

Accordingly, it is my opinion, that since such pistols are considered the property of the employer, said employees, as defined above, are exempt from the statutory requirements of having to obtain a license to purchase, and a safety inspection certificate upon receiving the handgun from the employer on a sign in-sign out basis. This is also true for employees of banks and savings and loan associations.

It is also my opinion that employees of businesses licensed under the act do not have to obtain a license to purchase or a safety inspection certificate upon receiving a handgun from the employer on a sign in-sign out basis. When subsection (3) of 1968 PA 330, § 19, *supra*, is read in conjunction with 1927 PA 372, § 9, *supra*, and 1927 PA 372, § 2, *supra*, it is clear that the practice by the businesses involved neither constitute a "purchase" within the meaning of 1927 PA 372, § 2, *supra*, as defined in 1927 PA 372, § 1, *supra*, nor does it constitute "possession" within the meaning of 1927 PA 372, § 9, *supra*. Only the employer must obtain a license to purchase, and a safety inspection certificate upon the purchase of the handguns.

In conclusion, it is my opinion that employees, who are furnished handguns by their employers on a sign in-sign out basis are not required to obtain (1) a license to purchase or (2) a safety inspection certificate before each transfer of the weapon.

FRANK J. KELLEY,
Attorney General.

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CIVIL SERVICE: Firemen and Police.

FIREMEN AND FIRE DEPARTMENTS: Civil Service.

POLICE: Civil Service.

A firemen and policemen civil service commission established pursuant to 1935 PA 78 may adopt a rule which gives applicants for promotion a credit of ½ point for each 6-month period of service.

A firemen and policemen civil service commission established pursuant to 1935 PA 78 may not discriminate against an applicant for promotion solely on the ground that there has been an interruption in his service experience. Thus, a rule of the commission which computes seniority and length of service only on the basis of continuous, consecutive active service in the department is invalid.

Opinion No. 5101

August 23, 1976.

Honorable Gary M. Owen
State Representative, 22nd District
The Capitol
Lansing, Michigan

You have asked my opinion on questions concerning sections 11 and 12 of 1935 PA 78; MCLA 38.511 and 38.512; MSA 5.3361 and 5.3362 ("Act

78"). I quote the questions and the factual background from the material attached to your letter:

"On January 31, 1973, the Civil Service Commission of the City of Ypsilanti adopted the following promotion policy:

"Promotion eligibility lists are to be comprised of eligible applicants who first score at least 70 per cent (unadjusted) on a written examination and who also pass an oral board exam/interview. Results of the written test will constitute 70 per cent, results of the oral board the remaining 30 per cent in computing each applicant's total score for a preliminary list. The preliminary list will be comprised of only those applicants who: 1—had a raw score of 70 per cent or better on the written examination and who, 2—had a combined score of 70 per cent or better on the written and oral exams combined (based on the 70/30 formula). Seniority and length of service will be computed at the rate of $\frac{1}{2}$ (one-half) point for each 6-month period of continuous, consecutive active service in the department; the seniority/service points will be added to each applicant's total combined score on the preliminary list (above) to constitute the final eligibility list for promotions."

"One fireman for the City of Ypsilanti began his employment on July 19, 1966 and was continuously employed as a fireman until February 28, 1969, until such time as he voluntarily left the department to take other employment. On August 1, 1970, he returned to the Ypsilanti Area Fire Department as a fireman and has been continuously employed as a fireman in Ypsilanti since that date. Subsequent to his taking recent competitive examination for promotion, this fireman was denied any seniority points pursuant to the above policy of the Ypsilanti Civil Service Commission for his prior service of July 29, 1966 through February 28, 1969.

"Two questions are presented for the consideration of the Attorney General:

"a. Is the action of the Civil Service Commission of the City of Ypsilanti of January 31, 1973, providing for the addition of points for seniority and length of service to points earned from a competitive examination, in conflict with the State Statute providing for promotion based upon competitive examinations?

"b. Assuming *arguendo* that the action of the Ypsilanti Civil Service Commission of January 31, 1973, was not in conflict with the State Statute, can the action of January 31, 1973, requiring continuous consecutive active service deny the aforementioned firemen [sic] the number of years of seniority which he had earned by his service, although not continuous, prior to the action of the Commission on January 31, 1973."

1935 PA 78, § 12(a), *supra*, provides in part that:

"All examinations for positions shall be practical in their character and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative merit and fitness of the persons examined to discharge the duties of the employment sought by them."

1935 PA 78, § 12(b); *supra*, provides in part:

" . . . Promotions shall be based upon merit to be ascertained by tests to be provided by the civil service commission and upon the superior qualifications of the persons promoted as shown by his previous service and experience. . . . Whenever a position becomes vacant for which examinations are held, the appointing power shall make requisition upon the commission for the name of the person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list at preceding examinations held under the provisions of this act. . . . The appointing power shall forthwith appoint such person to such position. . . ."

The above sections reveal that promotions must be based upon an examination conducted by the Civil Service Commission that is practical and relates to matters that fairly and completely test the comparative merit and fitness of the person examined. Promotion must also, however, be based upon the qualifications of a person as shown by his previous service and experience. Consideration of a qualification may appear to conflict with the requirement that the examination be "practical in character" since experience and service are not direct measures of capacity, competence or skill. However, a statute should be read so that all provisions are given effect without repugnancy or inconsistency and so as to render the statute a consistent and harmonious whole. 73 Am Jur 2d, Statutes, § 254, p 425; *Remus v Grand Rapids*, 274 Mich 577; 265 NW 755 (1936). It is possible to reconcile the provisions by reading the provision directing the consideration of qualifications shown by previous service as being a matter which "fairly tests the comparative merit of the person examined" since it is a rational assumption that a person with greater relevant experience has greater capacity, competence and skill.

Therefore, to answer your first question, it is my opinion that relevant experience may be used as a factor in determining the merit and fitness of persons examined for promotion. Thus, the promotion policy of the Ypsilanti Civil Service Commission of crediting a person with a ½ point for each 6-month period of service is within the statutory standard.

In your second question you ask whether the Civil Service Commission may disregard experience acquired prior to an interruption in service. The different treatment of two classes of persons, those who have had an interruption in service and those whose service has been continuous, raises the question as to whether such discrimination violates the equal protection clause of Const 1963, art 1, § 2 and of US Const, Am XIV. The same standard must be applied to each. *Fox v Employment Security Comm*, 379 Mich 579; 153 NW2d 644 (1967). The rational basis test applies when, as here, the law allegedly infringing equal protection creates no fundamental right. *Wahl v Brothers*, 60 Mich App 66; 230 NW2d 331 (1975). Under the rational basis standard, the constitutional safeguard is offended only if the classification rests upon grounds wholly irrelevant to the achievement of the objectives. *McGowan v Maryland*, 366 US 420; 81 S Ct 1101; 6 L Ed 2d 393 (1961).

According to the materials supplied with your letter, ½ point is added

to the score achieved on the test for "each 6-month period of continuous, consecutive active service." Thus, two persons with identical experience are treated differently if one of them has had an interruption in his service. Although, in view of changing techniques, there may be a rational basis for giving greater weight to service and experience recently performed than to earlier service, there is no rational basis for disallowing all experience acquired prior to a break in service solely on the ground that there has been an interruption in the service.

Therefore, in answer to your second question, it is my opinion that an Act 78 Police and Fire Civil Service Commission, which includes experience in an examination for promotion, may not discriminate against an applicant for promotion solely on the ground that there has been a break in his service.

FRANK J. KELLEY,
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PEACE OFFICERS: Use of firearms to control fleeing vehicle.

PEACE OFFICERS: Use of deadly force to arrest a person who has committed a crime.

WORDS AND PHRASES: "Deadly force" is that force which could result in the loss of human life.

A peace officer may not use deadly force when attempting to stop or arrest a person who has committed a misdemeanor.

A peace officer may use deadly force to effect the arrest of a felon unless a safe and speedy capture can be made without using deadly force.

A peace officer may use deadly force to arrest the occupants of a fleeing vehicle only where:

- (1) he knows or has probable cause to believe that a felony is involved;
- (2) he seeks only to control or stop the vehicle without intentionally harming the occupants;
- (3) a safer alternative would be useless or unreasonably dangerous to persons other than the occupants of the vehicle.

Opinion No. 5068

September 3, 1976.

The Honorable DeForrest Strang
State Representative
The Capitol
Lansing, Michigan

You have asked the following questions:

- (1) Do police officers have the authority to use firearms to control a fleeing vehicle?
- (2) Do our statutes presently clarify a police officer's authority in this situation?
- (3) Should the Legislature enact such a statute?