



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

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OAG 17-005

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March 24, 2017

Subject: Whether a deputy sheriff must resign the position upon announcing candidacy for sheriff

Requested by: Matt Smith
Greenup County Deputy Sheriff

Written by: Matt James

Syllabus: A deputy sheriff may run as a candidate for sheriff without creating a conflict until being sworn into office as sheriff

Statutes construed: KRS 61.080, KRS 61.090

OAGs cited: OAG 84-103, OAG 77-117

Opinion of the Attorney General

Matt Smith, Greenup County Deputy Sheriff, has requested an opinion of this office on whether he may run for sheriff without vacating the office of deputy sheriff. We advise that a deputy sheriff may run for office as sheriff without creating a conflict until the deputy sheriff is sworn into and accepts the duties of an incompatible office.

KRS 61.080(2) provides that "the offices of . . . sheriff, deputy sheriff . . . shall be incompatible." However, "the question of incompatibility only arises when an officer or employee assumes the office for which he is a candidate." OAG 84-103. "The constitutional and statutory reference to incompatible offices does not apply to a candidate running for office but only when he assumes a position that is incompatible with the one he holds." OAG 77-117. Accordingly, a deputy sheriff may run for the office of sheriff without resigning the position of

deputy sheriff. The incompatibility would not be created until the deputy sheriff assumes the office of sheriff, in which case KRS 61.090 provides that "the acceptance by one (1) in office of another office or employment incompatible with the one (1) he holds shall operate to vacate the first."

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A handwritten signature in cursive script, appearing to read "Matt James".

Matt James
Assistant Attorney General