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City of Cambridge

Law Department

August 6, 1937.

The Honorable, The Members of the City Council,
City Hall, Cambridge, Massachusetts.

Dear Sirs:-

Under date of July 23, 1937, you requested an opinion of the City Solicitor as to whether or not the ten police officers recently appointed from the reserve list should receive salaries based on the first twelve months service or on the second twelve months service, in accordance with an Ordinance establishing salaries of members of the Police Department.

In response thereto, I beg leave to submit the following:

The Ordinance establishing salaries of members of the Police Department classifies the pay of patrolmen in three different groups:

1. Patrolmen, first twelve months service.
2. Patrolmen, second twelve months service.
3. Patrolmen, after two years service.

Information from the records of the Police Department indicate that these men were appointed as reserve officers on June 13, 1936; thereafter, seven of them were assigned to a tour of duty on June 20, 1936; one man was assigned to a tour of duty on June 21, 1936; one man was assigned to a tour of duty on June 13, 1936, and one man, Gerald McCarthy, has not yet been assigned to duty.

The existing ordinance governing salaries of police officers was enacted on June 11, 1935. Before the date of the enactment of this ordinance, there was a prior ordinance enacted on February 15, 1921, which made provisions for the pay of reserve officers on the basis of first twelve months service, second twelve months service and after two years service.

Thereafter the legislature approved the Reserve Police Act, as far as it applied to Cambridge, without prejudice to the right of Cambridge to ~~repeal~~ the act at a later date. Cambridge did, at a later date, accept the act creating the Police Reserve Force and these men were the first appointees under the re-established police force.

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The existing ordinance was enacted in the interim and at a time when there were no reserve policemen and could not possibly apply to reserve policemen. No ordinance has since been enacted making provisions for the pay of reserve police officers. It is my contention that my only province is to interpret the existing ordinance and that I have no power to write into the ordinance something which is not there. This is entirely the province of the Honorable City Council.

The ten men referred to cannot claim to be entitled to second twelve months service pay under the existing ordinance because it applies only to permanent patrolmen.

The Supreme Judicial Court, in the case of Albert Riopel v City of Worcester, 213 Mass. 15, at P. 16, said in an analogous case in referring to the claim of a reserve police officer for compensation:

***** He cannot avail himself of the order of December 14, 1896, because obviously that applies only to the pay of the regular patrolmen, and in fact was passed more than five years before a reserve police force was created. And as he never was appointed or served as a regular patrolman, he would not be entitled to compensation as such even if the ordinance of March 5, 1902, were invalid".

Police officers are public officers, but the mere appointment of a public officer carries with it no compensation or right to compensation. Compensation must, in the City of Cambridge, be provided for by an ordinance duly enacted by the Honorable City Council.

I therefore must rule that there is at this time no authority to compensate these ten men for their services to the city and compensation, if provided, must be made under the provisions of Acts of 1935, C. 214, by the enactment of an ordinance or an amendment to the existing ordinance. If the present ordinance could have been construed to cover and apply to these reserve policemen, I would have ruled that they were entitled to second twelve months compensation. This ruling would have been predicated upon the language of the ordinance which is peculiarly adapted to policemen.

Policemen are "on service" from the date of their first assignment to duty after their appointment until death, resignation, discharge or retirement. From the date of the first assignment of these men to duty, they were subject to

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the rules of the Police Department and were holding themselves subject to call for such duty as their superior officers might assign them to.

This paragraph is inserted only for such guidance and assistance as it may afford the Honorable City Council in fixing the compensation of these men by ordinance.

I therefore reply again to the question of the Honorable City Council that these men are not entitled to second twelve months compensation and for the guidance of the City Council and the City, that the present ordinance makes no provision for their compensation and therefore they cannot be compensated.

Respectfully submitted,

George A. McLaughlin
City Solicitor.

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Communication from the City Solicitor in response to an order of the City Council adopted on July 23, 1937 requesting his opinion as to whether or not the ten police officers recently appointed from the reserve list should receive salaries based on the first twelve months service or on the second twelve months service, in accordance with an Ordinance establishing salaries of members of the Police Department.

In City Council AUG 10 1937

PLACED ON FILE

Frederick H. Barker
City Clerk