

I have advised J. M. Turner Esq
Chairman of The Board of Commissioners
of Hargett County
as follows, upon his request that I would
give him a written opinion upon the subjects
herein considered:

~~Is~~ Is a person who was a Sheriff before the
war, and afterwards participated in rebellion,
thereby prevented from holding office under the
constitution of this State and the XIVth Article
of the Constitution of the United States?

The XIVth Article of the Federal Constitution ex-
cludes from the privilege of holding office "under
any State" any person "who having previous-
ly taken an oath + + as a member of
any State Legislature, or as an executive
or Judicial officer, of any State, shall, &c."

The question occurs, "Is the Sheriff of a County
of North Carolina an "Executive or Judicial
Officer" as contemplated in that article?"

The Constitution of the United States and of every
State in the American Union contemplates
only three classes of officers: the Legisla-
tive, the Executive and the Judicial. These
three classes of officers are distinctly stated in
the XIVth Article of the Constitution.

Its purport is precisely as if it had said
"any civil officer of any state who having
previously taken an oath"

The ~~best~~ definition of an executive
officer is, - "one whose duty it is to see that
the law is obeyed," ^{and carried into effect} This is accepted and re-
cognized by all the States of the Union.

Strictly ministerial officers, or those whose
duty it is, to obey without question the
mandates of Superiors, and who have
vested in them, no independent responsi-
bility, power or discretion, are almost en-
tirely unknown to our form of govern-
ment - Such an officer is one who has
power only to do that which is commanded
by a Court, but as soon as he is given
power to perform any official act without
the order or ^{the} direction of a Court or other
superior, that moment, he is made so
far as the performance of such acts, is con-
cerned, an independent executive, or ju-
dicial officer of the State, according to the
nature of the functions devolving ^{upon} him.

A ministerial officer is the inferior of some
officer or Court, generally of the latter, since
the duties of most other officers may be performed, as
it were by attorney, by only the expressed

will of the Court can be executed by those who are its constituted agents. They are therefore properly ministerial officers, or as it is sometimes expressed officers of the Courts, rather than officers of the State.

Primarily, sheriffs were undoubtedly mere ministerial officers who only executed the express will, did the bidding of the court. Long before the separation of the American Colonies, however, this power was enlarged, and somewhat of discretionary power given to that officer. In all the States of the union, under the inevitable tendency of our institutions, this discretionary power has been very greatly extended. In some instances even they are given judicial power as in the taking of bail &c. This extension of the Sheriff's powers is especially true of North Carolina. A Sheriff in that State was even more an executive than a ministerial officer. He ^{in addition} ~~took~~ ^{made} arrests, took bail, swore witnesses, appointed ~~and~~ ^{or referees} viewers, collected taxes, &c, not only without the direction of the Court but entirely without its knowledge, by power and authority vested in him alone, by statute. He was just as much an executive officer, as the Treasurer, the Comp-

troller, the Secretary of State or the Governor.
As soon as by the Statutes of a State, inde-
pendent power, discretionary authority de-
volves on any officer his office should
to be purely ministerial in its character, and
none but purely ministerial officers can
by any subtlety be excluded from the pro-
visions of the XIVth Article of the Consti-
tution. The office of Sheriff being in great
measure an executive office, and one in
which the incumbent was compelled to take an
oath to support the Constitution of the United
States — any one who held that office, and af-
terwards engaged in the rebellion is clearly
by it excluded from holding office by
the XIVth Article of the Constitution
of the United States

Chautauqua

* Every person therefore to whom a discretionary authority is given to carry out the provisions of any law, without the command of a Superior, or who is charged with the performance of a specific duty in regard to the enforcement of law, by virtue of his office rather than by will of another, is an execution officer -

Ministerial offices are those which give the officer no power to judge of the matter to be done and require him to obey the mandates of a superior - (Bowyer Tit. Office, 7th Mass. - 288, 5 Wendell 170, 8 Vt. 512). The question does not seem to have arisen in this state.

The distinction between an executive
and a ministerial officer, is, that
the former enforces the law of the state
directly and as a duty devolving upon
himself primarily, — the latter does so
by command of a superior ^{and as}
an act not devolving on him un-
til such mandate is given. The ex-
ecutive officer is responsible for
the performance of a law, the
ministerial officer, for obedience
to a command.

Johnson vs.
Buckley's heirs
Executive Officer