

PUBLIC HEARING

before

ASSEMBLY COUNTY GOVERNMENT COMMITTEE

on

RESIDENCY REQUIREMENTS FOR EMPLOYEES AND OFFICERS  
OF COUNTIES AND MUNICIPALITIES

Held:  
October 26, 1977  
Bergen County Administration Building  
Hackensack, New Jersey

MEMBER OF COMMITTEE PRESENT:

Assemblyman Paul J. Contillo (Chairman)

ALSO:

Norman D. Katz, Research Assistant  
Aide, Assembly County Government Committee

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ASSEMBLYMAN PAUL J. CONTILLO (Chairman): We will get the meeting started. I have a brief prepared statement I want to read into the record and then we will take the witnesses on a pre-determined order. After I read my statement, if you haven't already listed your name, I would like you to come forward and list your name and we will put you on the list and take you in that order. Let me read the statement so we will know where we are going.

This is a hearing before the Assembly County Government Committee on the issue of residency requirements for employees and officers of the counties and municipalities. I am Assemblyman Paul Contillo, I am the Chairman of the Committee in Trenton. There are no other Committee members here at the present time. Sitting next to me is Norman Katz. Norman is the main aide to the Committee in Trenton.

I would like to welcome all of you to this meeting. It is my understanding that many of you have traveled a long distance and I want to thank you for doing so. If you intend to testify and have not previously contacted Mr. Katz, come up and give us your name when I am finished with this statement.

The County Government Committee has been asked to study this issue for local government workers and to see if it is possible to draft legislation which will reduce the controversy which currently exists over such requirements. The Committee welcomes your suggestions and recommendations. In order to keep the discussion within manageable limits and direct ourselves to this single issue this evening, we will not concern ourselves with those officers and employees who are currently exempt from residency requirements by statute. We are talking about police, firemen, teachers and those who are already specifically exempt - the professionals, the borough attorneys, the engineers, and things like that. Those have specific exemptions at the present time.

Before we start the testimony, I would like to summarize the present status of residency requirements for local government workers in New Jersey. State law now requires all county and municipal officers to reside within the boundaries of the local unit for which they work. New Jersey does not require that local employees reside in the county or municipality which employs them. In point of fact, however, it is difficult to distinguish an employee from an officer and some confusion has arisen over this point. The State also requires that all classified Civil Service workers to be employed by a county or a municipality must be a resident of the local unit for which they work when they take the Civil Service examination. However, Civil Service has often found it difficult to secure a sufficient number of qualified residents to fill all the available positions in a particular locality and in such cases the names of non-residents are suggested.

The State, however, is not the only government unit to impose residency requirements for local government workers. Counties and municipalities, through ordinance, resolution or administrative regulation - or sometimes just a verbal directive - may establish their own residency requirements and many have imposed requirements far more comprehensive than those demanded by the State Government.

The existence of residency requirements for local government officers and employees, whether imposed by the State or a county or municipality, has generated intense debate. Rather large differences of opinion exist as to the merits of residency requirements. Many local government leaders and segments of the public believe that residency requirements are absolutely necessary, while many local workers deem them an undue hardship. New Jersey's courts

have, on several occasions, been asked to determine the constitutionality of residency requirements. To date, the courts have upheld the validity of such residency requirements.

The Assembly County Government Committee is aware of the intense disagreements which exist over the wisdom of such requirements. Before taking any action, we believe it necessary to hear the opinions of all concerned parties. Your testimony tonight will hopefully be the first step in developing a solution which is equitable, enforceable, and in the best interests of this State, its counties, and municipalities.

Will you each identify yourself and then you can just go into your testimony?

G A R A B E D H A Y T A I A N: Assemblyman, I am Garabed Haytaian, the Director of the Freeholder Board in Warren County and I am here as an individual Freeholder.

ASSEMBLYMAN CONTILLO: Would each one who testifies, if you are going to give us a prepared testimony and then leave, will you indicate as much when you start, and then the aide will not have to take notes.

MR. HAYTAIAN: No, I will not be leaving.

ASSEMBLYMAN CONTILLO: You will not be leaving? Okay.

MR. HAYTAIAN: My colleagues have indicated this morning that my testimony will be the testimony of the Board.

We have had our attorney look into different statutes that concern residency. At this point, we are enforcing the residency requirements, per the statute, 11:22-7. Also, although you said not to be concerned with the residence of officers, that also is 40a:9-1. Those are the two laws that we really are concerned with.

We have background material that was presented by our attorney and I will go into part of that later on. But, what we have done in Warren County is, we have asked our non-residents who are Civil Service employees to indicate to us whether they will or will not move into the county within a 30-day period - to inform us. Then, we are telling them that they would have one year to move to the county. Now, the reason for this, I am sure you are well aware of. You cannot ask people to uproot their families - their children who are in school and what not - and to move back into the county.

We have approximately 25 employees that would be caused a problem by this. Most of them have indicated that they would move back into the county. One of my colleagues indicated the possibility of giving the employees 24 hours or 48 hours to move back into the county. Naturally, we did not go along with that.

ASSEMBLYMAN CONTILLO: You keep saying back -- do you mean they lived in the county and have moved out?

MR. HAYTAIAN: That's right. They are no longer living in the county. They are living outside of the county, and possibly outside of the State, yet they are working in the county. As you know, Warren County borders on the Delaware River and Pennsylvania is right across the bridge - okay? So, we have that situation also.

Now, as we see it, there are three possible alternatives. The first is to enforce the law as it is. That would mean not only Warren County, but all of the counties in the State. The second possibility is to enact a grandfather

clause, or to amend the present law with a grandfather clause, which would exempt any present employee from this residency requirement and enforce the law for any new employees. Or, the third possible alternative is to abolish the residency requirement. These are, in our minds, the three possible alternatives that the Assembly has, and that this Committee has to give to the residents of this State.

Now, there is a consequence as we see it and I have asked our attorney whether this could happen and he said, yes, very definitely. This consequence would be for a resident who qualifies for a position in the county today, to sue the county for a non-resident Civil Service position. My question would be, where does that leave the county? What recourse do we have? Because, in essence, that Civil Service employee is now employed against the statute, which is against the law. If a resident of the county who meets the qualifications for that position sues to take over that position, or to become an employee, what recourse does the county have? According to our attorney, none. We, in essence, would have to ask that Civil Service employee to leave that position.

ASSEMBLYMAN CONTILLO: Based on a State law.

MR. HAYTAIAN: That is correct.

ASSEMBLYMAN CONTILLO: At the present time you could dismiss them.

MR. HAYTAIAN: Excuse me?

ASSEMBLYMAN CONTILLO: Based on the State law--

MR. HAYTAIAN: That's right.

ASSEMBLYMAN CONTILLO: --at the present time--

MR. HAYTAIAN: That's correct.

ASSEMBLYMAN CONTILLO: --you could simply dismiss them.

MR. HAYTAIAN: That's correct. Now, what does that do to an employee? Let's face it, we are not people who are inhuman. We have emotions. We know what it means to be employed. We know what it means to uproot a family. But, in the case that I have just cited, that employee would be dismissed automatically - at least that is our belief. Now, if that is not true, then we would like to have someone clarify that position.

ASSEMBLYMAN CONTILLO: You are also saying employee--

MR. HAYTAIAN: Civil Service.

ASSEMBLYMAN CONTILLO: Yes. Okay. But, the law is specific as to officers.

MR. HAYTAIAN: No. We are talking about statute 11:22-7, which says, "Applicants limited to residents of county, municipal, and school district. All positions and employments in the classified service, where the service is to be rendered in a particular county, municipality, or school district, or any judicial district of such county and payment therefore is made from the funds of such county, municipality, or school district, or judicial district of a county, the Commission shall limit the eligibility of applicants to the qualified residents of the county, municipality, or school district, or judicial district of such county in which the service is to be rendered and from the funds which the employee is to be paid." So, it states it. All right? We have no recourse at this point.

Now, there is a positive reaction for residency - and I want to give all sides of the question - and that is, if we have county employees who are residents of the county, then when it comes time for negotiations for salary or

fringe benefits, there is a very good possibility that the demands of such employees would be taken in another light - meaning that their demands would not be as stringent as if they lived in the county. The reason for that is, they would then be county taxpayers and they would understand that their salaries and fringe benefits are paid by funds through the county tax rate. So, this would be, in essence, a positive aspect for the County Freeholders.

So, I think what we are saying here is that Warren County, in particular, is in a bind. Now, you have indicated that there are other counties - and I know of some - that have ordinances and resolutions for residency. But, from my indication and our counsel's indication, these do not supersede the State statute. So, therefore, in essence, they would not hold water in the court. I believe Hunterdon County has a grandfather clause in their residency ordinance and, yet, the statute does not have that grandfather clause.

ASSEMBLYMAN CONTILLO: Well, it is in a muddle and that is why we are holding this meeting. Passaic has also ventured now to require people to move back into the county, as of one year from the time they acted - which I think is September, 1978.

MR. HAYTAIAN: Exactly. I would like to read just one of the statements from our attorney. He says, "...therefore, it is clear that a county or a municipality may enact an ordinance governing residency of its employees to cover employees not specifically dealt with by the statute in question, and/or to provide procedures for the implementation of residency requirements for all employees, consistent with applicable legislative enactments.

"It is interesting to note that State Civil Service employees must be residents of the State of New Jersey for at least 12 months prior to taking the Civil Service examination - NJSA 11:9-2..." - that is the statute - "...therefore, it is clear that the greatest majority of governmental employees within the State of New Jersey are, or may be subject, to some form of residency requirement and that only a few whose functions are not limited to a particular political sub-division, or whose salary is not paid by a particular political sub-division, are exempt." So, this is a bigger problem than just county residency. I think it is also a problem with State employees that must be clarified. I think now is the time to do it.

ASSEMBLYMAN CONTILLO: Okay. You see, it is not my purpose to debate with anyone giving testimony here this evening. Mr. Joseph Lavery is here this evening and he is from Civil Service. I would like to suggest to him that it is not necessary to correct, or comment on, each speaker as he speaks, but possibly, towards the end of the evening, you could come forward and testify and put things in perspective from Civil Service's viewpoint. Okay? Thank you.

MR. HAYTAIAN: Mr. Chairman, I would like to thank you for the right to give testimony. Warren County has a predicament and we would like it solved. The way it will be solved is by the different procedures that I am sure people will testify to tonight or, possibly, in your wisdom, through amendments to the statute, or by abolishing it.

ASSEMBLYMAN CONTILLO: You have no specific recommendations, I take it?

MR. HAYTAIAN: No, at this point I think what we are trying to do is to clarify where we are. Specific recommendations at this point? No. My Freeholder Board did not come to testify on specific recommendations. The reason

for that is because at this point we are enforcing the present rule. Because of the controversy we would like to see, very honestly, all of the counties enforce it, if that is what is going to happen, or, as I indicated, amend it by a grandfather clause, or abolish the law.

ASSEMBLYMAN CONTILLO: Apparently, your position is a little more abrasive in that many of your people are actually out-of-state residents.

MR. HAYTAIAN: Excuse me?

ASSEMBLYMAN CONTILLO: Many of your employees are now out-of-state residents?

MR. HAYTAIAN: No. I stated that approximately 25 out of a work force of approximately 350. Okay? But, it must be clarified.

ASSEMBLYMAN CONTILLO: Okay. Thank you.

MR. HAYTAIAN: Thank you very much.

ASSEMBLYMAN CONTILLO: Are there any other Freeholders here from Warren County? We have three on the list.

MR. HAYTAIAN: They will not be here.

ASSEMBLYMAN CONTILLO: Okay. You spoke on their behalf; you made that quite clear.

Vincent Quick, Director of Ocean County Department of Employee Relations. (no response)

Henry Dinger, Communications Workers of America, Warren County also.  
H E N R Y D I N G E R: Sir, I can read from the prepared statement. You already have a copy of it. I think I will, just to be sure that I don't miss anything. I may interject certain things as I go along.

I agree with the Freeholder-Director from Warren County that Warren County does have a serious problem on its hands. At first, we thought it was just a Warren County problem because Warren County was the first to come up with a local resolution to enforce the latest interpretation of the State statute. I don't think it is going to stop in Warren County. There are 21 counties in the State and I think all 21 are going to find themselves in the same position.

Going to the prepared statement -- Recently, public employees in Warren County became aware of the decision of the Superior Court, Appellate Division, State of New Jersey, which, in effect, the way we see it, has changed the long-running interpretation of the State law regarding the question of residency. This decision, which has prompted the resolution in Warren County, and in some other counties, is having perhaps the most profound negative influence on public employees of any decision in many years. It appears to be also a stepping stone for what may become one of the largest hardships for government agencies.

The law which is the basis for these recent actions, which has already been mentioned - NJSA 11:22-7 - refers to applicants for county and municipal positions being required to be residents of the jurisdiction. The Superior Court decision in Skolski v. Woodcock expanded that interpretation of the statute to include residency as a condition of continuing employment. This change in interpretation obviously places those who have moved from the county of employ in a hazardous position. Certainly, the members of this Committee are aware of the applicable law and subsequent activity. So, maybe some specific examples of the seriousness of the decision can help to being about

a more equitable solution.

Speaking in terms of Warren County, employees were never informed at the time of employment, or subsequent to that, either verbally or in writing, that continued residence was a condition of continued employment. In fact, some of the employees were appointed while residing outside of the County. This apparently was in compliance with existing County policy, as well as the policies of the New Jersey Department of Civil Service at that time.

ASSEMBLYMAN CONTILLO: Because no qualified people were available within the County?

MR. DINGER: I would assume so, yes, sir.

ASSEMBLYMAN CONTILLO: Okay.

MR. DINGER: There were County and State lists. There were employees who had requested permission to move outside of Warren County and were granted that permission after consideration by the appropriate authorities, which in some cases also included State agencies.

Now, I mentioned State agencies because I am an employee of the Warren County Welfare Board. Our operation is subject to review by the Division of Public Welfare. There is a minimum 50% Federal matching funds in our administrative account where all administrative costs are at least - in some cases it is more - 50% Federal monies, with the difference being made up from county funds.

Based on the permission given to these employees after they requested it, an employee - or employees - proceeded to establish residency with the belief that there was no violation of policy and also in the belief that there was no violation of existing laws, as they were then being interpreted. Now, of course, several years later after these arrangements had been made, all that has gone before that is forgotten and the employee is facing a decision between whether or not he keeps his job or his home. And, of course, this is through no fault of his own. He did seek permission. He did receive it.

Those employees who reside outside the County have established themselves in other communities. They have made long-term commitments on such things as mortgages. They have adjusted their children to the local schools and, of course, the local people, as far as being friends. They have joined various civic groups and they have worked long and hard to become active parts of their new communities. These residencies were established with the complete knowledge of the employer, completely above board - it was not hidden - with both the explicit and implicit employer approval. Now it appears that one judge's opinion has changed all of the preceeding.

Employees who now face this dilemma have chosen public service as a career and have tried to do the best job possible. They have dedicated a number of years to the local government and the citizenry of that government. Now they are being told they have to decide between their jobs and their families, a position that is unenviable at best. Most of those employees can not afford to give up their jobs, nor can they afford to seek new employment because of the benefits which they have earned through their years of service. They, likewise, find it difficult to face disruption of their homes and family life in order to maintain those jobs.

Either decision, either to give up the job or to give up the home and move back into the county, will have a deleterious effect on the employee.

If he does decide to give up his home to keep his job, he loses everything he has worked for for a number of years. If, on the other hand, he gives up his job in order to stay in his new home, he loses the benefits and the monetary rewards he has built up over his long years of service. That is the employees side.

The employers side is similar because the employer also loses something in either case. If an employee has to give up a residency he has established in a home and move back into the county, then, of course, that employees is going to lose some of his devotion to his job - as I feel you can understand - because he is going to feel that he was unfairly treated. If the employee is terminated and loses his job to maintain his home, then the employer loses the experience that employee has gained over the number of years he has been there. The employer, of course, also must train new people to fulfill the needs of the service and in counties where there may be a large number of employees affected, you can see that it might cause quite a lot of problems.

With all these items to be lost by both the employer and the employee, the question is, what is to be gained by it? In the end we feel there is nothing really good that can result from the situation, if it continues the way it is. We are opposed to the idea that there should be force imposed upon anyone to reside in a particular geographic area. Preference has always been given, and should continue to be given, to county residents in the appointment of applicants for county jobs. They should also remain open to State and U. S. lists to fulfill the needs of the particular county. But, to force residence on a particular employee, to us, just smacks of a socialistic atmosphere. If there is to be a residency requirement as a condition of employment, it certainly should not be enforced in an ex post facto nature on those who have already been allowed to reside outside the county. At the very least, there should be legislation exempting those individuals who have already openly and with approval left the county, allowing those employees to retain their jobs as well as their homes.

If the policy is to be one where residency must be maintained in the future, then it should be clearly, and in writing, explained to each current employee and also to each employee that is hired from here on out. Doing anything less would be a disgrace to the word democracy and an insult to the the idea of fair play. We, therefore, urge appropriate modifications of the applicable statutes at the earliest possible opportunity. I thank you very much.

ASSEMBLYMAN CONTILLO: I am just curious about one part of your statement. You said that sometimes if we understand a single specific case it helps us to really understand the whole problem. A specific employee was granted permission to leave the county.

MR. DINGER: That is correct.

ASSEMBLYMAN CONTILLO: In that particular case, who was he granted permission by?

MR. DINGER: Okay. He had been a Warren County resident for quite some number of years and, of course, had been an employee for a number of years. He requested permission and decided to build in Pennsylvania. As the Freeholder-Director mentioned, we are right on the boarder with Pennsylvania. He decided to build in Pennsylvania and before he got into it - buying the lot

and so forth - he went to the Welfare Board director and told him what he had in mind and asked if there would be any objection. That was then taken to a Welfare Board meeting and discussed and it is in the minutes that it was approved by the Welfare Board. It was also then referred to the County Freeholders, because at that time they were a superseding type of thing over the Welfare Board and I assume they also approved it because he was never notified that they hadn't. It was also checked with the Division of Public Welfare and we have a copy of a response from them, in writing, which indicates that they could see no reason why there would be any problem with this individual moving outside of the county to Pennsylvania unless the county or the Welfare Board had a specific resolution prohibiting that, which they didn't - and which they still do not have. I am told the interpretation of the law was changed by the Superior Court.

So, that is one specific example. We also now represent, in our county, the Visiting Nursing Service - Public Health nurses. There are several of those individuals affected. One of those people was appointed from outside the county and continues to remain outside of the county. So, these are just a few examples of the situation that we find ourselves in.

One thing I would like to add - we learned about this hearing in a sort of round-about way and if possible in the future, we would appreciate it, if other public hearings are held, if some type of notification were sent to the bargaining representatives for employees. I mean particularly when they apply to employees, or employee situations.

ASSEMBLYMAN CONTILLO: I think we have a very extensive list, plus it was published in all the major, and not so major, newspapers throughout the State.

MR. DINGER: We are still quite a ways out in Warren County.

ASSEMBLYMAN CONTILLO: Specifically, I would suggest to you that you give Mr. Katz your address and you will receive a personal invitation if we have additional public hearings.

MR. DINGER: Okay. Very good, sir. Thank you.

ASSEMBLYMAN CONTILLO: Thank you.

MR. HAYTAIAN: Assemblyman, I have to go. Will we receive a copy of the testimony?

ASSEMBLYMAN CONTILLO: Yes, a copy of the testimony is directed to all those who request it and in your particular case I will take this as a request.

MR. HAYTAIAN: Thank you.

ASSEMBLYMAN CONTILLO: The gentlemen on my left is Mr. Lewis Goldshore. He is with the County and Municipal Government Study Commission and he is an aide to the Musto Commission which, in a general sense, has a deep interest in all these proceedings.

Martin Verp, County Counsel of Passaic County.

We have an Assemblyman from Passaic County on this Committee.

M A R T I N V E R P: I am aware of that.

ASSEMBLYMAN CONTILLO: So, you will have a sympathetic hear.

MR. VERP: I will try not to be repetitious of anything that either has been said or that I was going to mention.

ASSEMBLYMAN CONTILLO: Do you have a prepared statement?

MR. VERP: No, I do not. I was going to make mention of the fact that

I do not have a statement. My purpose, actually, in appearing here is perhaps to, a, bring you up to date with respect to our situation in Passaic County - if you don't already know - and, in addition to that, perhaps to just make several requests in an endeavor to obtain some clarification of our laws.

First, with respect to the situation in Passaic County, not that long ago I had been requested to render an opinion and did so. Very frankly, it recites what the existing state of the law is, both with respect to the 11:22-7 statute and, of course, in addition to the unclassified statute, 48:9-1. On the basis of what I prepared and some investigation by the Freeholders in Passaic County, the governing body took the route of adopting a resolution requiring residency. If you already have a copy, fine. Of course, I would be pleased to furnish you with a copy of it.

ASSEMBLYMAN CONTILLO: This is a copy of your resolution?

MR. VERP: Right.

Bringing it up to date - and this, perhaps, is somewhat of an interesting twist - one of the Freeholders requested a grandfather clause, much the same as has been done with respect to certain municipalities - Newark's ordinance was amended, Paterson's ordinance was amended to include a grandfather clause, and so forth.

ASSEMBLYMAN CONTILLO: Is there a grandfather clause in the Paterson ordinance?

MR. VERP: In Paterson? Yes, sir.

ASSEMBLYMAN CONTILLO: Is there?

MR. VERP: That was amended and if you want that, I will get you a copy of that.

ASSEMBLYMAN CONTILLO: I thought that one expired in September of 1978 - that they would all have to move back into the City of Paterson.

MR. VERP: No, sir, there is a grandfather clause there. That was amended. Before I leave, if you want--

ASSEMBLYMAN CONTILLO: Yes, I would like a copy, because it is a contradiction to my understanding.

MR. VERP: I can show you a copy of that.

ASSEMBLYMAN CONTILLO: Yes. Okay.

MR. VERP: At least I believe that is the status. In any event, one of the Freeholders from Passaic County has requested that. I anticipate, just by our little workshop session this afternoon, that there will be some rather lively debate and perhaps a novel aspect of what will happen next Wednesday -- and I hereby cordially invite you or any members of your committee or any of the aides or persons interested to attend our next public meeting in Passaic County. It is at 4:00 next Wednesday afternoon at our County Building. At this time we will have "Youth in Government" week and the only novel aspect of it is, the Freeholder-Director, today, announced that all the young Freeholders - as it were - will actually be talking about this very subject. We will be entertaining their views and, of course, it might be a little refreshing to see what the young people of our society say.

The few comments I have to make - which I hope will be somewhat constructive, and I trust that you probably already are aware of these things - are, first, with respect to various agencies within municipalities. I think there must be some clarification there, whether it be Housing Authorities,

Parking Authorities, or the like. My interpretation, very frankly, as it now stands with these cases is that they do not appear to be included, for example, in the unclassified statute and with respect to the classified statute, of course, I believe they are.

That is one area. Another area, very frankly, where I think something can be done is with respect to the statute for unclassified officers. Of course, this is hindsight. I am not criticizing the Legislature which enacted the statute, nor the one which amended the statute. But, it is very, very obvious that to talk in terms of officers and not to mention employees -- it is a very difficult distinction and, very frankly, I, as an attorney, would have to say I find a great deal of difficulty with it in giving a legal interpretation or finding precedence. Not that being an attorney is any great shakes, necessarily, but normally we are the people who are called upon to provide the legal guidance to members of the governing body. Frankly, I don't mind admitting that I think it is very difficult for us to do so, although there are some cases dealing with that very subject. Each case varies and I, very frankly, feel that it can be clarified.

Perhaps the last major point that I can make may be of some value. I don't want to comment upon it too deeply because right now the reason you see a thick file is because we are embroiled in litigation with our prosecutor's office. The matter is before the Appellate Division now and unless there is some legislation, of course, it may go to the Supreme Court because there are questions which must be clarified. The Skulski decision and, of course, there is a Mandlebaum case as well which holds the same thing, in essence, was against the Civil Service Department. I am sure the gentlemen sitting in the rear, who is from Civil Service, is familiar with that. That was a 1976 case. In essence this said, "Okay, Mr. Skulski, you, as a county detective, must reside within Bergen County" - that happens to be the particular county in which this case did arise - "because of the fact that you are in a classified position and that is that." Now, the strange part of it is, there are Attorneys General-- There is also a case where a County Investigator does not have to be a resident of the county. Now, all I say is, I find it very difficult to envision and really reconcile what I consider a very artificial distinction done by way of trying to circumvent, or get within, the language of the statute, whereby a county detective must comply with the law and must be a resident. If I may quote the statute - it is just slightly different, one from the other. It says, 11:22, "For all positions where the service is to be rendered in a particular county" - okay? Mr. Skulski was a detective. He is required - and this covers all classified people - and, hence, all county detectives are also required to live in the county. County Investigators, on the other hand, who are unclassified-- The language of the statute - 48:9-1 - reads: "the duties which relate to a county only." There, the case that I am referring to as well as the Attorney General's opinion says, "No, a county investigator's duties are not related to a county only," whereas the Skulski case said, on the other hand, "The service is rendered in a particular county."

ASSEMBLYMAN CONTILLO: Because somewhere along the line of his investigative process he may go to work outside of the county?

MR. VERP: Yes. If you are familiar with-- There is a great deal of argument on that and I don't want to argue, for example, the merits of our

case because there is a whole ball of wax involved with the Attorney General and criminal justice law, and so forth.

But, the point is, if you are familiar with the work of the prosecutor's office - and I am sure you are to a certain extent - I think you can appreciate the fact that any distinction, in essence, between the investigative duties, or powers as such, of a county detective and a county investigator is really non-existent. Any distinction is truly artificial. I am just saying I think this is one additional area which perhaps may not have been given too much thought but which I believe can be clarified if there is any legislation with respect to the matter.

If you have any questions or if I can help you in any way, I will be more than glad to try and answer any questions. I am going to stay around because I want to hear what is being said. I can forward you copies, if you want, of the brief that already exists in our case. That is up to you. Other than that, I have really completed what I want to say. Thank you.

ASSEMBLYMAN CONTILLO: We certainly agree with you. In fact, in our opening statement we indicated the difficulty in trying to determine who, indeed, is an officer and who, indeed, is an employee. It is sometimes a grey area.

MR. VERP: Thank you.

ASSEMBLYMAN CONTILLO: Mr. Rooney, your Director is not here?

MR. ROONEY: He is not here. I am filling in for him.

ASSEMBLYMAN CONTILLO: Mr. Rooney, I guess you will take Mr. Molyneaux's place and you can speak next.

J O H N R O O N E Y: I have a very brief statement that I will read.

In essence the statement is really to indicate the feeling of the Middlesex County Board of Freeholders towards the residence requirements and it offers several recommendations.

One, the Board members feel that wherever possible the employees of the county should be residents of the county and at all times priority should be given to residents.

Two, the Board members, however, feel that serious consideration must also be given to the services which are to be rendered by the county. These services affect all residents of the county and, therefore, have a greater significance and carry a greater weight in determining the hiring practices of the county. This service is particularly needed in the area of health and social services as well as other varied professional services.

In view of the second position, the Board feels that the statutes should be amended to contain a proviso which would effecuate the following:

a. Permit the establishment of standards by Civil Service to enable a governing body to secure the necessary employees to render services that must be rendered to the residents of the county or municipalities involved.

b. Permit the Division of Local Government to establish standards for those employees who are not classified under Civil Service.

Three, the Board is aware that certain practices that exist at the present time allow the hiring of employees who are not residents of counties or municipalities. It is the opinion of the Middlesex County Counsel and, I believe, other County Counsels that this practice is not, in fact, allowed by law even though it may be a sound practice and, therefore, the Middlesex County Board of Chosen Freeholders recommends an amendment in the law so that there

will be compliance with the law in hiring of employees who are not county residents.

ASSEMBLYMAN CONTILLO: I am not sure what you mean. Can I have a little clarification on a and b as to standards. What do you mean by that? In other words--

MR. ROONEY: Well, that the guidelines be changed - be more specific as to the employees who are exempt from the residency requirements.

ASSEMBLYMAN CONTILLO: You mean a definition between officer and employee?

MR. ROONEY: Yes. A and b really separate classified and unclassified employees.

ASSEMBLYMAN CONTILLO: Are you saying by standards to determine--

MR. ROONEY: Give us the guidelines - establish the guidelines - under which we must operate, because presently there is an awful lot of confusion, as some of the testimony before me has indicated.

MR. KATZ: Do you simply want the Division of Local Government to define who is an officer and who is an employee?

MR. ROONEY: Yes. They would determine it in areas of unclassified employees who do not fall under the jurisdiction of those who are covered under Civil Service. So, you would have two distinct bodies making that distinction. Civil Service, naturally, would be the agency that would make the determination for those employees covered by Civil Service. The other would be the unclassified - that determination would be made by the Local Government Services.

ASSEMBLYMAN CONTILLO: But we also have unclassified Civil Service.

MR. ROONEY: Yes.

ASSEMBLYMAN CONTILLO: I think we are all looking for a better definition of the law.

MR. ROONEY: Clarification so that we can operate effectively within the framework of the law.

ASSEMBLYMAN CONTILLO: Okay, Mr. Rooney.

MR. ROONEY: Thank you.

ASSEMBLYMAN CONTILLO: Is there anyone here who would like to testify? We have gone through all the names of those that notified us in advance that they were going to testify. So, if there is anyone else here who wishes to testify, come forward now.

Mr. Joseph Lavery, would you like to comment on anything that may not be exactly accurate, or would you like to give us some testimony that will help us along?

J O S E P H L A V E R Y: Yes, I would. I am Joseph Lavery. I am Director of the Division of Hearings and Regulations for the Department of Civil Service. S. Howard Woodson, President of the Commission sent me here at the invitation of your aide to answer any questions that you might have and since I have heard the testimony that preceeded me, I do have a couple of comments.

In Skulski vs. Woodcock, we have heretofore uniformly interpreted 11:22-7 simply to mean that at the closing date for receiving applications for examination you must be a resident of the political sub-division - county, school district, municipality. Skulski vs. Woodcock, when it came down, generated a lot of questions to us. We, in turn, generated a lot of questions to the Office of the Attorney General, who, in turn, verbally told us that it would not change our present interpretation. Mr. Verp was good enough to show

me, again, a copy of the case. There seems to be a considerable confusion and question about whether or not Skulski would change our interpretation consequently. I will return to President Woodson and suggest that we ask for a formal written opinion from the Office of the Attorney General to let us know just where we stand. We were not a party to that case. The Mandlebaum case that was cited was rejection of an application for being outside the political sub-division. That is consistent with our view of the statute.

If Skulski is read the way it has been here tonight, this gives us the responsibility to enforce, as I understand it, continued residency ordinances. That has not been our position. I don't know that it would be our position, absent further advice from the Office of the Attorney General.

In the case of the 12 month prior residency requirement for state employees, mentioned by the Freeholder from Warren County, that was struck down by prior U. S. Supreme Court cases, indirectly. But, we have formal advice from the Office of the Attorney General that is promulgated opinion, number thirteen of November 7, 1974, which states that prior durational residency requirement of 12 months is unconstitutional. Consequently, we no longer enforce that. We do test outside municipalities and counties and school districts when it is determined that it is impossible to obtain applicants for a particular position.

And, finally, I should mention that although you did not want to discuss persons who were exempt from residency, which I presume to mean police and firemen, we previously had supported legislation - and in fact we sent over a draft - that would permit municipalities - especially in the larger cities - to enact ordinances for residency. The reason for that was to effect affirmative action purposes - namely, in the City of Newark residency would be useful to enlist Black and Hispanic applicants for Civil Service examinations.

ASSEMBLYMAN CONTILLO: Well, we didn't want to bring it into the picture because we think that we have at this time a large enough problem to solve without setting fire to the State all at one time. We intend to direct ourselves to the one problem.

However, I have no problem if you want to enlighten me as to just what you meant when you said residency requirements. In other words, the statute, the way I read it, simply says you have to be living in the political sub-division when you take the Civil Service exam.

MR. LAVERY: That is how the Civil Service Commission interprets it.

ASSEMBLYMAN CONTILLO: Well, that is what it says. I mean, that is what the law says. It pretty much says that, right?

MR. LAVERY: Limit the eligibility of applicants.

ASSEMBLYMAN CONTILLO: Yes. So, it doesn't direct itself to where you live after you have the job.

MR. LAVERY: Right.

ASSEMBLYMAN CONTILLO: Which seems foolish. In other words, at this point we must, I think, get into that to determine it and clarify it. Did you direct yourself at grandfathering people or what was the position of Civil Service as to people who now live outside of those political sub-divisions?

MR. LAVERY: Well, we understood 11:22-7 to terminate our responsibility for its enforcement at the time the applicant put in his papers. Once he was appointed, since it is a municipal residency ordinance, we would presume - since

it is a municipal ordinance - that it was valid. I think our tacit understanding was that it was the municipal law that gave the municipalities authority to require continued residence - the Trainer case, Smith vs. Newark, etc. We did not see us as the agency requiring all persons to continue employment. Skulski is raising the question of whether or not that is a correct interpretation of 11:22-7. Mandlebaum is simply a case where a person was rejected at the time of closing. We never got to the issue of whether or not they have to continue living in the municipality. I hope I am making myself clear.

ASSEMBLYMAN CONTILLO: Kind of.

MR. LAVERY: Once the person puts in his papers at the closing date our interest in the matter ceases. We would certainly uphold any removal or failure to comply with the residency ordinance because of the many cases that say residency ordinances are legal. But, we would take no affirmative step. If I understand the arguments on Skulski correctly, 11:22-7 now requires that there be an ordinance. This is the basis, not Title 40 or 40a. If that is so, the question arises to what extent must Civil Service enforce this section of the statute? Must we now go beyond saying we are only concerned up to the time of application? In addition, it raises the question of whether or not we can now test outside in face of a residency ordinance when there are not enough applicants, unless you get away from the municipality, perhaps.

ASSEMBLYMAN CONTILLO: Before we started the hearing I said that was one of the things we realized. Not only the problems, but then enforcing any solution one might come up with is also a part of this.

MR. LAVERY: As I said, I am sure we will be able to obtain advice from the Attorney General as to the extent Civil Service is involved in this, at least by way of enforcement and also does it have a bearing on whether or not we can test outside in the face of an ordinance without a counter-ordinance at least waiving that requirement.

ASSEMBLYMAN CONTILLO: Well, obviously something is going to have to be done because there are many areas where - small areas - you cannot find enough applicants who want the job within a geographical limit. So, just common sense is going to indicate we have to develop a device to permit you to test on a wide area so jobs can be filled.

MR. LAVERY: We do that now in a kind of ad hoc administrative interpretation. If you can't get the people, the business of the government must proceed. There are cases to that effect and we do it on those cases and say we now have to test outside.

ASSEMBLYMAN CONTILLO: You would prefer a--

MR. LAVERY: We would like it made explicit.

ASSEMBLYMAN CONTILLO: I don't think there is anyone who would oppose that provision. That may be one of the few things that we discuss that no one will oppose. I don't see anyone opposing the idea of testing outside--

MR. LAVERY: No.

ASSEMBLYMAN CONTILLO: It may be the one area where we could start, where we have total and universal approval.

Do you have now, or could you develop a specific suggestion, or distinction between officers and employees?

MR. LAVERY: Officers and employees is a trap for the unwary, to say the least. There are a number of law review articles and schools - Rutgers - that try to distinguish, and I think further cloud the issue from my own point of view, an officer and an employee. This is not something that we too often encounter as a problem simply because we deal with classified employees, in the main, and our concern is whether or not they are classified. If they happen to be, concurrently, an officer or an employee it is a matter of vast indifference to us, thank God.

ASSEMBLYMAN CONTILLO: You were really directing yourself to non-Civil Service? We realize your primary concern is Civil Service. Our primary concern is--

MR. LAVERY: I know the police officers are considered to be officers, even though we think of them, more or less, as just a regular classified employee. That much I am fairly firm on. They are officers. That is why I thought perhaps Skulski really had in mind the fact that being a police officer-- It might be an officer under Title 40 and 40a residency requirements. But, that is beyond the scope of our authority to really give you advise on.

ASSEMBLYMAN CONTILLO: Thank you very much, Mr. Lavery.

If anyone else would like to be heard, please come forward. (no response)

Since there is no one else, I will now close this public hearing. I want to thank everyone who testified here this evening. We will distribute this information to the Committee members who are not here and any other interested party. The testimony will be available. Thank you.

(hearing concluded)





STATE OF NEW JERSEY  
DEPARTMENT OF HIGHER EDUCATION  
TRENTON, NEW JERSEY

OFFICE OF THE CHANCELLOR

October 26, 1977

The Honorable Paul J. Contillo  
Chairman  
Assembly County Government Committee  
State House  
Room 92  
Trenton, New Jersey 08625

Dear Assemblyman Contillo:

I am pleased to respond to your invitation to comment on the issue of residency for county officers and employees as it impacts on higher education in this State. This subject is of greatest concern to the county colleges of our higher educational system. The county colleges are a valuable asset to New Jersey's system of higher education. The academic excellence of their employees must be the primary consideration in hiring.

A residency requirement that would require a prospective employee to live in a limited geographic area before hiring would be inappropriate. Due to the complexity and diversity of courses that colleges typically offer, a college seeks qualified applicants on a national or regional basis. Affirmative action obligations pose further complications to the recruitment of personnel with geographical limitations. This type of requirement would seriously undermine the quality of our county colleges.

A more common form of residency law requires that employees once hired, must move within the confines of a county within a given time period. Our colleges would still be adversely effected by such a requirement. Institutions of higher education compete on a national level for employees. While salary is one consideration, other factors play important roles in an individual's employment decision. A residency requirement in this form would require an individual to displace his family, perhaps only for a distance of a few miles, with all of the attendant difficulties of spousal employment and changing school districts for the children. This would be an extremely negative influence on an individual's employment decision.

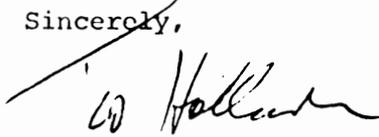
The Honorable Paul J. Contillo

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I would urge that if the Legislature intends to require county residence for county employees, that the institutions of higher education be exempted from this restriction.

Sincerely,

A handwritten signature in cursive script, appearing to read "T. Edward Hollander". The signature is written in dark ink and is positioned below the word "Sincerely,".

T. Edward Hollander  
Chancellor

REMARKS BY FREEHOLDER-DIRECTOR JEREMIAH F. O'CONNOR

LEGISLATORS:

ON BEHALF OF THE BERGEN COUNTY BOARD OF FREEHOLDERS,  
MAY I TAKE THIS OPPORTUNITY TO WELCOME YOU TO OUR CHAMBERS.

I BELIEVE IT IS APPROPRIATE ENOUGH FOR YOU TO REVIEW  
THE PRESENT CONDITION OF THE LAWS RELATING TO REGULATIONS  
ON RESIDENCY REQUIREMENTS FOR EMPLOYEES OF POLITICAL  
SUBDIVISIONS. MY REMARKS WILL BE SHORT.

BERGEN COUNTY HAS NO REGULATION PROHIBITING THE HIRING  
OF OUT-OF-COUNTY RESIDENTS, NOR DO WE HAVE ANY PROVISION  
FORCING PEOPLE TO MOVE INTO THE COUNTY WHEN HIRED OR TO  
REMAIN LIVING HERE AFTER BEING HIRED.

ON THE OTHER HAND, WE HAVE, THIS YEAR, PASSED A RESOLUTION, WHICH I AM ATTACHING TO MY TESTIMONY FOR YOUR PERUSAL. THE RESOLUTION CALLS FOR TESTING OF CIVIL SERVICE OPPORTUNITIES TO BE LIMITED TO LOCAL RESIDENTS, WHERE POSSIBLE, AND CALLS FOR THE AWARDING OF ALL OTHER JOBS AND POSITIONS, NOT WITHIN THE REALM OF CIVIL SERVICE RESTRICTIONS, TO BE AWARDED TO BERGEN RESIDENTS WHERE A SUITABLE APPLICANT, IS AVAILABLE. WE HAVE RESTRICTED OURSELVES TO RETAINING OUT-OF-COUNTY EMPLOYEES ONLY WHERE LOCAL TALENT IS UNAVAILABLE OR IS UNDISCOVERED.

OUR OBJECTIVE, OF COURSE, IS TO HIRE BERGEN RESIDENTS, BUT NOT TO RESTRICT OURSELVES WHEN A POSITION REQUIRING UNIQUE SKILLS CAN BE FILLED SATISFACTORILY ONLY BY SOMEONE WHO COMES FROM SOMEWHERE ELSE. IN THE FEW INSTANCES WHERE WE HAVE HIRED OUT-OF-COUNTY RESIDENTS, THEY HAVE BEEN ENCOURAGED TO MOVE TO BERGEN.

THERE ARE SEVERAL SITUATIONS WHERE COUNTY AGENCIES HAVE INDEPENDANT AUTHORITY AND WHO HAVE OPTED FOR OUT OF COUNTY EMPLOYEES. THE PROSECUTOR, THE COMMUNITY ACTION PROGRAM, THE COUNTY HOSPITAL, THE COUNTY COLLEGE, AND OTHER AGENCIES WITH VARYING DEGREES OF AUTONOMY MAKE THEIR OWN CHOICES, AND IN THOSE CASES, AS A RULE, WE HAVE OPTED TO ACCEPT OUT OF COUNTY EMPLOYEES, WHEN THE ALTERNATIVE IS TO EXERCISE QUESTIONABLE POLITICAL INFLUENCE OVER INDEPENDENT AGENCIES.

SO, WE WANT A BERGEN RESIDENT IN EVERY BERGEN JOB, SO LONG AS THE HIRED INDIVIDUAL IS ABLE TO GIVE THE PUBLIC THEIR MONEY'S WORTH.

THE STATE LAWS ARE NOT QUITE CLEAR AND THE CONSTITUTIONAL QUESTIONS ARE EQUALLY DEBATABLE.

FOR THOSE REASONS, LEGISLATIVE REVIEW MAKES SENSE TO US, AND WE ARE PLEASED THAT YOU HAVE CHOSEN TO TAKE UP THE SUBJECT AT THIS TIME.

I GREW UP IN NEW YORK CITY WHERE THE LYONS LAW WAS IN EFFECT FOR SOME YEARS. AS A NON-LAWYER, I NEVER QUESTIONED THE IDEA THAT THE CITY COULD REQUIRE ITS EMPLOYEES TO LIVE IN TOWN, ALTHOUGH FINDING ADEQUATE HOUSING AND SATISFACTORY LIVING ENVIRONMENT WAS NOT AN ISSUE IN THOSE DAYS. HOWEVER, I COULD NEVER UNDERSTAND HOW THE CITY COULD FORCE A POLICEMAN TO LIVE IN ONE PLACE, WHILE A SCHOOLTEACHER COULD LIVE WHEREVER HE OR SHE CHOSE. I ALWAYS THOUGHT THERE WAS SOMETHING DISCRIMINATORY ABOUT THAT. I AM AWARE OF THE COUNTER ARGUMENTS, BUT I ALWAYS HAD RESERVATIONS ON THE BASIC FAIRNESS QUESTION.

MY HOPE IS THAT THE LEGISLATURE, IN ITS WISDOM, WILL DEVISE A SOLUTION THAT ALLOWS BERGEN COUNTY TO HIRE BERGEN RESIDENTS, WITHOUT COMPETITION FROM OUT-OF-COUNTY RESIDENTS, AND AT THE SAME TIME MEETS CONSTITUTIONAL RESTRAINTS, AND ALLOWS ELECTED OFFICIALS THE RIGHT TO HIRE INDIVIDUALS WHO CAN DO THE JOB.

ALTHOUGH HE APPEARS TO HAVE MISSED THE FILLING DEADLINE, THE ELECTION OF KING SOLOMON TO THE LEGISLATURE MIGHT BE OF VALUE TO YOU AS YOU PROCEED WITH YOUR DELIBERATIONS.

LET ME FINISH BY SAYING THAT WITHIN THE LIMITS OF THE LAW AND THE CONSTRAINTS OF EFFECTIVE GOVERNMENT, WE WANT TO BE ABLE TO DEAL WITH THE UNEMPLOYMENT PROBLEM, WHICH CONTINUES TO AFFECT URBAN COUNTIES BY ALL THE MEANS AT OUR DISPOSAL. ONE OF THOSE MEANS IS TO BE ABLE TO SPEND OUR LOCALLY RAISED TAX MONEY TO PROVIDE LOCAL SERVICES THROUGH LOCAL PERSONNEL.

THANK YOU.

