

A **NJSACOP** Position Paper



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## **POLICE CHIEFS & CIVILIAN “POLICE DIRECTORS”**

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## Background

Documented cases of contentious struggles over administrative control of police departments throughout the State of New Jersey have occurred since the early times of organized police departments. Often the struggle for control over the management of the police department between police professionals and elected government officials results in bickering and feuding, which impedes the effective operation of the police organization. Elected officials have attempted to wrestle managerial authority away from Chiefs of Police for a number of reasons. The issues of control and influence over the police function and the desire to regulate the salaries of top level police executives have often emerged as motives for civilian control.

Political interference and an absence of clearly defined lines of authority in the law enforcement function led the state legislature to enact a law delineating the power and authority of officials regarding the management of a municipal police department. This law (N.J.S.A. 40A:14-118), enacted in 1981, defines the authority of a municipality to establish a police department and appoint members thereof. The statute describes the manner in which civilian oversight is established through a locally appointed "appropriate authority". The municipality may also appoint a person to the position of Chief of Police to head the police department. The law outlines the duties and

responsibilities of the Chief of Police if one is appointed in the municipality. *It should be noted that the overwhelming majority of police agencies in New Jersey are in fact headed by a sworn Chief of Police.*

## **Statutory Framework: N.J.S.A. 40A:14-118, a/k/a/ "Chief's Responsibility Act"**

The statutory system enacted by New Jersey regarding the creation of police departments and the appropriate function of Police Chiefs, N.J.S.A. 40A:14-118, reads in part:

*The governing body of any municipality, by ordinance, may create and establish, as an executive and enforcement function of municipal government, a police force, whether as a department or as a division, bureau or other agency thereof, and provide for the maintenance, regulation and control thereof. Any such ordinance shall, ... provide for a line of authority relating to the police function and for the adoption and promulgation by the appropriate authority of rules and regulations for the government of the force and for the discipline of its members. The ordinance may provide for the appointment of a chief of police and such members, officers and personnel as shall be deemed necessary, the determination of their terms of office, the fixing of their compensation and the prescription of their powers, functions and duties, all as the governing body shall deem necessary for the effective government of the force. Any such ordinance, or rules and regulations, shall provide that the chief of police, if such position is established, shall be the head of the police force and that he shall be directly responsible to the appropriate authority for the efficiency and routine day to day operations thereof, and that he shall, pursuant to policies established by the appropriate authority:*



- a. *Administer and enforce rules and regulations and special emergency directives for the disposition and discipline of the force and its officers and personnel;*
- b. *Have, exercise, and discharge the functions, powers and duties of the force;*
- c. *Prescribe the duties and assignments of all subordinates and other personnel;*
- d. *Delegate such of his authority as he may deem necessary for the efficient operation of the force to be exercised under his direction and supervision;....*  
*As used in this section, "appropriate authority" means the mayor, manager, or such other appropriate executive or administrative officer, such as a full-time director of public safety, or the governing body or any designated committee or member thereof, or any municipal board or commission established by ordinance for such purposes, as shall be provided by ordinance in a manner consistent with the degree of separation of executive and administrative powers from the legislative powers provided for in the charter or form of government either adopted by the municipality or under which the governing body operates.*

Accordingly, municipalities are authorized under New Jersey state law to create and maintain a police force. Municipalities are not required to create such a force, but having done so, there are several statutory requirements that must be

satisfied by the ordinance creating the force. The ordinance must designate an appropriate authority, provide for the adoption by that appropriate authority of rules and regulations for the government and discipline of the force, establish the ranks or positions within the force, and fix the number of police officers to be employed.<sup>1</sup>

Having established a police force, the municipality has several options with respect to the supervision of the force. The statute requires the designation of an appropriate authority, which is defined as "the mayor, manager, or such other appropriate executive or administrative officer, such as a full-time public safety director." This appropriate authority is responsible for the adoption of rules and regulations governing the police force and for the establishment of policies for the operation and administration of the force. "The appropriate authority is a **civilian** position."<sup>2</sup>

While the designation of an appropriate authority is mandatory, the appointment of a Police Chief is discretionary. If a municipality chooses to appoint a Chief of Police, under state law he or she shall exercise powers and duties that are exclusively reserved to the Chief by statute. Alternatively, the municipality may choose to forego the appointment of a Police Chief and rely on some other sort of executive or

<sup>1</sup> N.J.S.A. 40A:14-118; *see also* Marjarum v. Twp. Of Hamilton, 336 N.J. Super. 85, (App. Div. 2000); Reuter v. Borough Council of Borough of Ft. Lee, 328 N.J. Super. 547 (App. Div. 2000), aff'd., 167 N.J. 38 (2001).

<sup>2</sup> Policemen's Benevolent Association, North Brunswick Local 160 v. Twp. of North Brunswick, 318 N.J. Super. 544 (App. Div. 1999)(*emphasis supplied*).



administrative officer (including a civilian “police director”), to supervise the operation and administration of the police force.<sup>3</sup> It is important to note that both our Courts and our Legislature have implicitly recognized the civilian character of the “police director” position, and there is no statute directly authorizing the appointment of a “police director” other than as the appropriate authority.

However, it must be noted that simply vesting supervision of the police force in a “police director” or some other administrative or executive officer **does not** vest in that individual the authority to exercise police powers or to perform police duties.<sup>4</sup>

### **Accountability of Chiefs of Police Under State Law**

N.J.S.A. 40A:14-118 does not eliminate supervisory authority over the police force, even when a Chief of Police is authorized and appointed. On the contrary, the Police Chief remains directly responsible to the designated appropriate authority for the “efficiency and conduct of departmental operations, and must abide by policies established by such authority in carrying out his or her

<sup>3</sup> *PBA v. North Brunswick*, *supra*.

<sup>4</sup> *L. Louis Jordan v. Peter C. Harvey, Attorney General of the State of New Jersey*, NJ Appellate Division (A-0202-04T2, decided November 1, 2005), Approved for Publication November 1, 2005.

responsibilities.”<sup>5</sup> The statute also requires the Chief to “[r]eport at least monthly to the appropriate authority in such form as shall be prescribed by such authority on the operation of the force during the preceding month, and make such other reports as may be requested by such authority.”<sup>6</sup>

Moreover, the Chief of Police, as a sworn member of the state’s criminal justice system, is a key component of the law enforcement chain of command. He or she is responsible to the County Prosecutor and the State Attorney General. State law makes plain that the Prosecutor is the chief law enforcement officer in the county, over all law enforcement officers in the county, including Police Chiefs. These powers are derivative of those possessed by the State Attorney General.<sup>7</sup> The Criminal Justice Act of 1970 (*N.J.S.A. 52:17B-97 et. seq.*) broadened and reinforced the role of both the Attorney General and the County Prosecutor as the dominant law enforcement officers within their jurisdictions.<sup>8</sup> Our courts have consistently upheld the authority of the county prosecutor, as chief law enforcement officer in the county, to issue directives to local law enforcement authorities relative to the administration and enforcement of the criminal laws.<sup>9</sup>

<sup>5</sup> Kologi, Edward J., “*Civilian Control Over Police – Legal Consideration*,” *New Jersey Municipalities* (May 2001) 56, 57.

<sup>6</sup> *N.J.S.A. 40A:14-118(e)*.

<sup>7</sup> *State v. Winne*, 12 N.J. 152 (1953); *N.J.S.A. 2A:158-5*.

<sup>8</sup> *N.J.S.A. 52:17B-98*.

<sup>9</sup> See, e.g. *State v. Winne*, *supra* at 169; *O’Halloran v. DeCarlo*, 156 N.J. Super. 249 (Law Div. 1979), *aff’d*, 162 N.J. Super. 174 (App. Div. 1978); *Town of Kearney v. Ruvoldt* (decided January 21, 1985, Law Div.), unreported, *aff’d*, February 8, 1985 (App. Div.) unreported.



## **The Issue: Civilian Oversight versus Political Control**

Unfortunately, the structure of government in some local jurisdictions is ambiguous concerning the question of managerial authority of a police department. Various aspects of control may be vested simultaneously in a city council, a mayor, a city manager or administrator, a director of public safety and a Chief of Police. Further clouding the issue of control in many municipalities is the matter of individual personalities and attitudes. If top local government officials, including police executives, differ in their view of police management and are unwilling to work together in the spirit of cooperation, their relationship is likely to be stormy.

Although the state statute clearly gives the municipality an option to appoint a Chief of Police to be the administrative head of the police department, it has long been the position of NJSACOP that a municipal police department should be headed by a person with the title of Chief of Police. This position is founded upon the belief that the state statute intends to remove political influence from law enforcement. Legislation exists which provides tenure to a Chief of Police to further safeguard his or her independence in carrying out his or her lawful authority to run the day-to-day

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operations of a municipal police department. Police professionals believe they must have the authority to make certain decisions to perform police operations that are devoid of political interference.

However, it is clear that such power and authority cannot be absolute and must be accountable to the general public. Many elected and appointed public officials believe they should have even more influence in oversight of police operations. In some communities a director of public safety may have management oversight over a variety of emergency services, such as the fire department, emergency medical services and the police department. This concept is common especially in large cities and one that frequently works well. In other communities, police directors are appointed directly by the governing body, or other appropriate authority, to supervise the police department in place of a Chief of Police. ***Both the director of public safety and the police director are civilian positions without law enforcement authority.***

In some cases, local officials have decided not to appoint a person to the position of Chief of Police. In such cases, usually a person with the title of "police director" or public safety director is appointed to assume the responsibilities of the administrative head of the police department. A person holding this civilian position has little independence to run the day to day operations of a police department under the law. Generally speaking, directors and public safety directors are appointed to serve at the will of the appointing authority, thereby making them very sensitive to the needs, wants and desires of the political entity that appointed them. It is important to



note that there is a real and very significant difference between being responsible to legitimate oversight, and being beholden to political patrons or subject to political pressures. Interestingly, the courts have recognized the same potential. In the case of Asbury Park police director Louis Jordan versus Attorney General Peter Harvey, the Assignment Judge Feinberg noted that:

*Thus, regarding the enforcement of criminal law and, perhaps as importantly, the establishment of policies and priorities for the police function, there is a potential that a police director may exhibit a greater sense of duty or loyalty to those municipal officials who have appointed him than he would do to the Attorney General.*

Jordan v. Harvey, p. 16 (N.J. Superior Court, Law Division, 2004).

The court was not maligning the integrity of either individuals who hold civilian director positions nor that of elected officials who make such appointments. Rather, the court expressed her concurrence with a real-world concern about the position of civilian directors that has been expressed by residents in many communities and by law enforcement professionals.

### **Chiefs of Police and Civilian “Police Directors”: The Differences**

There are many real and important – even vital – differences between a sworn Chief of Police and a civilian “police director.” State law clearly distinguishes between police officers and other municipal employees who may be employed by or exercise supervision of the police force. Specific state statutes provide for the appointment of regular police officers and special police officers and establish qualifications for their appointment.<sup>10</sup> . These sworn officers must attend and successfully complete the basic training course approved by the New Jersey Police Training Commission. These officers are authorized to carry firearms in the performance of their duties.<sup>11</sup>

On the other hand, there are no State statutes which authorize, or in any way even regulate, the appointment of a “police director,” or which set forth the powers or duties or qualifications of such a position. However, our courts and our State’s Attorney General have clarified the very limited functions that can be exercised by a civilian “director,” and these go a long way toward outlining the importance difference between a sworn Chief of Police and a civilian “police director.”

As mentioned previously, the mere vesting of supervision of a police department in a “director” or the like does not vest in that individual the authority to exercise police

<sup>10</sup> N.J.S.A. 40A:14-122; N.J.S.A. 40A:14-146.10

<sup>11</sup> N.J.S.A. 52:17B-68; N.J.S.A. 40A:14-146.11; N.J.S.A. 2C:39-6; N.J.S.A. 40A:14-146.11; . N.J.S.A. 40A:14-146.14.



powers or to perform police duties. This is not merely a technicality; it has important implications. For example, a civilian “director” cannot perform police duties including conducting motor vehicle stops, engaging in patrol activities, answering calls for service and stopping or detaining individuals. A “director” may not wear a uniform or badge or carry a firearm, nor may he or she operate a motor vehicle which is equipped as a police car including police band radios. Likewise, they have no powers of arrest and may not issue firearms permits.<sup>12</sup>

Further, as a general rule a “director” may not have access to criminal investigative reports, nor may he or she have access to criminal history information. Likewise, such individuals must refrain, unless otherwise specifically directed by the county prosecutor, from directing the investigation of criminal activity. Nor may a “director,” as a civilian appropriate authority, have access to internal affairs investigative files absent a court order.<sup>13</sup> Moreover, a “director” may not examine confidential police reports or other confidential law enforcement documents, nor may he or she access the police department’s terminal for

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<sup>12</sup> *N.J.S.A. 40A:14-152; N.J.S.A. 2C:58-3.*

<sup>13</sup> September 5, 1997 letter from Deputy Attorney General O’Grady to Chief Robert L. DeLitta, Nutley Police Department.

data, including NJCIC and NCIC information.<sup>14</sup>

From a budgetary standpoint, a municipality gets a two-for-one deal with a sworn Chief of Police – both a sworn police officer trained, experienced and authorized under the law to perform police functions, and a professional police administrator. This is particularly important for municipalities with small departments.

It should be noted that a municipality has no right or authority to change the above by ordinance or otherwise. In fact, the Office of New Jersey’s Attorney General and our Courts have made clear that not only is this their position, but that our State Legislature specifically intended to limit the exercise of police powers and duties to those that fall under the statutory system enacted into state law.<sup>15</sup>

Another particularly salient point is the impact on the morale of the men and women of the police department when a civilian is brought in to head the agency (regardless of any past experience, a “police director” is both in law and fact a civilian brought in to be placed over the sworn personnel of the police agency). The message delivered to each and every member of the department, from the newest recruit to the most experienced senior commander is loud and clear: none of you are good enough to be entrusted with the ultimate command of the

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<sup>14</sup> April 9, 1999 letter from Deputy Attorney General Keating to Hon. John G. Laky, Warren County Prosecutor.

<sup>15</sup> September 15, 2003 letter from Deputy Attorney General O’Grady to Hon. Kevin Sanders, Mayor, City of Asbury Park; *Jordan v. Harvey*, (Law Division, Decided June 11, 2004, Docket MER-L-0801-04).



department to which you have devoted your professional life, and forget any aspirations to lead it in the future (unless you are willing to turn in your badge to accept a political appointment, that is). We believe that the extremely negative impact of this message is self-evident, and will resonate throughout the ranks and through the years. Ultimately, it is the community that pays the price.

The appointment of a sworn Chief of Police, on the other hand, bolsters the morale and professionalism of the department by encouraging personnel to prepare themselves for promotion, by further educating themselves and performing at an optimum level with the goal that they can be considered at some later date as an appropriate candidate for Chief, independent of political manipulation or similar considerations.

Another point not to be overlooked is the continuity of leadership that a Chief can provide. A “director” in contrast is often subject to a short-term contract or the term of office of the elected or appointed officials responsible for the appointment, or to the vagaries of political fortunes, leaving the long-term leadership of the department in doubt. This can have a very disruptive and detrimental effect on the performance of a law enforcement agency. This should not be construed as an attack on the integrity of local elected officials, or

even of those placed in the role of “director.” It is simply a recognition of the different roles and needs of elected and appointed officials and those of career, professional law enforcement leaders. The issue is not the personalities of the moment – it is about the future of professional, non-political law enforcement leadership in local law enforcement.

In short, the decision to place a civilian at the head of a police department needs to be weighed very carefully, and with the full knowledge that it poses many risks to the effective, efficient, and impartial administration of law enforcement in any given community.

#### **NJSACOP’s Position:**

The core mission of the New Jersey State Association of Chiefs of Police (NJSACOP) is to “promote and advance the highest ethical and professional standards in law enforcement at all levels throughout New Jersey.” The NJSACOP is of the firm opinion that only a person free of excessive political influence (as opposed to civilian oversight) can most effectively conduct the day to day operations of a municipal police department. A Police Chief is able to make law enforcement decisions without the fear of political repercussions. A sworn, tenured Chief of Police is enabled to make an honest assessment in presentation of police budgetary and other needs while allowing the Chief to make and present honest reports without fear of political reprisal.

A sworn career Chief of Police gives that municipality both a skilled, career police



administrator, as well as sworn and experienced police officer.

By opting for a Chief of Police, the appointing authority helps to maintain and bolster the morale and professionalism of their department by encouraging personnel to prepare for promotion by further educating themselves and performing at optimum level with the goal of eventually being considered as an appropriate candidate for Chief, independent of political circumstances or favor or manipulation.

And perhaps most of all, police officers who have made a career serving a specific community, and who have devoted their entire professional lives to the community and department have a better understanding of that community and department. Such officers, who have aspired for years to lead their department and to be a leader in their community, have a significant stake in both. Moreover, they are intimately familiar with the residents, the jurisdiction, the very fabric of the community they serve – and likewise, are well known by the community.

For all of the foregoing reasons, the NJSACOP opposes the appointments of civilian “police directors” or “public safety directors” as the head of municipal police departments, in the place of a sworn Chief of Police.

## Addendum

### *Arbitration: Additional Compensation for Ranking Officers*

In the Matter of Arbitration Between Montgomery Township and Montgomery SOA (AR-2004-039): This case involved a grievance filed by the two top sworn uniformed officers in the Montgomery Township Police Department for additional compensation for the extra duties and assignments performed by them, duties which the civilian police director could not perform due to his civilian status (notwithstanding the director’s previous law enforcement experience). The municipality had given the two officers an additional 10% in pay for the performance of these duties, and subsequently took the extra compensation away, even though the extra duties and responsibilities remained (minus purely administrative functions performed by the director). The arbitrator upheld the grievance, noting that:

*[T]he undisputed testimony was that the position of police director is a civilian position and that there are certain duties of law enforcement that the director cannot perform. While the director can assume certain responsibilities for the department and can delegate them to his officers, there are certain sworn law enforcement responsibilities<sup>16</sup> that he cannot perform and cannot delegate to the officers. [p. 8.]*

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<sup>16</sup> It is interesting to note that the director himself testified that the departmental rules and regulations required the chief [if any] to “[D]irect, coordinate, and personally participate when required by circumstances, in any and all activities of the Department.” The decision notes that the “record



The net result of the matter was that the superior officers' grievance was upheld, and they were granted additional compensation.

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N.J.S.A. 2A:158-5

N.J.S.A. 2C:39-6

N.J.S.A. 2C:58-3

N.J.S.A. 40A:14-118

N.J.S.A. 40A:14-118(e)

N.J.S.A. 40A:14-122

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N.J.S.A. 40A:14-146.14

N.J.S.A. 40A:14-152

N.J.S.A. 52:17B-68

N.J.S.A. 52:17B-98

### *Judicial Decisions*

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established that a police director cannot perform that function, so it was in fact not a function that could be delegated by him, but rather one that falls, in effect, by default to the department's superior officers. Montgomery, at p. 8.

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### *Official Correspondence*

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April 9, 1999 letter from Deputy Attorney General Keating to Hon. John G. Laky, Warren County Prosecutor.

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