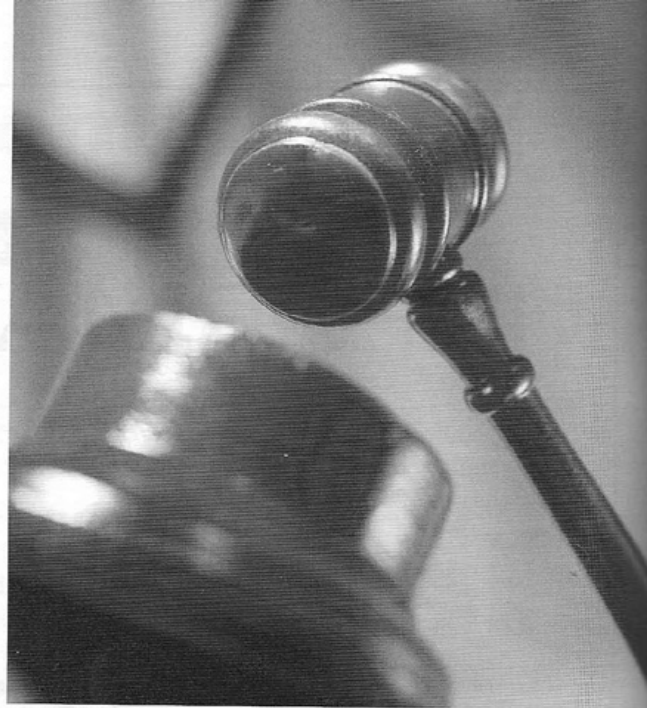


the FOP goes to court

to defend the residency law

By Mark A. Porter



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The State Lodge has entered an appearance at the State Court of Appeals in support of a Lodge Member who was denied a job because of residency. The State's residency statute was passed in 1999, after many years of effort on the part of the FOP. It states, at MCL 15.601-602, that a public employer cannot require an employee to live less than "20-miles or another specified distance greater than 20-miles." It also permits residency to be determined by reasonable travel times between the home and the place of employment.

In 2002, Sgt. Joseph Lash, a member of FOP Lodge #126, applied at Traverse City to become a police officer. In early 2003, Sgt. Lash purchased property outside of Traverse City, but within a 20-mile radius of the City limits, while awaiting an opening on the police department. In 2004, however, Traverse City refused to hire him, claiming that his property was not within 20 "road miles" of the City limits.

The only document that the City produced to justify its refusal to hire Sgt. Lash was a labor contract between the City and its police officers (a non-FOP bargaining unit). Sgt. Lash sued

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Traverse City in 2003, but the Circuit Judge dismissed the case, stating that the City's labor contract was a reasonable restriction for its employees.

Sgt. Lash, however, was not an *employee* – he was an *applicant*, and therefore ineligible to be covered or affected by any labor contract. The case has now gone before the State Court of Appeals, and it has become the first test of the State's residency statute.

In late 2005, the State Lodge filed an *amicus curiae*, or "Friend of the Court"

legal brief with the Court of Appeals on this issue. The Lodge's brief alerts the Court to the fact that public employee associations are prohibited by State law from putting restrictions on the ability of any applicant to apply for public employment. A police association, therefore, can not be implicated or held responsible for refusing to hire any applicant, for any reason, simply because its contract contains a residency clause.

In addition, the State Lodge has joined with Sgt. Lash's attorney to argue that the Legislature intended "20-miles" from the nearest boundary of the public employer to be a *radius*, and not "road miles," which can vary by community.

The FOP attended oral arguments at the State Court of Appeals on January 05, 2006, and a decision from the Court is expected by early Spring. The Court's decision and its impact will be reported in the next issue of *The Peace Officer*.

The State Lodge is the only law enforcement organization that has entered an appearance at the Court of Appeals, as it considers the first legal challenge to the residency statute.