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FILE NO. 97-007

TOWNSHIPS:
Residency Requirement for Employees

The Honorable Michael J. Madigan
Speaker
House of Representatives
State House, Room 300
Springfield, Illinois 62706

Dear Speaker Madigan:

I have your letter wherein you inquire whether a township may validly adopt and enforce a policy requiring that township employees reside within the township. For the reasons hereinafter stated, it is my opinion that a township board may require that employees subject to its control be residents of the township.

Your inquiry relates specifically to a township's personnel policy which requires that any employee who is hired by the township after adoption of the policy must become a resident of the township within six months after the date of appointment or employment. The failure of an employee to become or remain a resident of the township is cause for termination of employment.

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Extensions of time or waivers of the requirement may be granted upon specified conditions.

Section 100-5 of the Township Code (60 ILCS 1/100-5 (West 1994)) provides, in pertinent part:

"Township attorney and other employees; compensation.

(a) The township board may employ and fix the compensation of township employees that the board deems necessary, excluding the employees of the offices of supervisor of general assistance, township collector, and township assessor. * * *

(b) The board shall set and adopt rules concerning all benefits available to employees of the board if the board employs 5 or more employees. The rules shall include, without limitation, the following benefits to the extent they are applicable: insurance coverage, compensation, overtime pay, compensatory time off, holidays, vacations, sick leave, and maternity leave. The rules shall be adopted and filed with the township clerk within 6 months after July 1, 1992. Amendments to the rules shall be filed with the township clerk on or before their effective date."

Nothing in section 100-5 expressly authorizes the township board to require that employees be residents of the township. Ordinarily, however, the authority to hire employees, fix compensation and adopt rules concerning benefits necessarily includes the authority to establish qualifications, terms and conditions of employment. Employment is a contractual relationship in which the employer has the choice, control and direction of the em-

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ployee. (Hills v. Strong (1907), 132 Ill. App. 649.) An employer has a right to employ labor on favorable terms, subject to valid statutes designed to prohibit substandard working conditions. (Cater Construction Co. v. Nischwitz (1940), 111 F.2d 971, 976.) Furthermore, it has been established that a governmental agency can place reasonable conditions on public employment. (Kelly v. Johnson (1976), 425 U.S. 238, 245-47, 96 S. Ct. 1440, 1444-46, 47 L. Ed. 2d 708; Washington v. Civil Service Comm'n (1984), 120 Ill. App. 3d 822, 829.) An employer may, therefore, adopt and enforce terms and conditions of employment which are not contrary to law.

Local governmental residency requirements for employment have repeatedly been upheld as constitutional. In McCarthy v. Philadelphia Civil Service Comm'n (1976), 424 U.S. 645, 96 S. Ct. 1154, for example, the Supreme Court upheld the termination of the employment of a city fire department employee who moved his permanent residence from the city. The court concluded that such requirements are not irrational and do not violate the Due Process or Equal Protection Clause of the Fourteenth Amendment. Further, they do not infringe upon any constitutional right to travel. There is no constitutional right to be employed by a city while living elsewhere. McCarthy v. Philadelphia Civil Service Comm'n (1976), 424 U.S. 645, 646-47, 96 S. Ct. 1154, 1155.

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Even before the decision in McCarthy v. Philadelphia Civil Service Comm'n, the United States Court of Appeals in Ahern v. Murphy (7th Cir. 1972), 457 F.2d 363, had reached a similar conclusion with respect to a Chicago city ordinance requiring police officers to reside within the city, and Illinois courts have followed the same reasoning. (Fagiano v. Police Board (1983), 98 Ill. 2d 277; Budka v. Board of Public Safety Commissioners (1983), 120 Ill. App. 3d 348.) Other jurisdictions have also followed this line of reasoning, with only rare exceptions. See, Brian H. Redmond, Annotation, Validity, Construction, and Effect of Municipal Residency Requirements for Teachers, Principals and other School Employees, 75 A.L.R. 4th 272 (1988); Joel E. Smith, Annotation, Validity, Construction, and Application of Enactments Relating to Requirements of Residency Within or Near Specified Governmental Unit as Condition of Continued Employment for Policemen or Firemen, 4 A.L.R. 4th 380 (1978).

Based upon the authorities cited, it is my opinion that a township board may validly require that township employees who are subject to its control establish residency within the township within a reasonable time as a condition of continued employment. In so concluding, I note, however, that the township board does not control the employees of the supervisor of general assistance, the township collector or the township assessor. (60 ILCS 1/100-5(a) (West 1994).) These employees have responsibilities under the Public Aid Code (305 ILCS 5/1-1 et seq. (West

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1994)) and the Property Tax Code (35 ILCS 200/1-1 et seq. (West 1994)) and are subject to the supervision and control of the officers who appoint them, rather than the township board.

Sincerely,


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ATTORNEY GENERAL