

# Residency Requirements

## Sometimes a Litigation Issue, More Often a Legislative One



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*(This article is the first of a two-part report on residency requirements. In it we will discuss the legal issues regarding the subject. Our second article will discuss many of the arguments that one might use in attempting to abolish a residency requirement or prevent the establishment of such a requirement.)*

Residency as a condition of employment is an issue with which many FOP Lodges must wrestle. Most law enforcement officers believe their work should guarantee them the freedom to live where they can best provide for their needs and the needs of their families. Many public employers feel that their police officers should live within, and be an integral part of, the communities they serve and protect. What are the rules that govern residency requirements and what can FOP members do when these two expectations collide?

Generally, residency requirements have been upheld and deemed to be constitutional by the Federal Courts so long as the employing jurisdiction has demonstrated some "rational" basis for the provision.<sup>1</sup> In *Clinton Police Department Bargaining Unit v. City of Clinton* (464 N.W.2d 875, Iowa), the court upheld a city requirement that employees live within 10 miles of their duty station. The court found that "rational" interests included such things as having employees available for emergency calls, employees having a stake in the community, enhancing the tax base, improving community attitudes and cooperation, increasing loyalty to the community, and reducing absenteeism.

Mixing with the community, contributing to the tax base, and concerns about police response time were considered the "rational basis" for the residency requirement in *Tiffany v. City of Payette*, 825 P.2d 493 (Idaho). Both of these cases also declared that the residency rules did not infringe on an employee's right to free travel. In the United States Supreme Court's last decision regarding the constitutionality of public employee residency requirements, the Court said, "This kind of ordinance is not irrational." Additionally, the high court found such requirements to be lawful conditions of employment on the basis that there is no fundamental right to government employment and they do not unconstitutionally impinge on the right to travel. *McCarthy v. Philadelphia Civil Service Commission*, 424 U.S. 645, 646 (1976).

The Courts have not been as supportive of pre-employment or "durational" residency requirements—those that require a person to live within a jurisdiction for a specified time before being eligible for employment. The NAACP was successful in having such an ordinance struck down in Harrison, New Jersey. The court found the ordinance violated the Federal civil rights law when the NAACP provided proof that the policy resulted in disparate impact on blacks. While the population of Harrison was only 1% black, the surrounding labor pool in the three-county area was 22% black. The Court could find no business necessity for the "durational" residency requirement that could justify its discriminatory effects. *NAACP v. Town of Harrison*, 907 F.2d 1408 (3rd Cir.1990)

The Federal Courts also struck down a similar rule in Detroit, Michigan. The city began requiring that all persons applying for city employment must have resided within the city for at least 60 days prior to the date of application. Here again, the court found no compelling interest in such a rule. *Grace v. City of Detroit*, 760 F.Supp 646 (1991).

In New Orleans, the Supreme Court of Louisiana overturned a grandfather provision of a residency ordinance that denied promotional opportunities to one group of non-domiciliary employees and not another. The court found that this differential treatment did not further any appropriate governmental

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<sup>1</sup> The Rights of Law Enforcement Officers (Second Edition), Will Aitchison, ©1992, Labor Relations Information System, Portland, Oregon, pg. 173.

interest. However, it did approve the residency requirement itself. *Police Association of New Orleans v. City of New Orleans*, 649 So.2d 951 (La.1995).

State laws may provide some relief to Lodges opposed to residency requirements. States like Georgia and Texas have laws prohibiting public employees from being required to live within the boundaries of a municipality as a condition of employment. However, there are cities that have cleverly gone around such laws by requiring their employees to live not necessarily in the municipality, but within a certain distance of their work station. For instance, a Georgia court upheld a residency ordinance that required police officers to live within 8.75 miles of city hall on the basis that the law did not require the plaintiff to live within the municipality. *Dixon v. City of Perry*, 416 S.E.2d 279 (Ga. 1992). A Texas court upheld a Galveston Police Department residency rule that required officers to live within certain parts of Galveston County or Harris County. The court did this even though officers argued that there were other parts of Harris County and Brazoria County that were as close or closer in time to Galveston than the 30-minute response time Galveston officials claimed they had decided best served the public when they established the residency rule. *City of Galveston v. Giles*, No. 01-94-000970-CV (Texas, 1995).

There are also states and localities where a residency requirement is a negotiable term and condition of employment and, therefore, such a rule cannot be unilaterally imposed by an employer. In Chester, Pennsylvania, the courts found the residency requirement unenforceable even after the city council passed a charter amendment establishing the provision. The court ruled that residency requirements were traditionally considered a term and condition of employment and, as such, they were subject to collective bargaining under Pennsylvania law. *City of Chester v. Fraternal Order of Police, Lodge 19*, 615 A.2d 893 (Pa. Cmwlth. 1992).

Even with these possible avenues of relief, in many, if not most, situations a residency requirement is going to be a legislative issue rather than a legal one. Lodges should check with their local attorney to see exactly what their legal rights are regarding this issue. In those cases where legal relief is not available, you must be prepared to lobby your local legislative bodies to prevent the implementation of a residency requirement or to abolish the practice. You might begin this process at the negotiation table or in the halls of your city council chambers.

In an opinion piece for *Public Management* magazine, Carla Cataldo noted one of the strongest arguments for opposing a residency requirement: "...residency requirements can prevent qualified applicants from applying for jobs. Because tax dollars are a scarce resource, it behooves localities to get the most 'bang for their buck' by hiring the most qualified applicants, regardless of their addresses." Ms. Cataldo had conducted a survey of 32 Massachusetts and Rhode Island chief executive officers and found that 31% of them had turned down or refused to apply for jobs with residency requirements. You can make the case that your community is best served when its appointing authority is able to choose from the broadest pool of potential candidates for any position. A residency requirement limits those choices. Other arguments that might be considered in arguing against a residency requirement are:

1. Such requirements are a holdover from the days of political bosses and their patronage systems. It is a provision that enables politicians to obtain jobs for their friends and ensures a good pool of campaign workers and patronage votes.
2. Residency requirements smack of the old "plantation" and "company store" mentality. It is a way for an employer to ensure it gets back the money it pays in salaries.
3. An individual is paid a salary to perform specific job duties. As long as those duties are performed satisfactorily, the employee has earned his or her salary. The issue of where they live or where they pay taxes is irrelevant.
4. Taxpayers pay taxes to obtain specific services. As long as they get those services, they are not interested in where the person performing them lives. Not once in my police career has a complainant asked me where I lived. Further, employees who live in their employer's jurisdiction pay taxes for

those services also. Those who do not live in the jurisdiction should not be expected to pay those taxes.

5. Police officers are professional employees who work within specific guidelines and the boundaries of accepted practices. Those guidelines remain the same regardless of where the officer may live.

6. Communities, in the truest sense of the word, often extend beyond political boundaries. One may well live outside a specific area, but still be very much a part of the community he or she polices. Criminals do not care about boundaries. The same criminals who plague one neighborhood may well plague another the next day.

7. If employees are given an option where to live, they often will choose to live in the jurisdiction where they are employed. They will choose to live there for all the same reasons as the community's other residents—they are happy with the schools, emergency services, healthcare, shorter and less expensive commuting, shopping facilities, and the like. Giving employees a choice about where they live does not mean that everyone will move. Nashville, Tennessee abolished its residency rule in October of 1994. At that time, 1% of Nashville's FOP lived outside of Davidson County. They had been granted hardship exemptions. Today, that number has risen to only 6%. Yes, some old employees moved out and some new employees never moved in for any number of personal reasons. The point is, the vast majority still chose to live in their employer's jurisdiction. In Nashville, the city council demonstrated its confidence in the quality of life their community offered—the community they governed. Employees, in return, have demonstrated that that confidence was well-founded.

8. It may be important to cite personal examples of how particular employees have found a residency requirement very detrimental to their situation. For instance, an employee marries a person who has a home in another area. That home has been in the family for a long time and the couple wishes to keep it. However, they cannot afford to keep two homes. They must choose between the home or his or her job. This argument can be very effective if the employee is well known and respected for his or her service. It becomes even more compelling if the non-resident spouse is an employee of another jurisdiction that also has a residency requirement. Then what does a couple do? This type of situation is more common today, as more and more households have two wage earners.

9. Although residency requirements may well be constitutional, they are arguably bad policy and an unfair restriction placed upon employees. Employees should have a right to live where they wish and provide for their families as they best see fit as long as they are at work on time and satisfactorily perform the duties for which they are employed.

10. One can use the private sector as an example. Pick a major employer in your area—say XYZ Grocery. People who work for XYZ Grocery probably ought to buy their groceries at XYZ, but there is no law that forces them to do so. Further, the employees at XYZ do not live at the store. They are successful in carrying out their work in a professional and efficient manner without being part of that community. They are not required to give a piece of their paycheck back to the store for the privilege of working there. If these employees can do their jobs and not live at the store, why can't a public employee? If the XYZ employee is not forced to give back a piece of his or her paycheck to the store, why should a public employee be forced to pay taxes where they work?

11. Some employees living within a given jurisdiction might be farther from their work stations than other employees who do not, depending on the location of the workstation and the employee's home.

12. One might look at a compromise position and request that your residency requirement be abolished for employees with ten years of service or more. The case can be made that these employees already are familiar with the community they serve. Also, older employees should be given more freedom to purchase retirement homes wherever they feel is best for their needs. Many have already given years of service and contributed greatly to their employing community through their service and taxes.

You may well think of other arguments. It has been the experience of many that residency becomes a philosophical issue. This makes the debate over it potentially quite emotional—like debating politics or religion. There are persons who are very supportive of most issues adopted by law enforcement officers, but who strongly believe in residency requirements. You will have to try to direct the debate to the more objective aspects of the issue.

I suggest you ask for the support of local business leaders and editorial staffs to help further your cause, as well as the political leadership in your area. It is also important that you have the support of your police, fire and emergency medical chiefs. If any of these people claim that abolishing a residency ordinance will jeopardize emergency response times and, thus, jeopardize public safety, your efforts to abolish a residency ordinance will be severely hurt. Make sure you get their support. In some situations, the residency issue may face opposition on racial grounds. It may be criticized in some areas as "white flight." Make sure that you are prepared to address those issues. Do your homework before you move forward. Know in advance from where your support and your opposition will come.

There are also potential downsides to abolishing a residency requirement. Your lodge may lose political clout in direct proportion to the percentage of your members who ultimately live outside of your employing community. Our wages and benefits, the equipment we use, the cars we drive, our terms of employment and our working conditions are all subject to some form of support by politicians. Having fewer members (translated: voters) living in your jurisdiction can diminish your lodge's influence on those politicians. If this situation develops, your lodge may need to look for alternative methods of lobbying, such as forming a political action committee to which your non-resident members can contribute. Also, by abolishing your residency requirement, you are, at the same time, expanding your employer's labor pool. Expanding the supply of labor may have the potential to depress wages. The best way to control this issue is to demand high recruiting standards.

We might also caution against being critical of your employer. For instance, it is not wise for a police officer to say "I want to move out of Mytown because of the high crime rate." Similarly, I would caution against speaking ill of city schools or other services. Most city and county officials feel they have worked hard to make their areas good places in which to live. You will not win their support by bad-mouthing the results of their efforts. It is better to stick to the personal choice, fairness, and employment hiring and retaining issues.

Like any issue that must be addressed by passing legislation, it may take time. You may have to try several times before you are successful. If you are unsuccessful at the local level, your Lodge might attempt to have a state law introduced that would prohibit residency requirements. These kinds of issues take a firm and consistent effort. That is the kind of effort that only a well-founded organization like the Fraternal Order of Police can provide.