



**STATE OF ARIZONA**  
**OFFICE OF THE ATTORNEY GENERAL**

<p>ATTORNEY GENERAL OPINION</p> <p>By</p> <p>KRIS MAYES ATTORNEY GENERAL</p> <p>May 8, 2023</p>	<p>No. I23-002 (R22-006)</p> <p>Re: The legal authority, if any, granted to a Sheriff, to appoint an individual, to exercise the powers of a peace officer, without certification by the AZPOST Board</p>
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To: Matthew Giordano  
Executive Director, Arizona Peace Officer Standards

**Questions Presented**

1. Can a Chief Deputy Sheriff of a county, who is not certified as a peace officer by the Arizona Peace Officer Standards and Training Board (AZ POST Board) under Arizona Revised Statutes § 41-1823(B), exercise the authority and perform the duties of a peace officer, or does a non-certified Chief Deputy Sheriff have no greater police powers than that of any citizen?

2. Arizona Revised Statutes § 11-441 enables a sheriff to “command the aid of as many inhabitants of the county as the Sheriff deems necessary” in executing certain enumerated duties and to request the “aid of a volunteer posse” in executing the sheriff’s prescribed duties. When a sheriff selects a person to aid in this capacity, does the person exercise the authority of a peace officer or does the person have no greater authority than that of any citizen?

**Summary Answer**

1. A Chief Deputy Sheriff of a county who is not certified as a peace officer by the AZ POST Board may not exercise the authority or perform the duties of a peace officer, and has

no greater police powers than that of any citizen. Arizona Revised Statutes § 41–1823(B) requires every person who exercises the authority of a peace officer to be certified by the AZ POST Board or to fall within one of several specific statutory exceptions. Because a Chief Deputy Sheriff does not fall within any of the statute’s enumerated exceptions to the certification requirement, a non-certified Chief Deputy Sheriff cannot perform peace officer functions.

2. A person who is not certified as a peace officer by the AZ POST Board and is selected by a sheriff to aid in execution of the sheriff’s duties under A.R.S. § 11–441 cannot exercise the authority of a peace officer and has no greater authority than that of any citizen. Selection by a sheriff under § 11–441 is not one of § 41–1823(B)’s enumerated exceptions to the certification requirement and a sheriff does not have the authority to grant individuals peace officer status.

### **Background**

The Legislature has made clear that the authority of a peace officer to perform law enforcement functions—such as to detain, arrest, and conduct police investigations—is distinct from that of a citizen. For example, the Legislature has:

- conferred on peace officers broad authority to arrest a person without a warrant upon probable cause that an offense has been committed or to stop and detain a person as necessary to investigate traffic violations, *compare* A.R.S. § 13–3883 (peace officers’ authority to make arrests) *with* § 13–3884 (private persons’ authority to make arrests);
- given peace officers the right to carry firearms in situations where private citizens may be prohibited from doing so, A.R.S. § 38–1113;
- authorized peace officers to investigate traffic offenses and stop and detain individuals for that purpose, *e.g.*, A.R.S. § 28–982 (authority to stop and inspect vehicles for safety violations), –1149 (authority to inspect permits), –1173 (authority to enforce traffic laws), –1594 (authority to detain to investigate traffic violations);
- and authorized peace officers to execute search warrants, A.R.S. § 13–3911.

Given these important and potentially dangerous functions, the intent of the Legislature in requiring certification of peace officers was to protect public safety. *See* House Judiciary Committee minutes, notes on H.B. 2037 (Feb. 19, 1990) (noting comments from Sheriff Joe Richards that § 41–1823 would aid law enforcement agencies in the identification of peace officers who were removed from previous employment for misconduct). As noted in a prior Attorney General Opinion, “The potential for constitutional violations and actual injuries is extreme, which is why certification requires, among other things, the qualifications to include ‘physical, mental and moral fitness.’ Moreover, untrained and inexperienced individuals, should not make arrests, conduct searches, or engage in the other duties required of true police officers.” *Ariz. Op. Att’y Gen.* 195-009 (1995); *see also* *Ariz. Op. Att’y Gen.* 170-24 (1970) (“[A]ny title or position involving the use of the term ‘Deputy Sheriff’ is required to be occupied by a properly trained and qualified peace officer.”).

Among its duties, the AZ POST Board is responsible for establishing the qualifications for individuals to be certified as peace officers within the state and to deny, suspend, revoke or cancel the certification of any officer who is not in compliance with those qualifications. A.R.S. § 41–1822. In 1990, the Legislature amended A.R.S. § 41–1823(B) to require the certification of most people before they may exercise the authority or perform the duties of a peace officer. 1990 *Ariz. Sess. Laws* ch. 270, § 3. Section 41–1823(B) now provides:

Except for agency heads duly elected as required by the constitution and persons given the authority of a peace officer pursuant to § 8-205, 11-572, 12-253, 13-916 or 22-131, *no person* may exercise the authority or perform the duties of a peace officer unless he is certified by the board pursuant to § 41-1822, subsection A, paragraph 3.

(Emphasis added.) Thus, on the face of the statute, the sole exceptions to the certification requirement are: elected county Sheriffs, *Ariz. Const.* art. XII, § 3 (providing for election of

Sheriff); authorized juvenile court officers, § 8-205; voluntary forest fire wardens and deputy game and fish wardens, § 11-572; adult probation officers, § 12-253; adult probation surveillance officers, § 13-916; and constables, § 22-131.

Similarly, the Arizona Administrative Code provisions governing the Board provide that “[a]n individual who is not certified by the Board or whose certified status is inactive shall not function as a peace officer or be assigned the duties of a peace officer by an agency, except as provided in subsection (B).” Ariz. Admin. Code R13–4–103(A). Subsection B exempts “Sheriffs who are elected” from the certification requirement. *Id.* R13–4–103(B).

The office of county sheriff is created by the Arizona Constitution, which further specifies that “[t]he duties, powers, and qualifications of such [county] officers shall be as prescribed by law.” Ariz. Const. art. XII, § 4. “Since the sheriff is a county officer, the legislature, under this section, obviously has the power to fix his duties and powers, except in so far as it may be limited by other portions of the constitution.” *Merrill v. Phelps*, 52 Ariz. 526, 530 (1938).

The Legislature has enumerated the powers and duties of county sheriffs in A.R.S. § 11–441. Among those powers is the authority to “request the aid of volunteer posse and reserve organizations located in the county” in executing any of the duties prescribed by the Legislature. A.R.S. § 11–441(D). Additionally, in executing a smaller subset of those duties, a sheriff may “command the aid of as many inhabitants of the county as the sheriff deems necessary.” *Id.* § 11–441(B) (applying to duties enumerated in § 11–441(A)(1) through (4)).

### **Analysis**

1. A Chief Deputy Sheriff of a county who is not certified as a peace officer by the AZ POST Board may not exercise the authority and perform the duties of a peace officer. Instead, a non-Board-certified Chief Deputy Sheriff has no greater police powers than that of any citizen.

The Legislature has made clear that “no person may exercise or perform the duties of a peace officer” without certification by the AZ POST Board, except for those individuals who are explicitly exempted from the certification requirement by statute. A.R.S. § 41–1823(B). The first exemption from the certification requirement is for “agency heads duly elected as required by the constitution.” *Id.* Because county sheriff is an elected office under article XII, § 3 of the Arizona Constitution, this first exemption to certification applies to an elected county sheriff. The remaining exemptions apply to authorized juvenile court officers, § 8-205; voluntary forest fire wardens, and deputy game and fish wardens, § 11-572; adult probation officers, § 12-253; adult probation surveillance officers, § 13-916; and constables, § 22-131. A.R.S. § 41–1823(B).

A Chief Deputy Sheriff does not fall within any of the Legislature’s enumerated exemptions to the Board-certification requirement listed in § 41–1823(B). As a result, an individual in the position of Chief Deputy Sheriff may not exercise the authority and perform the duties of a police officer, and has no greater police powers than that of any citizen, unless the individual is certified by the Board. The title of Chief Deputy Sheriff does not exempt an individual from § 41–1823(B)’s requirements.

The Arizona Administrative Code further supports this conclusion by prohibiting any person who is not certified by the Board from functioning as a peace officer or being assigned the duties of a peace officer by any law enforcement “agency.”<sup>1</sup> Ariz. Admin. Code R13–4–103(A). The sole exception to this requirement in the code is for “Sheriffs who are elected.” *Id.* R13–4–103(B). Thus, under these regulations, any person working for a sheriff who functions as a peace

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<sup>1</sup> “Agency” is defined as “a law enforcement entity empowered by the state of Arizona.” Ariz. Admin. Code R13–4–101.

officer or is assigned the duties of a peace officer must be certified as a peace officer by the AZ POST Board.

A prior opinion from this office concluded that, because constables were not listed in § 41–1823(B)’s exceptions to the certification requirement, constables could not “exercise the authority or perform the duties of a peace officer unless first certified by the Arizona Peace Officer Standards and Training Board.” Ariz. Op. Att’y Gen. I95–009 (1995). The opinion noted that “[o]ther law enforcement officials, including Department of Public Safety officers and municipal police, also must be properly certified.” *Id.* However, after a 2008 amendment to § 41–1823(B), which added constables to the list of those exempted from the certification requirement, this office concluded that constables “no longer require AZ POST certification to act as peace officers.” Ariz. Op. Att’y Gen. I16–008 (2016).

The Legislature has created no similar exception for a Chief Deputy Sheriff. As a result, a Chief Deputy Sheriff who is not certified by the AZ POST Board is prohibited from exercising the authority of a peace officer.

2. When a sheriff “commands the aid” of an individual or “request[s] the aid of volunteer posse and reserve organizations” in executing the duties enumerated in § 11–441, those individuals may not exercise the authority of a peace officer unless they are certified by the AZ POST Board or fall within one of § 41–1823(B)’s specific exceptions to the certification requirement.

Section 11–441 prescribes the duties and obligations of county sheriffs. These duties require sheriffs to:

1. Preserve the peace.
2. Arrest and take before the nearest magistrate for examination all persons who attempt to commit or who have committed a public offense.
3. Prevent and suppress all affrays, breaches of the peace, riots and insurrections that may come to the knowledge of the sheriff.

4. Attend all courts, except justice and municipal courts, when an element of danger is anticipated and attendance is requested by the presiding judge and obey lawful orders and directions issued by the judge.
5. Take charge of and keep the county jail, including a county jail under the jurisdiction of a county jail district, and the prisoners in the county jail.
6. Endorse on all process and notices the year, month, day, hour and minute of reception and issue to the person delivering the process or notice, on payment of fees, a certificate showing the names of the parties, the title of the paper and the time of reception.
7. Serve process and notices in the manner prescribed by law and certify under the sheriff's hand on the process or notices the manner and time of service, or if the sheriff fails to make service, the reasons for failure, and return them without delay. When returnable to another county, the sheriff may enclose such process or notices in an envelope, addressed to the officer from whom received, and deposit the envelope postage prepaid in the post office. The return of the sheriff is prima facie evidence of the facts stated in the return.
8. Secure, as soon as possible, the home of a deceased person located outside the boundaries of an incorporated city or town if the sheriff is unable to determine or locate the heirs or executor of the deceased person.

A.R.S. § 11-441(A).

In executing the first four of these duties, the Legislature has authorized a sheriff to “command the aid of as many inhabitants of the county as the sheriff deems necessary.” *Id.* § 11-441(B). And in executing any of the duties prescribed in § 11-441 a sheriff “may request the aid of volunteer posse and reserve organizations located in the county.” *Id.* § 11-441(D).

When a sheriff selects a person to aid in the execution of the sheriff's duties under these provisions, that person may not exercise the authority of a peace officer unless they are certified by the AZ POST Board or fall within one of § 41-1823(B)'s statutory exceptions to certification. Nothing in a sheriff's prescribed duties and powers authorizes a sheriff to grant peace officer status to an individual who fails to meet § 41-1823(B)'s requirements.

Furthermore, if the Legislature had intended for individuals selected to aid a sheriff under § 11-441(B) or -(D) to exercise the authority or perform the duties of a peace officer, then

presumably it would have included that statute among those that confer an exemption to the certification requirement in § 41–1823(B). “Generally, when the legislature expresses a list, we assume the exclusion of items not listed.” *State v. Ault*, 157 Ariz. 516, 519 (1988). That the Legislature failed to do so indicates that a person’s selection to aid a Sheriff under § 11–441 does not confer peace officer status. *See Ariz. Op. Att’y Gen. Op. I16–008* (2016) (concluding that constables no longer required AZ POST certification to act as peace officers after a 2008 amendment to § 41–1823(B) specifically exempted constables from the certification requirement).

### **Conclusion**

The Legislature in § 41–1823(B) has required any person exercising the authority of a peace officer to have AZ POST certification unless they fall within one of several specifically enumerated exceptions. These enumerated exceptions do not include a Chief Deputy Sheriff or a person selected to aid a sheriff in the execution of the sheriff’s duties pursuant to § 11–441(B) or (D). Consequently, a Chief Deputy Sheriff or a person aiding a sheriff pursuant to § 11–441(B) or (D) may exercise the authority or perform the duties of a peace officer only if they are certified by the AZ POST Board.

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