



NEW YORK CITY LAW DEPARTMENT
OFFICE OF THE CORPORATION COUNSEL

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COURT OF APPEALS UNANIMOUSLY AFFIRMS THE IMPORTANCE OF RESIDENCY REQUIREMENTS FOR CITY EMPLOYEES

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New York, Nov. 29, 2004 – The New York State Court of Appeals, the State's highest court, today unanimously sustained the constitutionality of a New York City law that requires municipal employees to maintain City residency as an ongoing qualification of employment or else forfeit their employment.

"The Court's decision is particularly significant, as it will allow City agencies to efficiently investigate and address their suspicions that an employee is violating the residency requirement. Employees who fail to establish that they are City residents will automatically forfeit their City employment," noted Commissioner Martha Hirst of the New York City Department of Citywide Administrative Services (DCAS). Prior to this decision, employees who did not live in the City were compelling agencies to proceed through lengthy and cumbersome disciplinary proceedings before they could be removed from their positions.

Corporation Counsel Michael A. Cardozo, whose office litigated the case on behalf of DCAS, added: "This case also affects virtually every City department and other governmental subdivisions throughout this State that imposes a residency requirement on its employees. We are pleased that the Court of Appeals recognized the importance of the law's requirement that City employees maintain City residency, which in turn fosters a bond between employees and the City they serve."

The Court, in a 6-0 vote, held that the City's local residency law does not run afoul of the Constitution nor does it conflict with the general laws of the State. The local law was challenged by Francisco Felix, a permanent civil servant with DCAS. When the City learned that Felix might actually be residing in Nassau County, he was directed to attend a meeting with proof of his residency. He appeared for the meeting with his union representative and various documents, including his tax return and W2 form, which listed his residence as an address in Nassau County. The City determined that he violated the residency requirement and thus forfeited his employment. He was subsequently removed from the payroll.

The residency law, codified in Administrative Code §12-120, was enacted to encourage employees to maintain a level of commitment and involvement in the local government and community employing them. It reads: "Failure to establish or maintain city residence...shall constitute a forfeiture of employment; provided, however, that prior to dismissal...an employee shall be given notice of and the opportunity to contest the charge that his or her residence is outside the City."

Felix was supported by an *amicus curiae* or "Friend of the Court" brief submitted by District Counsel 37 / the American Federation of State, County and Municipal Employees / the AFL-CIO at the eleventh hour. (Reporters' Note: These names are all part of one combined group.)

Reversing the order of the Appellate Division, First Department, the Court of Appeals rejected Felix's argument that he was entitled to a pre-termination hearing pursuant to Civil Service Law §75(1). That statute, which was enacted to protect civil servants from arbitrary and capricious penalties for

delinquencies in job performance, provides that a tenured employee “shall not be removed or otherwise subjected to any disciplinary penalty provided in this section except for incompetency or misconduct shown after a hearing upon stated charges pursuant to this section.” Here, the Court held that Felix was not entitled to the procedural protections of the Civil Service Law because his dismissal was a result of his failure to maintain City residency – an ongoing qualification of employment wholly unrelated to job performance, misconduct or incompetency.

Sharyn Rootenberg, an Assistant Corporation Counsel in the Law Department’s Appeals Division, handled the case at the appellate level. Eric Eichenholtz, an Assistant Corporation Counsel in the Labor & Employment Law Division also worked on the case at the lower court level.

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