

WHICH COUNTY OFFICIALS SHOULD BE ELECTED?

The County has a number of positions like the Sheriff, Elections Director and Assessor that are elected positions, meaning the public directly chooses the person to fulfill the role.

Should these positions continue to be elected or should an official be chosen through a more traditional job application process?

Sheriff's Response:

Washington Law Favors an Elected Sheriff.

There is strong support for keeping the Sheriff as an elected official of the County. In Washington, the laws indicate a strong preference for an elected sheriff. The state Constitution identifies the sheriff as an officer who must be elected by the people. Article XI, Sec.5 provides: "The legislature, by general and uniform laws, **shall provide for the election in the several counties of** boards of county commissioners, **sheriffs**, county clerks, treasurers, prosecuting attorneys and other county, township or precinct and district officers, as public convenience may require, and shall prescribe their duties, and fix their terms of office". The Revised Code also provides for election of the Sheriff. RCW 36.16.030 ("**in every county there shall be elected from among the qualified voters of the county ... a county sheriff**"). Washington courts, interpreting Article XI, Sec. 5, limit the ability to interfere with the office of sheriff. "The office of sheriff is a constitutional office. In naming the county officers in section 5, article 11 of the Constitution, the people intended that those officers should exercise the powers and perform the duties then recognized as appertaining to the respective offices which they were to hold. State ex rel. *Johnston v. Melton*, 192 Wash. 379, 388, (1937). The language concerning elected officers in section 5, article 11 of the Constitution is mandatory. *State v. Blumberg*, 46 Wash. 270, 274 (1907) (describing the language as "plain and unambiguous", the constitution "requires all county officers to be elected"). Although Article XI, Sec. 4, of the Constitution *allows* for the appointment of some county officers in home rule counties, it does not require appointment of the Sheriff.

Voter Engagement Demonstrates a Strong Public Interest in Election of a Sheriff.

Even if there were not strong legislative support for an elected Sheriff, it is clear that the public has a strong interest in deciding who is responsible for the law enforcement in their community. Examining the results of the 2017 General Election in King County sheds an important perspective on the voter's view of the importance of the elected Office of Sheriff: only the County Executive's race resulted in a higher vote count. The County Executive's race received 502,584 total votes, the Sheriff's 499,959, Division 1 Court of Appeals 425,776 and 324,883 respectively, Port Commissioner Position 4 468,381 and City of Seattle Mayor 217,693. The highest vote total was for King County Council was District 3 at 59,966. Total ballots counted for the November 7, 2017 General Election was 546,200. In a state where voter input is solicited for a variety of public servants and subject matter initiatives, it is hard to image a public preference for retracting the right to vote for the chief law enforcement officer in the County. Recent legislation, including initiatives on police accountability show an ongoing public concern, and voting participation related to law enforcement issues.

An Elected Sheriff Model Supports Consistency and Balance.

Election of the sheriff also provides a check and balance by electing county official directly responsible to the citizens that protects from undue influence by members of the county council or by other county officials. If an elected sheriff fails to serve the interests of the community, the voters can remove the sheriff from office. As explained below, voters provided a chance to decide the issue have almost universally decided to keep the office elective. In addition, the appointment could lead to lack of continuity and inefficient administration of one of the County's largest agencies. No one can effectively run an agency with a new Chief Officer, subject to removal at the direction of another branch of government, at any time. There is no objective, empirical data that proves city police departments, headed by an appointed law enforcement official are any more creative, innovative, stable or cost-effective than the office of sheriff. At their recent meeting on February 28, 2019, the Washington State Sheriff's Association passed a unanimous resolution to maintain an elected Sheriff in each county in the state. Referring to the vital public services such as civil and foreclosure procedures provided by elected Sheriffs, in addition to law enforcement, the Association said "These vital public services require a sheriff who has the legitimacy and support of the residents of their county, which is why these offices are elected and directly responsive to the voters." You all should have received a copy of the WSSA letter earlier this week.

Election of a Sheriff is Consistent with the Prevailing Practice in the United States.

Across the country, popular election is the almost uniform means of selection of the sheriff. Sheriffs are elected to four-year terms in 41 states, two-year terms in three states, a three-year term in one state and a six-year term in one state. The races are on a partisan ballot in 40 states and on a non-partisan basis in 6 states. Attempts to retract the right to elect a sheriff have been short-lived and arguably unsuccessful.

Some jurisdictions have explored switching to a system of appointed sheriffs and at least two have had an appointed sheriff and returned to a system of elections. In Multnomah County, Oregon the sheriff became appointed on January 1, 1967. From January 1, 1967, to late 1978 the county board appointed six different sheriffs. Due to dissatisfaction with that system, the voters returned to election of the sheriff. The position of sheriff in King County, Washington, was elected until 1968. At that time, the Home Rule Charter of the county was amended and the sheriff became appointed, serving at the pleasure of the elected executive. The voters restored the position to being elected in 1997. The change was proposed in response to Council concerns that as an appointed director the sheriff was not able to establish an independent budget in response to community public safety needs. Media reported that the voters believed that public safety and law enforcement services would be improved by the return to election of the sheriff. In 1994, Iowa held a referendum to change the status of sheriff from elected to appointed, but that initiative was heavily defeated by the voters.

Thank you for the opportunity to provide my views on this most important matter.

CIVILIAN OVERSIGHT OF LAW ENFORCEMENT

The County has a civilian-led Office of Law Enforcement Oversight with the ability to investigate and report on certain events and areas of the operation of the King County Sheriff's Office.

Should the official powers of the office, as described in the charter, be expanded to include subpoena power and/or other improvements to give the office more ability to investigate and report?

Sheriff's Response:

I am also on record as supporting independent oversight of the Sheriff's Office to provide further perspective on how the Sheriff's Office and I are doing. Further, the residents of King County have an advantage if the Sheriff's Office fails to deliver constitutional, accountable, effective and efficient services with dignity and respect. They can vote me or the Sheriff's that follow me out of office if they fail. Finally, I have formally established the first goal to be *Through Community Engagement and Collaboration Develop and Sustain Public Trust, Value and Support*.

Current Office of Law Enforcement Oversight – Concerns

I have concerns with the focus, methodologies and priorities of the current Office of Law Enforcement Oversight. I would humbly point out an approach being taken by our neighbors next door in the City of Seattle with their Office of Inspector General. The primary functions of the Office of Inspector General for Seattle are to conduct Audits, Review and Certify/Not Certify Investigations and Reviews, be a clearinghouse for best practices through Data-Driven Policy Work and to establish effective communications and outreach to support the work of the Office of IG.

Of particular note is that the model that Seattle is pursuing, as does most model oversight agencies around the nation, is that they audit or assess to standards then make that information available to other decision-makers for action. The model Seattle uses would add value with how the Sheriff Office currently works with the Auditor's Office, Ombud's Office and Risk Management. Most importantly, it would bring the current Office of Law Enforcement Oversight into alignment with best practices currently being used around the nation rather than adding authorities and functions not normally assigned oversight offices.

Subpoena Authority for OLEO

First it is unclear why subpoena authority is necessary. OLEO has access to a significant amount of information which most agencies do not. For example the Ombuds has such authority, but they do not have access to an electronic database with statement, documentary evidence and tape recorded interviews related to their investigations. All this information is available to OLEO.

Additionally, there are potentially significant impacts on workforce. Officers may be charged with criminal offenses and so are provided with certain protections, one of which is that they cannot be compelled to provide statements on an issue that can be available for a criminal investigation. Such authority has the potential to run afoul of these protections. In fact, this issue is one of the primary issues in labor negotiations which are headed to interest arbitration. Because that issue can be determined by an arbitrator, we could end up with a determination that is inconsistent with the charter. We propose that this issue be fully vetted with specialized labor law advice, to gain guidance on the issues raised by this concept. The Prosecuting Attorney's Office has specialized labor counsel who could provide guidance to this committee

Conclusion: The King County Office of Law Enforcement Oversight is a necessary function for police accountability and public trust. The OLEO is still in the process of establishing itself and needs to focus on identifying then consistently performing the key functions of oversight which are reviewing/auditing, certifying/not certifying investigations and review, helping to identify best practices and policies through data-driven analysis, and establishing effecting relations and communications with the communities the Sheriff's Office serves. They have excellent opportunity to partner with other mature and established Offices of county government to do so in an effective, efficient manner, such as the Auditor's and Risk Management.

Thank you for the opportunity to provide my views on this most important matter.