

OHIO RESIDENCY

By Robert Pursley

In a letter sent to all Ohio House Members on residency according to the Ohio Municipal League (OML) "*Residency requirements in Ohio have been an issue for at least the last 85 years, since the Toledo Charter was adopted requiring residency of all city employees*". The OML conducted a survey of all 242 member-cities some time before April 30, 2003. The purpose of the survey was to determine the residency requirements imposed on the employees of those cities by the city's charter. Combining the survey results and its own review of City and Village charters kept on file at the League's offices, the OML published the following statistics:

- 125 Cities and 13 Villages have some requirement for residency in their Charter.
- Almost all City Manager-Cities (62 Cities) have a requirement that the Manager live inside the City during his or her tenure in office.
- Many of Ohio's major cities (Akron, Toledo, Cleveland, Dayton, and Columbus) and a few smaller cities (e.g. Parma Heights) have a residency requirement for virtually all employees in their Charter. These requirements are to live within the city limits, except in the case of Columbus, which allows employees to live in Franklin and adjacent counties. Cincinnati requires their employees to live within Hamilton County and Youngstown requires their employees to live within the city by ordinance. Canton repealed their ordinance requiring city residency in 2002. This change was related to changes in their collective bargaining agreements.
- Outside of Ohio's major cities, the residency requirements in charters most often require the CEO (Manager/Administrator) to live within the city. To a lesser degree, other management employees are also required to live in or near the city. Those other management employees for which we found examples are: The City Clerk, the Public Service Director, the Law Director, the Finance Director or Treasurer, the Assistant City Manager or, simply, "All Department Heads."
- When a residency requirement is described as broader than residency within the city, it is usually marked as within five, eight or fifteen miles from a designated point at the historic center of the city. In one instance, the description was "within a twenty-minute commute from the city."

Senate Bill 82

On March 1, 2005, Senator Timothy J. Grendell Senate introduced Bill (SB) 82. It became effective on May 1, 2006 and Section 9.481 of the Ohio Revised Code was amended. The Act, according to *Bill Analysis- SB 82-Final*: “generally prohibits political subdivisions from requiring their permanent full-time employees to reside in any specific area of the state.” In addition, it permits the citizens of a community by “initiative, or the legislative authority of a political subdivision, by ordinance or resolution, to require the political subdivision's employees, as a condition of employment, to reside either in the county where the political subdivision is located or in an adjacent county”. However, a political subdivision may impose residency requirements for volunteers. A volunteer is defined as a person who is not paid for a service or who is employed part-time. In addition, citizens are empowered to adopt either an ordinance or resolution requiring political subdivision employees to live in the county where the political subdivision is located, or any adjacent county within the state.

The intent of the Act is to strike a balance between the individual employee and the political subdivision by:

- Recognizing the inalienable and fundamental right of an individual to choose where to live under Section 1 of Article I of the Ohio Constitution
- Recognizing that Section 34 of Article II of the Ohio Constitution specifies that laws may be passed providing for the comfort, health, safety, and general welfare of all employees and that no other provision of the Ohio Constitution, including its home rule provisions, impairs or limits this power.

As one might imagine, SB 82 is quite controversial. Political subdivisions have many reasons for requiring their employees to reside within their geographic boundaries and employees have just as many reasons to live where they choose.

Political Subdivision's Arguments for Residency

"Every matter, & thing, that relates to the City ought to be transacted therein and the persons to whose care they are committed [should be] Residents," (George Washington, 1796).

One reason often given for requiring residency for employees is that residency requirements work effectively to create safer more economically stable communities. Based on testimony given at the Senate hearings by various people and organizations the following is a brief synopsis of other reasons for residency requirements:

- Residency requirements are a requirement of employment to be determined solely by the employing community, thus SB 82 violates "Home Rule" provisions.
- Local officials working with local residents on a daily bases, are in the best position to determine how resources should be employed to meet the needs of the community.
- Residency requirements have been established because of the popular vote of the local electorate during the Charter process.
- Residency requirements create a sense of responsibility to the community by the employee.

The contempt city leaders feel toward SB 82 and residency in general, is illustrated well in the article by Mark Williamson, Director of Communications for the City of Akron, titled *City vs. State in Court, Issue is Local Control* in May of 2006. In the article Mayor Don Plusquellic is quoted as saying:

"This is another attempt by the leadership in this state to usurp cities' authority and quiet the voice of the people."

"Twenty eight years ago Akron voters approved residency, telling us they want people whose salaries they pay to live in their city. The people are the employers, and this is their wish."

"Every argument in favor of this bill benefits the employee; there isn't one argument advanced that benefits the municipality, or the people who voted for us to protect their interests and do what's right for them."

"Citizens feel a greater measure of security knowing that people who work for the city live nearby,"

Employee's Arguments for Right to Choice

There are many arguments against residency requirements. Most center on the safety of the members of law enforcement and their families. Stories given in testimony routinely speak of family members being threatened by people in their neighborhood who were arrested. The following reasons were submitted as testimony to the Senate Hearings by the *Ohio Citizens for Family Values* titled *Reasons to Abolish Residency Requirements*:

- Reduction in a qualified labor pool
 - The public is better served when the most qualified applicants are hired. Restricting where an employee can live reduces the applicant pool.
- Mutual Aid Agreements
 - Modern transportation, communications and mutual aid agreements negate the reasoning for having employees live within the municipality.
- Nontraditional Families and Stress
 - When divorce occurs, the stress incurred by the non-custodial parent is increased if bound by a residency requirement. Non-custodial parents may not be able to move close enough to remain a part of the daily lives of their children without sacrificing their career.
- Marriage
 - Couples who chose to marry are often faced with serious emotional and financial strain as a direct result of residency requirements. If each person in the couple already has an established household, it may become necessary for them to maintain both residences; one home to meet residency requirements and the second home to meet a variety of other needs: work, distance, schooling, and/or elderly or ailing parents.
- Employee Safety
 - Retaliation against the police officer and their family.

- Family Values
 - The center of a family is the home. The decision on where to live should take into account all family members. Being near aging parents or family in general, choice of schools for children, religion and being able to raise ones children wherever they see fit are important elements in the decision making process.

- Article II, Section 34 of the Ohio Constitution
 - *Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power. (1912)*

On example of the burden residency can place on employees is mentioned in *Governing Magazine*, May 2000, Feature: *Assessments, THE RESIDENCY REBELLION* by Alan Ehrenhalt. *“Boston has done well in the years since Menino put in the residency law, so well that decent housing at an affordable price has become very difficult to find. Police, fire fighters and others subject to the 1994 agreement now argue that they are being ordered to live in a city whose property they simply cannot afford--either to buy or to rent. It doesn't seem fair for a local government to insist that a police officer with a four children choose between an expensive downtown loft and a grimy flat somewhere in the slums. If affordable housing isn't available, maybe a rethinking of the rules is in order”*

Litigation

The question raised by SB 82 is: what will take precedence, local ordinances or state statues? The Court's interpretation of Article XVIII: Municipal Corporations, Section 3 and Article II: Legislative, Section 34 of the Ohio Constitution will ultimately define the validity of SB 82.

Commonly referred to as the “home rule amendment”, this article was adopted into the Ohio Constitution in 1912. The provisions authorize municipal corporations to govern themselves in local municipal matters independent of state laws. According to the publication *Members Only*, Volume 124, Issue 5, titled *Municipal Home Rule*:

“In Ohio, municipal corporations (cities and villages) have certain powers granted to them in Article XVIII of the Ohio Constitution that exist outside their authority found in the Revised Code. Because these powers originate in the Constitution, laws passed by the General Assembly that interfere with them are invalid as applied to municipal

corporations unless those laws otherwise are sanctioned by the Constitution. These constitutionally granted powers, known as “home rule” powers, include the power of local self-government, the exercise of certain police powers, and the ownership and operation of public utilities.”

Specifically Section 3, Municipal Power of Local Self-Government states:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws”. (1912)

Although there is not a definitive interpretation of what “*all powers of local self-government*” entails, various court decisions have agreed the following are considered within the realm of the local self-government:

- Internal organization;
- The control, use, and ownership of certain public property;
- Salaries of municipal officers;
- Recall of municipal elected officials;
- Regulation of municipal streets;
- Procedures for the sale of municipal property.

Conversely, the courts have determined the following to be outside the realm of the “home rule amendment”, ruling the following as statewide concerns:

- Detachment of territory
- Annexation
- Prevailing wage law
- Public employee collective bargaining law

Article II: Legislative, Section 34 Welfare of Employees states:

Laws may be passed fixing and regulating the hours of labor, establishing a minimum wage, and providing for the comfort, health, safety and general welfare of all employees; and no other provision of the constitution shall impair or limit this power. (1912)

When one reviews these two Articles, the question becomes which Article takes precedence? In two separate cases, the Ohio Supreme Court held the following opinions on self- government: In *Rocky River v. State Employment Relations Bd.*, supra, 43 Ohio St.3d 1, 539 N.E.2d 103, that

the exercise by municipalities of Home-Rule powers is constitutionally limited to the exercise of powers that do not conflict with any general law. Thus, the provisions of R.C. Chapter 4117, a general state law, prevail over conflicting municipal enactments, such as the commission's regulations.

In *Beachwood v. Bd. of Elections of Cuyahoga Cty.* (1958), 167 Ohio St. 369, 371, the Court described the limits of the power of local self-government as follows:

"The power of local self-government granted to municipalities by Article XVIII relates solely to the government and administration of the internal affairs of the municipality, and, in the absence of statute conferring a broader power, municipal legislation must be confined to that area. (See Prudential Co-Operative Realty Co. v. City of Youngstown, 118 Ohio St. 204, 160 N.E. 695.) Where a proceeding is such that it affects not only the municipality itself but the surrounding territory beyond its boundaries, such proceeding is no longer one which falls within the sphere of local self-government but is one which must be governed by the general law of the state.

Within Section 3 of SB 82 the 126th General Assembly states the following:

"The General Assembly finds, in enacting section 9.481 of the Revised Code in this act, that it is a matter of statewide concern to generally allow the employees of Ohio's political subdivisions to choose where to live, and that it is necessary to generally prohibit political subdivisions from requiring their employees, as a condition of employment, to reside in any specific area of the state in order to provide for the comfort, health, safety, and general welfare of those public employees."

Ultimately, the conflicts between SB 82 and residency requirements will fall upon the courts for interpretation. In the opinion of *James P. Schuck, Esq. and Jon Brollier of Bricker & Eckler, LLP:*

"Based upon the interpretation of the Ohio Supreme Court in a number of cases decided since the Home Rule Amendment's passage, whether the local ordinance or state statute will prevail depends largely on whether the municipal law touches upon a matter of statewide concern, or, instead, has only a local impact. Accordingly, if the courts deem a municipality's residency requirement to be only of local importance, the local requirement will supersede the state law. But if the courts determine that a local residency requirement for municipal employees is an issue of statewide concern, the state law would prevail over the local ordinance."

In an October 3, 2006 article in *USA Today* titled "*Firefighters Mount National Challenge to Residency Rules*", Cleveland, Akron, and many other cities are attempting to obtain declaratory and injunctive relief against the enforcement of Senate Bill No.82. Many officials have warned their employees that they could be fired if they move outside their cities. Cleveland Mayor Frank

Jackson stated, *"assaults on residency requirements threaten the stability of urban neighborhoods. Requiring Cleveland's 8,500 city government workers to live within the city has protected many neighborhoods from a tide of inner-city flight to the suburbs."*

On May 1, 2006, the City of Akron filed a lawsuit against the State of Ohio in Summit County Common Pleas Court. A copy of the lawsuit can be found at:

http://ci.akron.oh.us/News_Releases/2006/ResidencyDoc.pdf

Enforcement of Residency

Many cities investigate and enforce residency requirements vigorously. As an example, in the City of Chicago, the inspector general's office will investigate tax returns, voter registration lists for suburban address, do surveillance on addresses claimed by employees. Other cities are very lax with enforcement for fear of being compared to Big Brother by employees. The City of Barberton has a fifteen-mile radius outside the city limits an employee can reside. Unless there is a strong suspicion an employee is in violation, they do not confirm residency addresses.

Conclusion

It is ironic to hear our city managers preach the importance of having police and firefighters live within the city's boundaries for quick emergency responses, yet chastise police and fire leaders for paying overtime for calling in personnel during an emergency rather than utilizing mutual aid.

I wonder how many elected officials and citizens would be willing to live in a geographical boundary determined by their primary employer. Certainly, the same reasons used to argue residency for police and fire are just as applicable to all employers. During staffing, infrastructure, or miscellaneous emergencies that occur within the business, having the employees close by would be extremely beneficial for any employer. Local business leaders working with local residents on a daily basis are in the best position to determine how resources should be employed to meet the needs of the community/customer. Residency requirements create a sense of responsibility to the community by the employee. What better way is there for a business to enhance its public relations with the community, than to employ the community? Consider the benefits of working and living with the same people day in and day out.

Residency requirements have been established because of the popular vote of the local electorate during the Charter process. There are two questions to consider. What citizen would not feel safer with a police or firefighter living in their neighborhood? When given the option to

vote, are they not voting to give themselves a feeling of safety, rather than residency having any other practical application? If residency is such a good idea, why not enforce it on all employees? I know I would feel better if I had a plumber, carpenter, chemist, physician, electrician, retail manger, etc. living in my neighborhood.

"If my tax dollars are paying you, then I want you to live here." Does this mentality not also apply to private employers as well? My earnings purchase the products, thus becoming revenue for the company that pays the employees. Therefore, my money is paying you the same as your tax dollars pay me. Do I now get to mandate where you will live and raise your family?

If a political subdivision wants its employees to reside within its boundaries, an incentive program is a potential solution. Some cities offer low-interest mortgage loans, use of city-owned or subsidized rental housing, salary incentives or a hiring preference for city residents. Fort Wayne, Indiana offers 100% financing for police officers to reside in low income, high crime areas. Atlantic City, New Jersey in cooperation with the Casino Reinvestment Development Authority put together a \$5 million dollar fund to pay for very low-interest home mortgage loans.

Clearly, it will require the interpretation of the courts to decide the affect SB 82 will have on political subdivisions. Until that time, political subdivision employees need to follow their entity's residency requirements. Employees should refrain from interpreting "home rule" and SB 82 based on their individual opinion. It is said; sometimes it is best to do nothing. I believe this to be one of those times, at least until the courts render an opinion.

I believe residency requirements for police officers and firefighters were very necessary at one time. Years ago when fire protection was provided by volunteers, residency had to be required. It was a matter of public safety. However, those times have passed. Today, we have many full-time fire departments, residency for volunteers or part-time firefighters, mutual aid, better streets and communication systems. State Senator Tim Grendell said, *"I believe that it is a fundamental right of all Ohioans under Article I of the Ohio Constitution to live in the community of their choosing."* and I agree.

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