

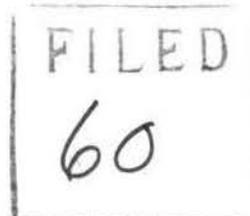
RESIDENCE:
FIRE PROTECTION DISTRICTS:

A fire protection district may enact a rule or regulation requiring all future firemen to reside within the fire protection district.

OPINION NO. 60

May 1, 1972

Honorable Earl L. Schlef
Representative, District 28
Room 404, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Schlef:

This is in response to your request for an opinion from this office as follows:

"May the Board of Directors of a Fire Protection District operating in St. Louis County, pursuant to Chapter 321 of the Revised Statutes of Missouri, enact Rules and Regulations, which would provide that all future firemen engaged by the District shall be residents of the District."

Section 321.220, RSMo 1969, defines the powers of the fire protection board and provides in part as follows:

"For the purpose of providing fire protection to the property within the district, the district, and on its behalf the board, shall have the following powers, authority and privileges:

"(9) To hire and retain agents, employees, engineers and attorneys, including part-time or volunteer firemen,

* * *

"(12) To adopt and amend bylaws, fire protection and fire prevention ordinances, and any other rules and regulations not in conflict with the constitution and laws of this state, necessary for the carrying on of the business, objects and affairs of the board and of the district, and refer to the proper authorities for prosecution any infraction thereof detrimental to the district. . . ."

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A fire protection board is given express authority to hire and retain the necessary employees for the performance of the duties of the fire protection district. Such employees are public employees, and your question concerns the right and authority of the fire protection board to make rules and regulations as to their qualifications.

In State ex inf. McKittrick ex rel. Ham v. Kirby, 163 S.W.2d 990 (Mo. banc 1942), the issue before the court was the validity of certain provisions of the charter of the City of St. Louis governing civil service employees. Some of the charter provisions complained of were those exempting employees at the time of the enactment of the charter from the provisions of the charter, exempting certain classes of employees from its provisions who were employees at the time of the enactment of the charter provision, and prohibiting political activity of the employees under the Civil Service Act. In discussing the rights of an individual in obtaining public employment, the court stated l.c. 995-996:

"Relator also contends that the above cited provisions of the amendment are violative of the due process of law clause of the 14th Amendment to the Constitution of the United States. It has been uniformly held that a public office is not property in the constitutional sense and that the right to be appointed to a public office is not a natural or property right within the protection of the due process clause. State ex rel. v. Davis, 44 Mo. 129; State ex inf. Crow v. Evans, 166 Mo. 347, 66 S.W. 355; State ex rel. v. Kansas City, 310 Mo. 542, 276 S.W. 389; Motley v. Callaway County, 347 Mo. 1018, 149 S.W.2d 875; People v. Evans, 247 Ill. 547, 93 N.E. 388; Crampton v. O'Mara, 193 Ind. 551, 139 N.E. 360.

* * *

"Relator further attacks these provisions on the ground that they constitute an interference with freedom of speech as guaranteed to the citizens of this state by § 14 of Art. II of the Missouri Constitution and the due process clause of the 14th Amendment to the Constitution of the United States. A sufficient answer to this contention, as well as to all of relator's contentions in regard to these political restrictions, is found in the language

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of the late lamented Justice Holmes in *McAuliffe v. Mayor of New Bedford*, 155 Mass. 216, 29 N.E. 517: 'The petitioner may have a constitutional right to talk politics, but he has no constitutional right to be a policeman. There are few employments for hire in which the servant does not agree to suspend his constitutional rights of free speech as well as of idleness by the implied terms of his contract. The servant cannot complain, as he takes the employment on the terms which are offered him. On the same principle the city may impose any reasonable condition upon holding offices within its control.'

It is our opinion no person has a constitutional right to be employed or appointed as a fireman; and, if employed or appointed, he is subject to such reasonable rules and regulations regarding his employment and tenure of employment as the fire district may promulgate regarding residency of firemen.

The statute concerning fire protection districts is silent insofar as the question of residency of the employee is concerned. The legislature has seen fit by statute in many instances to require municipal employees of certain cities to be residents of the city. Certain officers and employees of fourth class cities are required to be residents of the city under Section 79.250, RSMo 1969. Certain officers and employees of a third class city are required to be residents of the city under Section 77.380, RSMo 1969. In *State ex rel. Reardon v. Mueller*, 388 S.W.2d 53 (St.L.Ct.App. 1965), the court held that a residency requirement imposed by the charter of the City of St. Louis requiring a city alderman to be a resident of his ward was a valid requirement and mandatory. These statutes would not be valid if the residency requirement violated any constitutional right of an individual regarding his employment.

Since there is no statute requiring employees of a fire protection district to be residents of the district, the question remains as to whether the board of directors of the fire protection district has the authority to require all future employees of the fire protection district to be residents of the district and do so by regulation. It is our opinion that the board of directors may require firemen employed by them in the future to reside within the district.

In regard to whether the board may by a regulation require all future employees of the fire protection district to be residents of the district, it is our opinion that they may do so.

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In 73 C.J.S., Public Administrative Bodies and Procedure, paragraph 95, page 416, the general rule of law is stated as follows:

"A public administrative officer ordinarily has authority to make or promulgate such rules and regulations as may aid in enforcing or carrying into effect the law or statute which he is administering. The measure of his power it [sic] the amount adequate for the purpose for which it was delegated, and his discretion in promulgating regulations depends, to some extent, on the subject matter of the legislation which he is attempting to implement. In exercising his power to make or adopt rules and regulations a public administrative officer should not go beyond the authority vested in him, nor may he regulate matters expressly taken or removed from his supervision by the legislature. He may make or adopt only rules and regulations which will carry into effect the will of the legislature as expressed by the statute, and he may not enact a law under the guise of making an administrative rule or regulation."

Under the above-quoted statute, a fire protection district has express authority to hire and retain necessary employees for the performance and carrying out of the business of the fire protection district. It is also given authority by statute to adopt any necessary rules and regulations necessary for the carrying on of the business, objects and affairs of the district. We believe that a rule and regulation requiring all future employees to live within the fire protection district does not infringe upon any fundamental constitutional right of an individual to live where he wishes to live or any other fundamental right in regard to public employment, and we consider such a rule as a reasonable, valid regulation.

CONCLUSION

It is the opinion of this office that a fire protection district may enact a rule or regulation requiring all future firemen to reside within the fire protection district.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Very truly yours,



JOHN C. DANFORTH
Attorney General