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**CIVIL SERVICE:** Police and fire civil service act

**CIVIL SERVICE:** Supplementary employment

**PUBLIC EMPLOYEES RELATIONS ACT:** Supplementary employment as term or condition of employment

The firemen and policemen civil service act authorizes a civil service commission in a municipality that has adopted the act to adopt and enforce rules relating to outside employment that are reasonably related to efficient service.

A rule relating to outside employment is a term and condition of employment that is a mandatory subject of collective bargaining under the public employees relations act.

Opinion No. 4975

April 26, 1976.

Honorable Richard A. Young  
State Representative  
The Capitol  
Lansing, Michigan 48901

You have asked my opinion as to whether a police and fire civil service commission established pursuant to 1935 PA 78; MCLA 38.501 *et seq*; MSA 5.3351 *et seq*, may adopt and enforce rules governing outside employment for members of the police and fire departments. A related issue in your letter and the attached materials is whether rules on outside employment is a term and condition of employment which is a mandatory subject of collective bargaining.

1935 PA 78, § 9; MCLA 38.509; MSA 5.3359 empowers a police and fire civil service commission, established pursuant to the act, to adopt and enforce rules for carrying into effect the provisions of the act. 1935 PA 78, § 14;\* MCLA 38.514; MSA 5.3364 provides in its relevant part:

"The tenure of every one holding an office, place, position or employment under the provisions of this act shall be only during good behavior and *efficient service*; and any such person may be removed or discharged, suspended without pay, deprived of vacation privileges or other special privileges, by the civil service commission, for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment to the public, neglect of duty, violation of the provisions of this act or the rules of the commission, or any other failure of good behavior, or any other acts of misfeasance, malfeasance or nonfeasance in office: . . ." [Emphasis supplied.]

OAG, 1959-1960, No 3324, p 211 (November 13, 1959) held that a municipality may adopt rules limiting the right of employees to engage in outside employment provided that the regulations reasonably relate to efficient service.

\* As amended by 1943 PA 173; 1945 PA 287; 1949 PA 271.

Therefore, a municipality may adopt rules regarding outside employment reasonably related to efficient service, it is my opinion that police and fire civil service commission operating under 1935 PA 78, *supra*, may adopt rules on outside employment. Any rules which a Civil Service Commission adopts limiting outside employment must be reasonably based and not arbitrary, and actually contribute to efficient service.

As to the question of whether a rule on outside employment is a term and condition of employment which is a mandatory subject of collective bargaining, consideration must be given to the Public Employees Relations Act (PERA), 1947 PA 336, as amended by 1965 PA 379; MCLA 423.201 *et seq*; MSA 17.455(1) *et seq*, which governs collective bargaining agreements of public employees. Section 15 of PERA requires a public employee to bargain collectively with respect to "wages, hours, and other terms and conditions of employment." The imposition of a change of a mandatory subject of bargaining including a change of a "term or condition of employment" without collective bargaining is an unfair labor practice. We can find no Michigan case addressing whether rules on outside employment are "terms and conditions of employment." Residency, however, has many of the characteristics of outside employment since they both directly concern how a person lives in his non-working hours. In *Detroit Police Officers Association v Detroit*, 391 Mich 44; 214 NW2d 803 (1974), the Michigan Supreme Court upheld residency as a mandatory term and condition of employment.

Looking to the experiences of other states for guidance, if not precedent, I notice that New Jersey has decided a case dealing with a similar situation. In *Association of New Jersey State College Facilities, Inc. v New Jersey Board of Higher Education*, 66 NJ 72; 328 A2d 235 (1974) the New Jersey Supreme Court examined the Board of Higher Education's 1973 guidelines on outside employment. The contract between the State of New Jersey and Association of New Jersey State College Facilities, Inc. provided for notification by faculty members of their superiors of their commitment for regular off-campus services for compensation. The 1973 guidelines provided *inter alia* for written approval and for limitations on compensation. The court found that the adoption of the guidelines constituted a change in "terms or conditions of employment" and that they are a mandatory subject of negotiations which should have been negotiated before being adopted.

Therefore, based on the above, it is my opinion that rules on outside employment are "terms and conditions of employment" which are mandatory subjects of collective bargaining.

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