



CITY OF CAMBRIDGE
INTEROFFICE CORRESPONDENCE

To	Russell B. Higley City Solicitor	Date	November 10, 1976
From	Paul E. Healy City Clerk	Reference	
Subject	Residency Requirement for future municipal employees		

At the request of the City Council I am forwarding to you your original opinion relative to residency. The Council would like you to redefine the terms of your opinion specifically in the area of prior residency before accepting appointment to a city position. Furthermore could you explain the relationship between the current ordinance regarding employment and residency and the order proposed by Councillor Sullivan (copy attached) .

The Council would like to have this opinion for November 15, 1976, if possible.



CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139 • TEL. 876-6800

LAW DEPARTMENT

EDWARD D. MCCARTHY
CITY SOLICITOR

ROWENA E. TAYLOR
ASSISTANT CITY SOLICITOR

CHARLES WATSON
LEGISLATIVE AGENT

RUSSELL B. HIGLEY
ASSISTANT CITY SOLICITOR

April 14, 1976

Honorable Members of the City Council
City Hall
Cambridge, Massachusetts 02139

Dear Councillors:

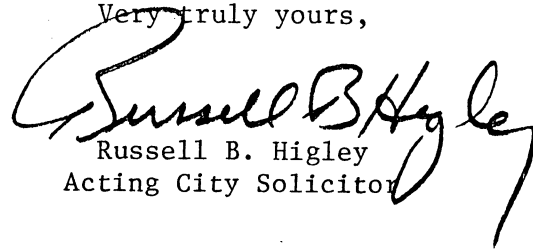
I have reviewed the recent opinion of the United States Supreme Court in McCarthy v. Philadelphia Civil Service Commission as reported in United States Law Week and attached hereto.

As pointed out in the Court's decision, previous cases have "differentiated between a requirement of continuing residency and a requirement of prior residency of a given duration." The Court has frequently thrown out laws and regulations involving the latter with an eye to the protection of the constitutional right to travel and equal protection. Shapiro v. Thompson 394 vs. 618; Dunn v. Blumstein 405 vs. 330, Memorial Hospital v. Maricopa County 415 vs 250. However, prior to the McCarthy case the U. S. Supreme Court had not, to my knowledge, dealt with continuing residency requirements. We could, therefore, only infer what the court might rule, based on its treatment of durational residency requirements.

April 14, 1976

It was in this context that I, and the City Solicitors preceding me, have offered the opinion that a general residency requirement for employment in city government would be unconstitutional. In light of the new direction provided by the McCarthy decision, it now appears that the Court would allow such residency requirements.

Very truly yours,



Russell B. Higley
Acting City Solicitor

RBH:cas

Ruling below (CA 7, 8/7/75):

Neither administrative law judge nor Deputy Commissioner of U.S. Department of Labor has authority under Administrative Procedure Act or Longshoremen's and Harbor Workers' Compensation

Act to approve settlement agreement entered into between widow of deceased worker, his employer and employer's insurer, since federal statutory authorization relating to approval of settlements does not apply to death claims.

ment is vacated and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of Commissioner of Internal Revenue v. Shapiro, 424 U.S. — (1975). Mr. Justice Stevens took no part in the consideration or decision of this case.

JOURNAL OF PROCEEDINGS

MARCH 22, 1976

Present: Mr. Chief Justice Burger, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, Mr. Justice Marshall, Mr. Justice Blackmun, Mr. Justice Powell, Mr. Justice Rehnquist, and Mr. Justice Stevens.

Orders of the Court

75-783 *McCarthy v. Philadelphia Civil Service Comm.* Per Curiam. After 16 years of service, appellant's employment in the Philadelphia Fire Department was terminated because he moved his permanent residence from Philadelphia to New Jersey in contravention of a municipal regulation requiring employees of the city of Philadelphia to be residents of the city. He challenges the constitutionality of the regulation and the authorizing ordinance as violative of his federally protected right of interstate travel. The regulation was sustained by the Commonwealth Court of Pennsylvania² and by the Pennsylvania Supreme Court.³ His timely appeal is here pursuant to 28 U.S.C. § 1257(2).

The Michigan Supreme Court held that Detroit's similar requirement for police officers was not irrational and did not violate the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment.⁴ We dismissed the appeal from that judgment because no substantial federal question was presented. *Detroit Police Officers Assn. v. City of Detroit*, 405 U.S. 950. We have therefore held that this kind of ordinance is not irrational. *Hicks v. Miranda*, 422 U.S. 322; see *Wardwell v. Board of Education of Cincinnati*, — F.2d — (CA6, Feb. 11, 1976), slip op., at 5.

We have not, however, specifically addressed the contention made by appellant in this case that his constitutionally recognized right to travel interstate as defined in *Shapiro v. Thompson*, 394 U.S. 613; *Dunn v. Blumstein*, 405 U.S. 109; and *Memorial Hospital v. Maricopa County*, 415 U.S. 250, is impaired. Each of those cases involved a statutory requirement of residence in the State for at least one year before becoming eligible either to vote, as in *Shapiro*, or to receive welfare benefits, as in *Dunn* and *Memorial Hospital*.⁵ Neither in those cases, nor in any others, have we questioned the validity of a condition placed upon municipal employment that a per-

son be a resident at the time of his application.⁶ In this case appellant claims a constitutional right to be employed by the city of Philadelphia while he is living elsewhere.⁷ There is no support in our cases for such claim.

We have previously differentiated between a requirement of continuing residency and a requirement of prior residency of a given duration. Thus in *Shapiro*, supra, at 636, we stated "(t)he residence requirement and the one-year waiting period requirement are distinct and independent prerequisites." And in *Memorial Hospital*, supra, at 254-255, quoting *Dunn*, supra, at 342 n. 13, the Court explained that *Shapiro* and *Dunn* did not question "the validity of appropriately defined and uniformly applied bona fide residence requirements."

This case involves that kind of bona fide continuing residence requirement. The judgment of the Commonwealth Court of Pennsylvania is therefore affirmed.

The Chief Justice, Mr. Justice Brennan, and Mr. Justice Blackmun would note probable jurisdiction and set the case for argument.

75-595 *Tucker v. Sales*

75-6021 *Woods v. Harden*

The judgments are affirmed.

75-656 *Haas v. Haas*. The appeal is dismissed for want of a properly presented federal question.

75-967 *Bearden v. Hardware Mutual Casualty Co.*

75-5994 *Finken v. Roop*

The appeals are dismissed for want of jurisdiction. Treating the papers wherein the appeals were taken as petitions for writs of certiorari, certiorari is denied.

75-1061 *Western Grain Co. v. Alabama*. The appeal is dismissed for want of a substantial federal question.

75-6108 *Hardy v. Ohio*

The appeal is dismissed for want of a substantial federal question. Mr. Justice White would note probable jurisdiction and set the case for oral argument.

74-1420 *James v. U.S.* The petition for a writ of certiorari is granted. The judg-

74-1476 *U.S. v. Sellers*; and
74-6503 *Sellers v. U.S.*

The motion of the petitioner in No. 74-6503 for leave to proceed in forma pauperis and the petitions for writs of certiorari are granted. The judgment is vacated and the cases are remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *United States v. Gaddis*, 424 U.S. — (1976). Mr. Justice Stevens took no part in the consideration or decision of these cases.

75-167 *U.S. v. Phillips*. The motion of the respondent for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *United States v. Gaddis*, 424 U.S. — (1976). Mr. Justice Stevens took no part in the consideration or decision of this case.

75-272 *Williams v. Hilliard*. The motion of the respondent for leave to proceed in forma pauperis and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Imbler v. Pachtman*, 424 U.S. — (1976).

A-760 *California State Board of Optometry v. California Citizens Action Group*. The application to stay the preliminary injunction entered by the United States District Court for the Central District of California, case No. CV 74-2079-FW, entered February 5, 1976, presented to Mr. Justice Rehnquist and by him referred to the Court is granted pending further order of the Court. Mr. Justice Stevens would deny the application. The motion of Terminal-Hudson Electronics of California, Inc., dba Opti-Cal, for leave to intervene as an appellee is denied.

74-1487 *U.S. v. MacCollom*. The motion of the Solicitor General to permit Frank H. Easterbrook, Esquire, to argue pro hac vice on behalf of the petitioner is granted.

74-6257 *Gregg v. Georgia*;
75-5394 *Jurek v. Texas*;
75-5191 *Woodsen v. North Carolina*;
75-5706 *Proffitt v. Florida*; and
75-5844 *Roberts v. Louisiana*

The motion of the Attorney General of California for leave to participate in oral argument, as amicus curiae, is granted.

75-139 *Quinn v. Muscare*. The motion of American Federation of Labor and Congress of Industrial Organizations for leave to file a brief, as amicus curiae, is granted. Mr. Justice Stevens took no part in the consideration or decision of this motion.

¹ Section 7-401 of the Philadelphia Home Rule Charter of 1951; § 20-101 of the Philadelphia Code of Ordinances; and § 30.01 of the Philadelphia Civil Service Regulation.

² 339 A.2d 634 (Pa. 1975).

³ In an unpublished order entered on September 2, 1975, that court denied a petition for review.

⁴ *Detroit Police Officers Assn. v. City of Detroit*, 190 N.W.2d 57 (1971).

⁵ Although there is a durational residence requirement in the Philadelphia ordinance, appellant does not have standing to challenge that requirement.

⁶ Nor did any of those cases involve a public agency's relationship with its own employee, which, of course, may justify greater control than over the citizenry at large. Cf. *Pickering v. Board of Education*, 391 U.S. 563, 568; *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548; *Broadrick v. Oklahoma*, 413 U.S. 601.

⁷ Appellant seeks review of other alleged errors as if presented in a petition for a writ of certiorari. We decline to review those issues.



City of Cambridge

IN CITY COUNCIL⁶
March 29, 1976

Councillor Sullivan

WHEREAS:

On Monday, March 22, 1976, the United States Supreme Court, in the case of McCarthy v. Philadelphia Civil Service Commission #75-783, decided that cities have a right to impose the requirement of residency on their employees, and

WHEREAS:

The court ruled that their case does not violate the constitutional right to travel, and

WHEREAS:

The City of Boston is now prepared to move forward on their ordinance, making all employees, civil service or otherwise, hired after July 1, 1976, conform to the requirement of residency, therefore be it

RESOLVED:

That the City Solicitor rethink his opinion on my prior order asking for a residency requirement and report back to the City Council within two weeks.

City Council

Adopted by the affirmative vote

of 7 members

Paul E. J. [Signature]
City Clerk



City of Cambridge

AMENDED ORDER

Councillor Sullivan

2.

IN CITY COUNCIL
February 9, 1976

WHEREAS:

The primary responsibility of local government is to serve the people of the local community, and

WHEREAS:

Our devastating 16% unemployment rate has put 7,000 of our citizens out of work, and

WHEREAS:

These figures represent real men and women whose lives have been disrupted and whose sense of worth has been eroded, and

WHEREAS:

These people constitute a huge source of talent, as in borne out by the fact that 30% of our population 25 years of age or older have completed 4 or more years of college, twice the rate of the Boston SMSA, and

WHEREAS:

Those who administer the policies of this city out to be accountable for their work by living in the city that is affected by their decisions, and

WHEREAS:

Currently we are faced with unconscienable situation wherein 197 city employees are salaried at \$20,000.00 or more, and yet 127 of these people do not live in this city that pays them so well to serve, and

WHEREAS:

A striking example of this problem exists in the Department of Community Development, where 12 people earn in excess of \$20,000.00 yet 9 of these people do not even live in the community that they are so eager to develop, and

WHEREAS:

The fear of patronage accusations has resulted in policy that takes the easy way out by bypassing the Cambridge resident altogether, and

WHEREAS:

Times have changed, and we must gather the courage to look within our own community and evaluate our own citizens on the basis of their merits and potential, and

WHEREAS:

We cannot in good conscience ask private employers to hire local residents if we ourselves are unwilling to provide leadership of our own in this area, and

REAS:

A comprehensive effort to insure accountability on the part of city employees and ease the burden of our unemployed requires a wide range of policies, nonetheless one step in the right direction is apparent; therefore be it

ORDERED:

That the City Solicitor report back to this honorable body within 2 weeks with his opinion as to the propriety of amending ordinance #389 as follows:

No person shall be employed by this city who is not a resident and a registered voter therein. This section shall not apply retroactively to any person employed by the city at the time of its adoption or to anyone who is a resident but ineligible to register to vote provided that said person shall inform the City Clerk of his or her ineligibility and the reasons therefor.

In accordance with Chapter 43, section 103, this ordinance shall not apply to the City Manager, and be it further

ORDERED:

That the City Solicitor also review the legality of restriction of unregistered voters relative to employment, as well as the separation of coverage regarding the present employees versus the new employees, and be it further

ORDERED:

That the City Clerk be and hereby is requested to establish a file for all orders passed by this Council in the future relative to the employment of Cambridge residents and any legislation relative thereto.

Referred to the City Solicitor



CITY OF CAMBRIDGE

CAMBRIDGE, MASSACHUSETTS 02139

Tel. 876-6800

EXECUTIVE DEPARTMENT
JAMES L. SULLIVAN
City Manager

April 26, 1976

To the Honorable, the City Council:

In response to a City Council request, enclosed please find a self-explanatory communication from Russell B. Higley, Acting City Solicitor, relative to a general residency requirement for employment in city government.

Very truly yours,

James L. Sullivan
City Manager

JLS/mbf
Enc.

Comm. from the City Clerk, at the request of Councillor Sullivan, transmitting copies of a previously submitted order as well as a legal opinion from the City Solicitor.

In City Council,
November 8, 1976

*Referred to City
Mgr and City
Solicitor for opinion
on the law in
opinion expressed
by City Solicitor -
Classification Required
By C. Ackerman*