

IN THE SUPREME COURT OF FLORIDA

**COASTAL FLORIDA POLICE
BENEVOLENT ASSOCIATION, INC.,**

Petitioner,

v.

Case No. SC00-1860

**PHILLIP B. (PHIL) WILLIAMS,
SHERIFF OF BREVARD COUNTY,**

Respondents.

_____ /

**INITIAL AMICUS CURIAE BRIEF OF
CAL HENDERSON, SHERIFF OF HILLSBOROUGH COUNTY**

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PRELIMINARY STATEMENT

SHERIFF CAL HENDERSON is filing this amicus brief with the consent of the parties, COASTAL FLORIDA POLICE BENEVOLENT ASSOCIATION, INC. and PHILLIP B. (PHIL) WILLIAMS, SHERIFF OF BREVARD COUNTY. Although not a party to the proceedings below, Sheriff Henderson is the Respondent in *West Central Florida Police Benevolent Association v. Hillsborough County Sheriff's Office*, Case No. RC-2000-020, now pending before the Public Employees Relations Commission. In that case, West Central Florida Police Benevolent Association has filed a petition with the Public Employees Relations Commission for certification as the collective bargaining unit for deputies appointed by Sheriff Cal Henderson. Therefore, Sheriff Henderson has a substantial interest in the outcome of this cause.

STATEMENT OF THE CASE AND FACTS

Sheriff Henderson agrees with the Statement of the Case and Facts, as stated in the Petitioner's Initial Brief. In addition, Sheriff Henderson has filed a Consent to Amicus Curiae in which the parties in which the parties have consented to the filing of an Amicus Curiae brief by Sheriff Cal Henderson, Sheriff of the Hillsborough County.

SUMMARY OF THE ARGUMENT

This Court's holding in *Murphy v. Mack*, 358 So.2d 822 (Fla. 1978), correctly states that a deputy sheriff holds office by appointment rather than by employment. This appointment by the sheriff is necessary in order for the Sheriff to carry out the duties of his office and because he is responsible and liable for all the acts of a deputy done in his name. As a result, deputy sheriffs are not included within the definition of a public employee under 447.201(3), *Florida Statutes*. There has been no legislative intent to modify the definition of a public employee to include appointed officers nor has any compelling reason been offered for receding from that precedent. In fact, the legislature has specifically declined to extend collective bargaining rights to deputy sheriffs under other statutory constructions.

ARGUMENT

ARE DEPUTY SHERIFFS CATEGORICALLY EXCLUDED FROM HAVING COLLECTIVE BARGAINING RIGHTS UNDER CHAPTER 447, PART II, FLORIDA STATUTES?

The resolution of the issue before this Court requires an analysis of the origin, history, nature, status, powers and duties of sheriffs and their relationship to deputy sheriffs. This Court has already completed that analysis and closely examined the relationship between a sheriff and his deputies. *Blackburn v. Brorein*, 70 So.2d

293 (Fla. 1954). In that opinion, this Court recognized the common law in England, which provided for a sheriff and an under sheriff. The undersheriff possessed all the powers and duties of the Sheriff. This Court further recognized that the government of the State of Florida has always provided for a sheriff and has authorized the appointment of deputy sheriffs. 70 So.2d at 295. In *Blackburn*, this Court recognized the special relationship created between a sheriff and his deputies by virtue of the appointment of deputy sheriffs. This Court stated:

There is a reason for the constitutional provisions and statutes with reference to sheriffs and deputy sheriffs. In our scheme of constitutional government, we find throughout an attempt to place responsibility upon a particular officer or a particular class of officers.... It is essential to law enforcement in the various counties of this state that the people shall be able to place responsibility upon a particular individual, the sheriff. He and he alone appoints his deputies and is responsible for them. It was never contemplated that the sheriffs of the state must perform the powers and duties vested in them through deputies or assistants selected by someone else. 70 So.2d at 298.

In rejecting a special legislative act to impose a civil service system upon the Sheriff of Hillsborough County, which would restrict the Sheriff's powers of hiring and firing, this Court recognized the importance of maintaining, within the office of sheriff, the absolute responsibility and accountability for law enforcement within a county. Deputy sheriffs were designated

as officers and sheriffs, this Court stated, could not be limited or regulated in appointing their deputies. 70 So.2d at 299.

The rationale of *Blackburn* is not unique to Florida, as pointed out by the Eleventh Circuit in *Terry v. Cook*, 866 Fed. 2d 373 (11th Cir. 1989). In that case, the Eleventh Circuit stated: “[t]he closeness and cooperation required between sheriffs and their deputies necessitates the sheriff’s absolute authority over their appointment and/or retention”. 866 Fed. 2d at 377.

This Court is now being asked to decide whether it should recede from its holding in *Murphy v. Mack*, 358 So.2d 822 (Fla. 1978), which, unlike the other cases relied upon by Petitioner, deals exclusively with deputy sheriffs. In that case, this Court held that deputy sheriffs are not public employees, as defined in 447.203(3), *Florida Statutes*, and, therefore, were not entitled to engage in collective bargaining. Because this Court declined to extend its holding in *Murphy v. Mack* to *Service Employees International Union, Local 16, AFL-CIO v. Public Employees Relations Commission*, 752 So.2d 569 (Fla. 2000), does not mean that this Court has receded from or overruled *Murphy v. Mack*. This Court correctly stopped short of receding from *Murphy v. Mack*.

The initial threshold question, which must be addressed, is whether deputy sheriffs should be included within the scope and definition of employees under Article I, Section 6 of the Florida Constitution and *Florida Statute* 447.203(3), which defines a public employee as any person employed by a public employer other than those specifically excepted by the statute. Is a deputy sheriff appointed

by a sheriff any different from a public employee employed by a public employer? Historically, the distinction was clear, and the question remains whether that distinction remains valid today. In *Murphy v. Mack*, this Court pointed out that deputy court clerks fill a variety of positions and perform a variety of functions for the Clerk of the Court. They include bookkeepers, archivists, filing clerks, typists, and receptionists. Many of these positions may not be interchangeable. Deputy sheriffs, however, must all meet the same minimum qualifications under Chapter 943, *Florida Statutes*, in order to become certified law enforcement officers. Once certified, deputies then all possess the same law enforcement powers, including the ability to make arrests, to serve search warrants and other court process, such as subpoenas, writs, and summons. In addition, certified law enforcement officers are given the authority to apply for search warrants, arrest warrants and orders intercepting oral or wire communications. Finally, they are authorized to engage in conduct during the course of official criminal investigations, which would otherwise violate state laws. For instance, see *Florida Statute* 893.09.

It could be argued that these law enforcement powers are not unique to sheriffs' deputies but are shared by all law enforcement officers, including municipal and state officers. The question then arises, what sets deputy sheriffs apart from other law enforcement officers. This takes us back to the special relationship between the sheriff and his deputies. In addition, the sheriff is an elected, constitutional officer responsible and accountable directly to the citizens who elected him. Heads of municipal or state law enforcement agencies, on the other

hand, are employed by government entities and not directly elected by the citizens. A sheriff elected by citizens to perform the unique law enforcement functions described herein, performs those functions by appointing officers as his deputies granting them the full powers of his office. As stated by this Court in *State ex rel Rauscher, et al, v. Gandy*, 178 So. 166 (Fla. 1937), “[t]he Sheriff has a right to select his deputies for whose official acts he is responsible”. 178 So. at 410.

In determining whether deputy sheriffs should be considered public employees, we must also look to legislative intent. In the 22 years since *Murphy v. Mack* has been decided, the legislature has not elected to change or modify the definition of a public employee to include any employee who is employed or appointed by a public employer. Even stronger evidence of the legislative intent, not to include deputy sheriffs within the definition of public employees, is found in several statutes, which specifically set forth the legislature’s intent to decline to extend collective bargaining rights to deputy sheriffs. For instance, when the Career Service Act was created under Chapter 30, *Florida Statutes*, the legislature specifically stated that this act does not grant to deputy sheriffs the right of collective bargaining. *Florida Statute* 30.071(2). In addition, when the Policemen’s Bill of Rights was extended to deputy sheriffs, in 1993, the legislature provided that the Bill of Rights was not to be construed as granting collective bargaining rights to deputy sheriffs. *Florida Statute* 112.535. The legislative intent then is clear that the legislature has not intended to include deputy sheriffs within the definition of a public employee under Article I, Section 6, of the *Florida Constitution*, or *Florida*

Statute 447.203(3).

If this Court rules that a deputy sheriff is an employee and, therefore, not excluded from collective bargaining, unless he/she is a confidential or managerial employee, the Court must recede not only from twenty-two years of precedent under ***Murphy v. Mack***, supra, but from many more years of common law. Both state and federal courts have relied heavily upon that precedent. In addition to the cases cited herein, see for example: ***McRae v. Douglas***, 644 So.2d 1368 (Fla. 5th DCA 1994); ***Romero v. State***, 641 So.2d 455 (Fla. 1st DCA 1994); ***Tanner v. McCall***, 625 F.2d 1183 (5th Cir. 1980); and ***Sikes v. Boone***, 562 F.Supp. 74 (M.D. Fla. 1983).

CONCLUSION

Based upon the foregoing authorities and argument, Sheriff Cal Henderson requests that this Court answer the certified question in the negative and decline to recede from the precedent set in ***Murphy v. Mack***, supra.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail, postage prepaid, to G. "HAL" JOHNSON, ESQ., Attorney for Petitioner, 300 East Brevard Street, Tallahassee, Florida 32301, PHILLIP P. QUASCHNICK, ESQ., LEONARD J. DIETZEN, III, ESQ., and WILLIAM E. POWERS, JR., Attorneys for Phillip B. Williams, Post Office Box 12186, Tallahassee, Florida 32317-2186; JACK E. RUBY, Assistant General Counsel, Public Employees Relations Commission, 2586 Seagate Drive, Turner Building, Suite 100, Tallahassee, Florida 32301-5032; and JAMES G. BROWN, ESQ. and DOROTHY F. GREEN, ESQ., Attorneys for Robert E. Newmann, Sheriff of Palm Beach County, P. O. Box 3108, Orlando, Florida 32802-3108, this the _____ day of November, 2000.

ELLEN LEONARD, ESQ.

STATEMENT ON TYPE STYLE

I hereby certify the Initial Amicus Curiae Brief of SHERIFF CAL HENDERSON, SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA, has been typed in Courier New 12 point, a font that is not proportionately spaced.

DATED this _____ day of November, 2000.

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