

MEMORANDUM OF LAW

DATE: February 8, 1988

TO: Sergeant Gordon Clausen, San Diego Police
Department, via Deputy Chief Guaderrama and
Dr. Brady

FROM: City Attorney

SUBJECT: Durational Residency Requirement for Police
Officer Applicants

You recently asked, via memorandum, whether the Police Department could amend its hiring standards to include a requirement that an applicant must have been a California resident for one year prior to acceptance of the application. Your inquiry was based on departmental concern over low retention rates of officers accepted for employment while residents of other states. We have researched this question and conclude that a durational residency requirement is impermissible under the laws of California.

DISCUSSION

Residency requirements incident to employment fall into two categories: durational residency, which requires a prospective employee to live within the municipality or a defined area for a designated length of time before being eligible for employment (C.S. Rhyne, Police and Firefighters Law 50 (1982)); and continuing or concurrent residency, which requires an employee to maintain his or her residence within the municipality or other defined area during the period of employment. Detroit Police Officers Association v. City of Detroit, 385 Mich. 519, 190 N.W.2d 97 (1971). Both types of requirements have been widely reviewed by various courts on both federal and state constitutional grounds.

Durational residency requirements were initially applied as a condition to receiving some type of state benefits. The United States Supreme Court has struck down a number of such requirements insofar as being a prerequisite to receiving welfare benefits, Shapiro v. Thompson, 394 U.S. 618 (1969), indigent

medical care, Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) and voting Dunn v. Blumstein, 405 U.S. 330 (1972).

Extensive review has been made of durational residency requirements for candidates for public office. See, Annot., 65 A.L.R.3d 1048 (1975). The United States Supreme Court has not, however, reviewed a durational residency requirement for police or fire personnel and some states have validated these

requirements. See, e.g., *Hattiesburg Firefighters Local 184 v. Hattiesburg*, 263 So.2d 767 (Miss. 1972). As such these requirements could be considered valid under the United States Constitution.

Continuing residency requirements for municipal employees, particularly police and firefighters, have been more widely reviewed. The principal case in this area is *Detroit Police Officers Association v. City of Detroit*, 385 Mich. 519, 190 N.W.2d 97 (1971). In 1968 the City of Detroit adopted an ordinance which required all police officers to reside in the city. The police union challenged the ordinance on various grounds, including violation of equal protection of the law. The Michigan Supreme Court examined the ordinance using a rational relationship standard of review. The court recognized the policy considerations of the Detroit Common Council in enacting the ordinance and held it valid. On appeal, the United States Supreme Court "dismissed for want of a substantial federal question." 405 U.S. 950 (1972). Subsequently, a federal appellate court held the dismissal to be a decision on the merits. *Ahern v. Murphy*, 457 F.2d 363 (7th Cir. 1972).

In California, the subject has a connected but different history. The California Supreme Court reviewed a continuing residency requirement in *Ector v. City of Torrance*, 10 Cal.3d 129 (1973). At the time Government Code section 50083 provided that "No local agency or district shall require that its employees be residents of such local agency or district." The City of Torrance is a charter city and so the section was deemed inapplicable as falling within the home rule power vested by subdivision (a) of section 5, article XI of the California constitution. *Ector*, 10 Cal.3d at 132, citing also *Bishop v. City of San Jose*, 1 Cal.3d 56, 62 (1969). The court also reviewed the constitutional issue and noted that the dismissal of *Detroit Police Officers Assn.* was held in *Ahern* to be a decision on the merits by the United States Supreme Court. *Ector*, 10 Cal.3d at 134. In response to *Ector*, the question was presented to the voters on the November 5, 1974 General Election Ballot as Proposition 5. The proposition was enacted by the voters, is now article XI, section 10 subdivision (b) of the State Constitution and reads as follows:

A city or county, including any chartered city or chartered county, or public district, may not require that its employees be residents of such city, county, or district; except that such employees may be required to reside within a reasonable and specific distance of

their place of employment or other designated location.

The durational residency requirement was reviewed in *Cooperrider v. Civil Service Com.*, 97 Cal.App.3d 495 (1979), a case involving a San Francisco Code section requiring one year residency prior to application for employment. In its review, the court discussed the ballot arguments pro and con Proposition 5 and concluded that the voters understood the measure to encompass applicants. The court thus held that the term "employees" in subdivision (b) also includes applicants, *id.* at 502, thus invalidating any durational residency requirements. The remaining issue, as to "reasonable and specific distance" from the place of employment, has recently been reviewed by an appellate court. In *International Assn. of Fire Fighters v. City of San Leandro*, 181 Cal.App.3d 179 (1986) the court upheld a forty (40) road mile residence requirement.

Based on the above, it is our opinion that California law strictly precludes a continuing or durational residency requirement for police officers. While a rule may be imposed requiring residence within a certain distance, it must be both reasonable and specific.

JOHN W. WITT, City Attorney

By

Grant Richard Telfer

Deputy City Attorney

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