



Legal Briefs

May a town require its employees to reside in town?

The New Hampshire Supreme Court has held that residency requirements for municipal employees infringe on the fundamental constitutional right to travel. Such a restriction is lawful only if the municipality can show that the “restriction is necessary to achieve a compelling state interest.” *Seabrook Police Assoc. v. Seabrook*, 138 N.H. 177, 179 (1993). Such a restriction must also be narrowly drawn to achieve its purpose. *Id.* In *Donnelly v. Manchester*, 111 N.H. 50 (1971), and *Angwin v. Manchester*, 118 N.H. 336 (1978), residency requirements for school employees were held to be invalid. In the *Seabrook* case the Court upheld a residency restriction for police officers. The Town demonstrated that Seabrook needs especially prompt emergency response because of its nuclear plant, greyhound track and limited beach access. The Court was particularly impressed with the unique role of police, compared to other town employees who have roles in emergency management. “[T]he totality of the police officers’ job differentiates them from these others who might on rare occasion need to respond to a major emergency. . . . [P]olice officers alone have the necessary police power to protect persons and property during an emergency situation.” 138 N.H. at 182. In 1986, after *Donnelly* and *Angwin* and before *Seabrook Police*, the superior court invalidated a residency requirement for Nashua firefighters. *Nashua Firefighters Ass’n, Local 789 v. Board of Fire Commissioners of the City of Nashua*, Hillsborough County Superior Court E-84-818.

Under the “compelling state interest” standard of the *Seabrook* case the town would have the burden to justify the residency requirement in terms of the person’s unique and crucial role during emergency responses and why this role requires their continuous presence in the community in anticipation of an emergency. It would likely be easier to justify a restriction framed in terms of some distance or driving time that objectively relates to a reasonable response time to the fire station or the center of town, or the like. Such a radius might or might not extend to surrounding towns.

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