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March 14, 2008

John Florek, Esq.
Chairman, Town Charter Revision Committee
Stratford Town Council
2725 Main Street
Stratford, CT 06615

Re: Residency Requirements

Dear Mr. Florek:

At the March 6, 2008 Charter Revision Commission meeting, you requested that we research whether the Town can impose residency requirements on "appointed" officials such as department heads.

After analyzing the issue, we conclude that the Town *may* impose such a residency requirement. This conclusion, however, is subject to a showing that the residency requirement rationally relates to a legitimate governmental purpose.

As a precursor, state statute, subject to the charter, authorizes the power to "appoint" municipal officers. These powers are found generally in Title 7 of the Connecticut General Statutes and specifically under § 7-193. In relevant part, the authorization states:

Every municipality shall have all municipal officers, departments, boards, commissions and agencies which are required by the general statutes or by the charter . . . All such officers, departments, boards, commissions and agencies shall be elected, appointed and organized in the manner provided by the general statutes, except as otherwise provided by the charter or by ordinances or resolutions adopted pursuant to such charter. Any municipality may, by charter or by ordinances or resolutions adopted pursuant to such charter, alter the method of election, appointment or organization of any or all of such officers, departments,

boards, commissions or agencies . . . unless specifically prohibited from making such alteration by the Constitution or the general statutes. (C.G.S. § 7-193(2)(b)).

Most notably, Connecticut General Statutes §7-460b speaks to the issue of residency requirements:

Notwithstanding any provision of the general statutes or special act or local law, ordinance or charter, no municipality may require as a condition of employment with such municipality that an *employee* whose position is subject to the terms of a collective bargaining agreement reached pursuant to sections 7-467 to 7-477, inclusive, reside in such municipality.

The relevant sections of the collective bargaining statutes, §§ 7-467 to 7-477, define several relevant terms. Accordingly:

"*Employee*" means any employee of a municipal employer, whether or not in the classified service of the municipal employer, *except* elected officials, administrative officials, board and commission members, certified teachers, part-time employees who work less than twenty hours per week on a seasonal basis, department heads and persons in such other positions as may be excluded from coverage under sections 7-467 to 7-477, inclusive, in accordance with subdivision (2) of section 7-471¹. (C.G.S. § 7-467(2)).

"*Department head*" means an employee who heads any department in a municipal organization, has substantial supervisory control of a permanent nature over other municipal employees, and is directly accountable to the board of selectmen of a town, city or borough not having a charter or special act form of government, or to the chief executive officer of any other town, city or borough. (C.G.S. § 7-467(4)).

Therefore, and in accordance with the previously mentioned statutes, if the position at issue is "subject to the terms of a collective bargaining agreement . . ." then the Town may *not* require that the employee reside in the Town of Stratford. This statute, however, is inapplicable to department heads (pursuant to the definitions in C.G.S. §§ 7-467(2) and 7-471(2), *supra*) as they are excluded from the definition of "employees" as per statute. Making the determination of whether appointed department head positions can be subject to residency requirements requires a constitutional analysis under the equal protection clause.

¹ The board shall have the power to determine whether a position is covered by sections 7-467 to 7-477, inclusive, in the event of a dispute between the municipal employer and an employee organization. In determining whether a position is supervisory the board shall consider, among other criteria, whether the principal functions of the position are characterized by not fewer than two of the following: (A) Performing such management control duties as scheduling, assigning, overseeing and reviewing the work of subordinate employees; (B) performing such duties as are distinct and dissimilar from those performed by the employees supervised; (C) exercising judgment in adjusting grievances, applying other established personnel policies and procedures and in enforcing the provisions of a collective bargaining agreement; and (D) establishing or participating in the establishment of performance standards for subordinate employees and taking corrective measures to implement those standards. The above criteria for supervisory positions shall not necessarily apply to police or fire departments.

The first step in the constitutional analysis is determining the type of residency requirement at issue. The Connecticut Supreme Court has emphasized the distinction between pre-employment durational residency requirements (i.e. must live in municipality for a pre-determined number of years to be eligible) that impinge on the fundamental right of travel and bona fide residency requirements as continuing conditions of municipal employment (i.e. requiring concurrent town residency with employment), which present no analogous equal protection problems. *Carofano v. City of Bridgeport*, 196 Conn. 623, 638, 495 A.2d 1011 (1985). The Connecticut Supreme Court upheld this distinction in *Bruno v. Civil Service Commission*, 192 Conn. 335, 472 A.2d 320 (1984), which remains good law. *Bruno* invalidated a requirement that a candidate for recreation superintendent of the City of Bridgeport have been a resident of that city for one year prior to his civil service examination. The Court reasoned that:

In order to determine whether a statutory scheme violates the equal protection clause, a court must consider three factors: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification." *Dunn v. Blumstein*, 405 U.S. 330, 335 (1972). The analysis must "commence with a determination of whether a legislative classification . . . impinges upon a fundamental right. Where the legislation impinges upon a fundamental right . . . it must be struck down unless justified by a compelling state interest." *Id.*, 342; see also *Horton v. Meskill*, 172 Conn. 615, 639-40, 376 A.2d 359 (1977).

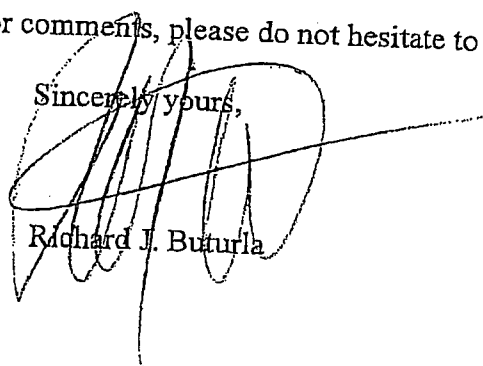
Id. at 345. Subsequent Connecticut jurisprudence has only served to underscore the distinction between durational residency requirements, which are constitutionally suspect, and bona fide residency requirements, which are not. Therefore, pre-employment residency requirements must pass strict constitutional muster (i.e. compelling government interest) while bona fide residency requirements do not.

The constitutional standard for bona fide residency requirements of, *inter alia*, non-elected or appointed officials is the rational basis test. This test, the lowest of the equal protection standards, merely requires that the residency requirement rationally relate to a legitimate governmental purpose. An example of this basis is enhancement of the quality of employee performance by greater personal knowledge of the city's conditions and by a feeling of greater personal stake in the city's progress.

This opinion does not address the issue of the imposition of a residency requirement on those public employees who were hired and commenced employment prior to a charter change.

If you should have any questions or comments, please do not hesitate to contact me.

Sincerely yours,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Richard J. Buturla

RJB:jlc