputy sheriff. The placement of the statutorily recognized position of chief deputy sheriff of Ramsey County with the County's unclassified service was also accomplished by specific legislation. Minn. Stat. 383 A.286, subd. 2 (1986).

Although the Administrative Law Judge solicited the comments of counsel on the application of Minn. Stat. 387.145 (1986), no explanation of the existence of the position in Cass County was offered other than historical fact. Nor did the County bring to the attention of the Administrative Law Judge any statute applicable to Cass County that would vary Minn. Stat. 387.145 (1986).

If Minn. Stat. 387.145 (1986) did not authorize the creation of the position of chief deputy within the Cass County Sheriff's Department, it must be determined whether the chief deputy exception in Minn. Stat. 197.46 (1986) could still apply to the position occupied by Mr. Gramke.

Although, again, there is no specified relationship between Minn. Stat.

387.145 (1986) and Minn. Stat. 197.46 (1986), no reason to distinguish between the same -terms used in both statutes is apparent. Moreover, the limitation contained in Minn. Stat. 387.145 (1986) is more specific than the exception stated in Minn. Stat. 197.46 (1986) and was adopted at a later date. The Administrative Law Judge also notes that those portions of Minn. Stat. C. 387 (1986) adopted after the Veterans Preference Act which were not intended to affect the provisions of that Act specifically so state. See, Minn. Stat. 387.45 (1986). Hence, the Administrative Law Judge concludes that the position held by Mr. Gramke in 1987 was not within the exception contained in Minn. Stat. 197.46 (1986) for the chief deputy of an elected official. For purposes of both Minn. Stat. C. 387 (1986) and Minn. Stat. 197.46 (1986), Mr. Gramke's position was that of a deputy sheriff for Cass County.

It could be suggested that a further exception contained in Minn. Stat. 197.46 (1986) exempted Mr. Gramke from the application of the Minnesota Veterans Preference Act. As previously noted, the Act does not apply to an employee "holding a strictly confidential relation to the appointing officer". Minn. Stat. 197.46 (1986). In *General Drivers Local 346 v. Aitkin County Board*, 320 N.W.2d 695, 700 (Minn. 1982), the Court holds that a deputy sheriff is entitled to the protection of the Veterans Preference Act unless the deputy is a chief deputy. That language would, apparently, preclude a determination that a deputy sheriff who was not an authorized chief deputy could have a sufficiently confidential relationship to the sheriff to preclude Veterans Preference Act rights. That position, in a more general form, had been adopted by the Attorney General in the 1965 Opinion previously noted. That Opinion of the Attorney General was specifically rejected by the Court in *General Drivers*. *supra*.

Even if a deputy sheriff who is not a chief deputy authorized by Minn.

Stat. 387.145 (1986), could have a confidential relationship with the sheriff so as to avoid Veterans Preference Act rights, the existence of that relationship in this proceeding has not been demonstrated. Initially, it should be noted that the duty of establishing the existence of an exemption is upon the appointing authority. Minn. Stat. 197.46 (1986). The Minnesota decisions that consider whether such a confidential relationship exists look to the duties of the position as established and its relationship to the appointing authority. *Blaski v Fisher*, 259 N.W. 694 (Minn. 1935); *State v. Mangni*, 43 N.W.2d 775 (Minn. 1950). As indicated in the Findings, the duties that II" Gramke were to assume in the position he accepted were not clearly specified prior to his appointment. Although a draft position description had been prepared for the position, it was never adopted by the County Board and was not specifically discussed with Mr. Gramke as reflecting his duties. Moreover, the County has argued to the Administrative Law Judge that the draft position description reflected only the duties that Sheriff Dowson had performed as Chief Deputy under former Sheriff Chalich and was in no sense applicable to Mr. Gramke's position.

The record reflects a conclusion that Mr. Gramke was told he was to act in the Sheriff's absence and to perform such duties as were delegated to him by Sheriff Dowson. That is precisely the responsibility that the Court, in *State v. Mangni*, 43 N.W.2d 775 (Minn. 1950), determined did not establish the existence of the necessary confidential relationship to the appointing authority. It may be that Sheriff Dowson had unspecified expectations about the degree of confidence that he might develop in Mr. Gramke after some period

of time and duties that he might then delegate. As admitted by the County in its Memorandum, the duties that Mr Gramke would perform were at all times entirely within the discretion of Sheriff Dowson. Under those circumstances, the County has not established that the position Mr. Gramke accepted necessarily involved a "strictly confidential relation to the appointing officer". Minn. Stat. 197.46 (1986).

Despite the lack of record evidence concerning what was communicated to Mr. Gramke about his duties as "chief deputy" the functions that he did perform within the Sheriff's Department do not substantiate that his position would necessarily involve a "strictly confidential relation to the appointing officer". Minn. Stat. 197.46 (1986). The only evidence of any type of confidential relationship to the sheriff not shared by other deputies or superior officers is a general reference to unspecified conversations that the sheriff had with Mr Dowson about matters affecting the operation of the sheriff's office. There is no indication, however, that similar conversations did not take place with other members of the Department. see, Blaski v. Fisher, 259 N.W. 2d 694, 695-96 (Minn. 1985). The Administrative Law Judge looks to the practical relationship between Mr. Gramke and Sheriff Dowson only to clarify, in the absence of a clear statement (of the Petitioner's expected duties, whether his job responsibilities included a "strictly confidential relation to the appointing officer", within the meaning of Minn. Stat. 197.46 (1986). The Administrative Law Judge determines that the County has not established the existence of the confidential relationship except in violation of Minn. Stat. 197.46 (1986), even if a deputy sheriff not an authorized chief deputy could be exempt from the Veterans Preference Act.

Since the Administrative Law Judge has determined that the County has not established that Minn. Stat. 197.46 (1986), did not apply to Mr. Gramke's position, he is entitled to the veterans hearing provided for in that

statute. The hearing herein was limited to the issue of the application of the Veterans Preference Act. Since Mr. Gramke is entitled to the hearing provided for by Minn. Stat. 197.46 (1986), he must receive salary and appropriate benefits until the date that cause for discharge is determined. Leininger v. City of Bloomington, 299 N.W.2d 723, 731 (Minn. 1980); Kurtz v. City of Apple Valley, 290 N.W.2d 171, 173 (Minn. 1980). Amounts so paid to Mr. Gramke should be reduced by separation payments previously received from the County at the time of his purported termination.

B.D.C.