

CITY OF CAMBRIDGE

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

LAW DEPARTMENT

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CITY SOLICITOR

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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:

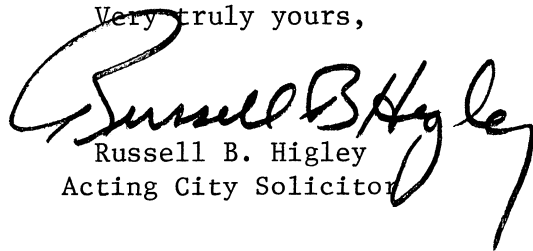
I have reviewed the recent opinion of the United States Supreme Court in McCarthy v. Philadelphia Civil Service Commission as reported in United States Law Week and attached hereto.

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. Shapero 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,

A handwritten signature in dark ink, appearing to read "Russell B. Higley". The signature is fluid and cursive, with a large initial "R" and a long, sweeping tail that extends downwards and to the right.

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.

tion 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 ordinances 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. 618; Dunn v. Blumstein, 405 U.S. 330; 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 whereon 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;
75-5491 Woodson 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.

75-130 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 (a) of the Philadelphia Home Rule Charter of 1961; § 20-101 of the Philadelphia Code of Ordinances; and § 30.01 of the Philadelphia Civil Service Regulation.

² 399 A.2d 634 (1975).

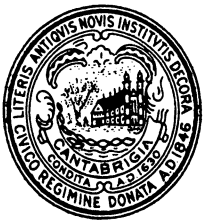
³ In an unreported order entered on September 2, 1975, that court denied a petition for review.

⁴ Detroit Police Officers Assn. v. City of Detroit, 190 N.W.2d 97 (1971).

⁵ Although there is a durational residence requirement in the Philadelphia ordinances, 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 employees 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

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.

Agenda # 15. *S-161*
Opinion of the Acting City Solicitor
on the residency requirement for em-
ployment in city government.

In City Council,

April 26, 1976

4/26/76

Placed on File -