



EXECUTIVE OFFICE

**MEMO**

Richard Simmons, Jr.

April 11, 1978

TO: Group Executives  
Mayor's Executive Staff

RE: Chief's Staff - Residency Unit

For your information, I think that it is worth your while to read this history on the issue of residency insofar as the Police Department is concerned.



*Palmer*  
*(in)*



Department of Police  
Detroit, Michigan 48226

Coleman A. Young, Mayor  
City of Detroit

March 31, 1978

The Honorable City Council

Re: Chief's Staff - Residency Unit

In anticipation of our meeting on Thursday, April 6, 1978, I am pleased to have the opportunity to discuss the current status of the Chief's Staff - Residency Unit. The commitment of resources and results to date have indicated a response on the part of the department that reflects the high priority that the Mayor of the City of Detroit has placed on this subject.

The goal of the Residency Unit is to assure the Chief of Police that all members of the department are residents of the City of Detroit and are in compliance with the Residency Requirement. Through the attainment of the following objectives, it is certain that this goal shall be achieved:

1. Produce quality cases that have been thoroughly investigated.
2. Assign and investigate all existing complaints.
3. Decrease the amount of time spent from original complaint to case closure.
4. Provide clear, understood and accepted guidelines to all members of the department on the definition of Residency.

5. Actively seek out those members of the department who are not in compliance with the Residency Requirement.
6. Provide assistance to the Corporation Counsel's Office in the prosecution of residency violators.

In order to present to you a review of this matter, this report has been indexed to include the following:

- A. History of the Department's Residency Requirement, the formation of the unit and its current status as a unit assigned to the Chief's Staff.
- B. Statistics
- C. Recommendations.

#### A. DEPARTMENTAL HISTORY ON RESIDENCY

As early as 1944, the Rules and Regulations of the Detroit Police Department have required that all members of the Department shall reside within the city limits. Although the police manual and later General Orders have been modified and reprinted several times, the residency requirement has remained in effect. Applicants for the position of police officer were required to establish residency status prior to appointment.

In 1965, as an aid to recruiting, the rule affecting applicants was modified to allow non-residents to be appointed. The non-residents were then required to establish Detroit residency status prior to the end of their one year probationary period. Those who failed to do so were subject to dismissal. This rule has once again been modified so that presently applicants are once again required to establish residency sixty (60) days prior to application.

In May of 1968, the Detroit Common Council enacted City Ordinance 327-G, which requires all police officers (and other city employees) to be Detroit residents.

Prior to the enactment of this ordinance, Ray Girardin, the Detroit Police Commissioner, granted permission to thirty-three members of the Department to reside outside the city limits of Detroit. Eight of these officers are still members of the Department. Although this residency permission was tested by the courts, the courts ruled in favor of those officers who were granted permission to reside outside the corporate city limits of Detroit.

In May of 1969, the Detroit Police Officers Association filed suit in Circuit Court for a declaratory judgment that the ordinance and the rule governing residency was unconstitutional and invalid, and sought injunctive relief. The Circuit Court ruled for the Detroit Police Officers Association and ruled null and void that part of the ordinance which required police officers to live within the city limits. The city appealed this judgment to the Appellate Court.

During this period of litigation, some officers who obviously expected a final court decision favorable to them, moved their families and established a residence outside the city limits.

Before a decision was made by the Appellate Court, the city applied directly to the Michigan Supreme Court for leave to appeal prior to a decision by the Court of Appeals. The Michigan Supreme Court granted this request and subsequently heard the appeal itself. The Michigan Supreme Court reversed the Circuit Court, declaring that the ordinance was constitutional in its entirety.

The Detroit Police Officers Association attempted to appeal this case to the United States Supreme Court, but this court failed to grant certiorari for lack of jurisdiction.

In 1971, during the pendency of the DPOA suit, the Detroit Fire Department proceeded under the Civil Service Rules against a firefighter, Dale Grable. Grable was found guilty of violation of the Residency Requirement, although he argued he was a resident but his family was not. The firefighter was ordered dismissed within sixty days if he did not establish Detroit residency. In his final appeal, the courts ruled that firefighter Grable was a resident and that "a spouse may establish a residence apart from his family".

Shortly after the residency ordinance was tested for its constitutionality in the courts and found to be valid, a Residency Unit was formally created within the Personnel Division of the Administrative Services Bureau. (Notation 72-188) Fixed responsibility was placed on this unit for the maintenance of files as well as the investigation of cases of non-compliance with the Residence Requirement. A Certificate of Residency form (38 A) was updated as well as a formal Notification of Residency Form prepared, (573-A) which informed a member that he/she has until September 15, 1972 to comply with the residency requirement or face appropriate disciplinary action.

Effective September 15, 1972, the terminal date of non-compliance by Commissioner John F. Nichols, the Residency Section changed from a compliance unit to an investigative unit. Officers were catalogued on complaints alphabetically, and investigations were instituted based on the earliest date of complaint, coupled with the rank of the alleged non-resident to insure the presence of impartiality.

Based on an opinion from the Corporation Counsel's Office, Police Commissioner John Nichols ordered those officers who received previous permission to reside outside the city, to move into the city within sixty days or face appropriate disciplinary action. These officers appealed this decision by Commissioner Nichols to the Courts. The Courts later ruled that those officers who were granted prior permission to reside outside the city limits of Detroit could remain.

By September 28, 1973, seven police officers had been tried and dismissed from the department as residency violators. Two other members had been tried and suffered the loss of leave days. At this time, Sergeant Eugene Caviston was cited as a residency violator and taken to a trial board. During his hearing, Sergeant Caviston argued that like Grable, he was a resident of the city of Detroit, but his family was not. After being judged guilty at his trial board, Caviston appealed to the Circuit Court. On February 5, 1975, Judge Blair Moody, Jr., ruled that Sergeant Caviston was not a residency violator but had convinced the court that he had "normally ate, slept and maintained household effects at his Detroit residence, the majority of his time". This decision by Judge Moody was not appealed by the city.

Shortly before the Caviston decision was rendered, the Residency Unit was transferred from the Personnel Administrative Division to the Internal Affairs Section. (Notation 74-24)  
The unit continued to investigate complaints.

NOTE: Upon their inability in 1972 to resolve a number of economic and non-economic disputes at the expiration of their last previous collective bargaining agreement, the City and the DPOA entered into compulsory arbitration under Act 312, the Police and Fireman Compulsory Arbitration Act. Although the economic issues were settled, the key non-economic issue, residency was not settled. In February of 1974, the Michigan Supreme Court ruled that residency is a mandatory subject of bargaining under the State Public Employment Relations Act, (PERA). Shortly after this decision, the DPOA, on February 20, 1974, made a formal demand upon the city to "meet and bargain in good faith regarding the residency of police officers". Both parties were unable to resolve the residency dispute through negotiation. On June 14, 1974, the DPOA requested binding arbitration under Act 312.

While the arbitrators were attempting to resolve the residency issue, the Residency Unit ceased prosecution of alleged violators, but continued to investigate complaints.

On February 20, 1975, the Residency Unit of the Internal Affairs Section was disbanded. Deputy Chief George Bennett, Commanding Officer of the Internal Controls Bureau, stated he had disbanded this unit because of its ineffectiveness in the past and because of the ongoing court action. Personnel of this unit were reassigned within the Internal Controls Bureau; cars and equipment were absorbed into their inventory while the Residency Unit files were maintained by the Administrative Unit of the Internal Affairs Section. Residency investigations ceased.

On September 5, 1975, Harry H. Platt, the Chairman of the Arbitration Panel hearing the residency case ruled in the favor of the city's position that "all members of the bargaining unit shall be residents of the City of Detroit".

In November of 1975, the Residency Unit was re-activated by Chief of Police Philip G. Tannian and transferred to the Chief's Staff from the Internal Controls Bureau. Because of

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the high priority placed on the issue of residency by Coleman A. Young, the Mayor of the City of Detroit, the Chief of Police was certain that by having this unit under his close supervision, it would surely receive the special attention that it warranted. The unit was restaffed, and vehicles and equipment provided as well as facilities at 8045 Second, Detroit.

In order to establish integrity within the command structure of the Police Department, all command officers were subjected to a discovery investigation of their stated residence as being within the corporate city limits of Detroit. These initial investigations led to two command officers retiring within twenty-four hours because of their non-compliance. Recent and pending promotions of members of the Department have also been verified to insure compliance. Since the Residency Unit was incorporated into the Chief's Staff, more than two hundred members have been verified as being residents.

At the conclusion of the residency verifications of command officers, the oldest complaints (1972) were assigned for investigations.

During the October Term of 1975, the United States Supreme Court granted a motion to dismiss or affirm on appeal from the Commonwealth Court of Pennsylvania a case concerning Francis McCarthy, a Philadelphia firefighter who had been dismissed for violating the Philadelphia residency requirement. McCarthy argued that the City of Philadelphia could not prescribe as a qualification for employment an appropriately defined and uniformly applied bona fide continuing residency requirement and that his right to interstate travel was also jeopardized because of this requirement. The appellant also questioned the constitutionality of the administrative process of the Philadelphia Civil Service Commission's decision that was adduced from McCarthy's own testimony. In upholding the actions of the Civil Service Commission of Philadelphia, the Court pointed out that "the most persuasive portion of the entire testimony that the appellant gave at the hearing before the Civil Service Commission were the facts that his wife and family lived in New Jersey; that his children attended local schools in New Jersey, and that the appellant was still maintaining the marital relationship with his wife. Regardless of whether appellant vigorously argues that his bona fide residence is in a room at his mother's house, the inferences to be derived from the above mentioned facts are very

persuasive in affording a conclusion that the appellant was not a bona fide resident of the City of Philadelphia". The findings of the Civil Service Commission were upheld by the Supreme Court.

Shortly after the Philadelphia-McCarthy Supreme Court Case, the Chief of Police Philip G. Tannian, requested that all residency "open" complaints against members of the department be immediately investigated for available records which would indicate a subject's residence. Within weeks, all open cases had been checked to ascertain an alleged residency violator by property ownership, tax records, postal authorities, voter's registrations, public utilities, department personnel records, as well as the Secretary of State records on vehicles and licenses. The minimum surveillance period of one or two week near twenty-four hour intensive surveillance was ruled out in favor of "spot observations" to ascertain the presence of the member, his wife or children.

On June 11, 1976, the Detroit Police Board of Commissioners issued General Order 76-76, which were rules governing proceedings and appeals before the Board of Police Commissioners. Section III of the General Order dealt with an Eligibility for Employment Proceeding in which a member of the Department could be determined to be ineligible for employment because of failure to comply with the residency requirement. This general order pointed out that the Chief of Police shall make a finding of eligibility or ineligibility for employment based on a preponderance of the facts which had been available to him. General Order 76-76 also pointed out that these proceedings were of a non-disciplinary nature and that a suspended member had ten days in which to appeal this decision by the Chief to the Board of Police Commissioners.

In the afternoon of June 11, 1976, seventy-eight (78) department members were suspended as residency violators under the provisions of General Order 76-76, Eligibility for Employment Proceedings, Residency.

The Detroit Police Officers Association (DPOA), and the Lieutenants and Sergeants Association (LSA), recognized bargaining units for these affected members, immediately appealed to Wayne County Circuit Court to overturn these suspensions stating violations of the past practices of the Department, rules and regulations of the Department concerning the disciplinary process, and the contractual agreements between the City of Detroit and their bargaining agencies, the DPOA and the LSA.



On June 21, 1976, Judge Thomas J. Foley of the Wayne County Circuit Court ruled that the suspended members are entitled to disciplinary hearings before a member can be discharged. An agreement was later reached as to what form of disciplinary process would be taken by the suspended member.

Attorney J. Douglas Korney, representing the DPOA, requested that the fifty-four (54) suspended police officers bypass the trial board hearings and file grievances so an independent arbitrator could determine guilt.

Attorney Armand Bove, representing the LSA, requested that police trial boards be scheduled immediately for the twenty-three (23) suspended members of the Lieutenants and Sergeants Association.

Although all of the suspended members were originally scheduled for trial boards (June 28, 1976), this scheduling was changed to conform with the requests of the LSA and the DPOA.

By July 13, 1976, all of the suspended members had been rescheduled for either a police trial board or an arbitration hearing.

Because of a delay, the first trial board began on July 26, 1976, with the subject member being Sergeant Wayne Smith, File #73-51, of the Fourth Precinct.

The first arbitration board began its hearing on August 12, 1976. The arbitrators, Richard Kanner and Dr. E.J. Forsythe, were to divide the DPOA cases and act as chairmen of the arbitration panel. The city's representative was Lewis Barr of the Labor Relations Section, while the DPOA's representative was David Watroba, the vice-president of the DPOA.

August 24, 1976, Armand Bove, the attorney for the LSA, once again made application to Circuit Court, this time citing an undue delay on the city's part in the scheduling and the processing of trial boards. Judge Thomas J. Foley ruled that the city violated the officer's constitutional right to due process by delaying the hearings an unreasonable amount of time. The judge also ruled that those members of the LSA shall be reinstated with full back pay and benefits. These members had been without pay and insurance benefits and also ineligible for unemployment compensation since the date of their suspension.

On September 2, 1976, all of the suspended members of the LSA were reinstated with full back pay and benefits.

On September 3, 1976, all of the suspended members of the DPOA were reinstated but WITHOUT full back pay and benefits.

During the interim period of the date of suspension and scheduled hearing date, ten suspended members had terminated their employment with the Department.

During those arbitration hearings and trial boards, the need for intensive covert surveillance of the suspected residency violator was deemed imperative. Based on the recommendations of the former Chief of Police and the Corporation Counsel's Office, residency investigations and suspensions in the past had focused primarily on where a member's family resided as opposed to the stated residence of the subject member of the department. Those seventy-eight (78) members were cited and suspended on those facts and circumstances.

In the arbitration cases, both arbitrators took the position that the labor contract applied solely to the member of the bargaining unit and that the basic issue at these hearings was their residency and not the residency of their families. Therefore, of the forty-eight (48) grievances that went to arbitration, forty-five (45) were sustained in the favor of the officers, with full back pay retroactive to the original date of suspension. These officers were deemed to be non-residents and their employment with the department was terminated. Of these forty-five (45) members, thirty-five (35) of them are still members of the department and their residency complaints are awaiting "executive prerogative".

As a result of these arbitration and trial board cases, the Residency Unit, under my direction, was informed to shift the emphasis from being placed on a member's family as being the factor in determining residence to "a" factor in determining residence. Their Standard Operating Procedure was revised to reflect my decision. Since the decision was made, more than one hundred (100) residency complaints have been totally investigated, resulting in sixty-eight (68) cases being closed and the remaining thirty-two (32) are awaiting executive prerogative. Because of litigation in progress, contract negotiations and the proposed amendment to the City Ordinance on Residency, there is no residency disciplinary action pending.

## B. STATISTICS

To date, the Residency Unit has received a total of four hundred (400) complaints of members failing to comply with the residency requirement.

Of these four hundred (400) complaints, two hundred and eighty-seven (287) have been closed. The remaining one hundred and thirteen (113) cases are in either different phases of the investigative process or awaiting executive prerogative.

The following statistics reflect the performance and investigative endeavors of the Residency Unit.

|      | <u>COMPLAINTS</u> | <u>OPEN</u> | <u>CLOSED</u> | <u>EXECUTIVE<br/>PREROGATIVE</u> |
|------|-------------------|-------------|---------------|----------------------------------|
| 1972 | 81                | 11          | 70            | 11                               |
| 1973 | 86                | 15          | 71            | 15                               |
| 1974 | 52                | 9           | 43            | 9                                |
| 1975 | 56                | 20          | 36            | 19                               |
| 1976 | 80                | 22          | 58            | 19                               |
| 1977 | 30                | 21          | 9             | 12                               |
| 1978 | 15                | 15          | --            | --                               |

## C. RECOMMENDATIONS

There are reports of many members of the Department who believe that they are in compliance with the Residency Ordinance by maintaining some form of a "dual residency". These same members have been advised by their bargaining agencies that by living in a manner as "Caviston" did, that they are in compliance with the ordinance and not subject to any form of disciplinary measures.

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In 1968, the Residency Ordinance was passed by Common Council and later tested in the courts to be constitutional and valid.

The second portion of your letter requested me to respond to an article which appeared in the Detroit Free Press on Saturday, February 18, 1978. This article alluded to the fact that because one officer involved in a civil action failed to appear in court, the plaintiffs were awarded a total of \$550,000 in damages for alleged injuries inflicted upon them by two Detroit police officers.

As a result of your inquiry as to why this officer was not present to testify in court, I directed that an investigation into the matter be conducted. The following information was submitted to this office as a result.

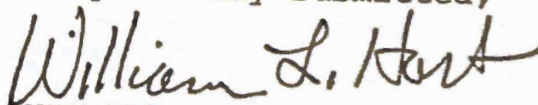
On February 3, 1978 Officer Richard Court, assigned to the Law Department as an investigator, received notification from City Attorney William Ashworth that the trial involving both Officers David G. Barrick and William R. Mason was due to commence on February 10, 1978. Officer Court's instructions were to notify both officers at their respective unit assignments. Immediately upon receipt of these directions, Officer Court attempted to contact both officers. Officer Barrick was notified of the upcoming court appearance; however, Officer Mason could not be reached due to a pre-scheduled vacation which the officer had already begun.

On February 4, 1978 Sergeant Charles Newberry, supervisor in charge of the Law Department, attempted to notify the officer of the pending court appearance; it was learned on this date that the officer had begun his furlough on February 1, 1978 and was not due to return from Hawaii until on or about February 20, 1978.

On March 13, 1978, during a brief telephone conversation with Mr. Ashworth, he indicated that although Officer Mason was not present in court, his testimony was not a critical factor to the case itself. According to Mr. Ashworth, another factor to consider is that had Officer Mason been present during the trial, the outcome would probably have been the same as the jury chose to believe the plaintiffs rather than the police officers.

I hope this information is adequate response to your inquiry about the aforementioned trial.

Respectfully submitted,



WILLIAM L. HART  
Chief of Police