

A **NJSACOP** White Paper



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Limitations of Authority Under NJ Law of Civilian Police / Public Safety Directors

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Introduction

The appointment of a civilian “police director” or “director of public safety” in the place of a sworn Chief of Police is a politically and emotionally charged issue.

However, it is important to view the issue not from a political or emotional issue, but rather from a legal perspective. Whatever choice is ultimately made by a local appointing authority, there is no escaping the fact that everyone involved – the appointing authority, mayor, municipal governing body, and a civilian “director,” are all bound by the statutory and case law of the State of New Jersey.

If a decision is made to appoint a civilian “director”, the law of this State is clear that such a position is civilian in nature, and operates under strict limitations of action and authority.

Statutory Provisions

One of the ironies of the problem posed by the appointment of civilian “directors” is that there is *no* statute directly authorizing the appointment of a police director. However, in addition to creating specific requirements for the appointment of law enforcement personnel in general, and Police Chiefs in particular, the State Legislature has implicitly recognized the *civilian* character of the police director position. As the New Jersey Appellate Division discussed in *Kossup v. Bd. of Trustees, Police & Firemen's Retirement System*, 372 N.J. Super. 468, 859 A.2d 721 (App.Div.2004), the Police and Firemen's



Retirement System (PFRS) pension statutes, and the history of those statutes, demonstrate that the Legislature has in a backhanded way acknowledged the creation of police director and fire director positions and has recognized that these are ***civilian rather than law enforcement or firefighting jobs***. *Id.* at 473-75.

A civilian director may not 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. *N.J.S.A. 40A:14-152; N.J.S.A. 2C:58-3*.

It is important to note that a municipal government ***may not*** in any way attempt to circumvent the law by conferring upon civilian “directors” any police powers by way of local ordinances. *N.J.S.A. 52:17B-67* specifies that a police officer is “any employee of a law enforcement unit...other than civilian heads thereof.” Moreover, this very topic was the subject of a series of court cases which led to a published Appellate Decision (discussed below).

Case law

In the Appellate Court decision *L. Louis Jordan and The City of Asbury Park v. Peter C. Harvey, Attorney General Of The State Of New Jersey*, 381 N.J. Super. 112 (App.Div.2005), the Court put a definitive end to any ambiguity about the civilian nature of the position of “police director,” and further put an end to any thought that a municipality may confer upon such a civilian director any police powers (regardless of any prior experience that a particular “director” may have). The Court left no doubt about the status of the law in this regard:

“In light of the detailed and specific State regulatory scheme concerning who may enforce the criminal laws, we conclude that a municipality cannot accord law enforcement powers to an employee without specific statutory authority. We find no statutory authority to accord such powers to a police director.”

Id. at 116.

The Appellate Court went on to affirm the decision of the trial court, which followed prior precedent and enjoined the city from attempting to confer police powers on its police director.

The trial court also provided a helpful list of duties “consistent with the supervisory function of a civilian police director.” As the court-provided list makes clear, the role of the civilian police director is solely



limited to civilian administrative tasks. *L. Louis Jordan and The City of Asbury Park v. Peter C. Harvey, Attorney General Of The State Of New Jersey*, (Law Division – Mercer County, Docket No. 0801-04, decided June 11, 2004).

Attorney General Opinions

The Office of Attorney General has addressed the issue of the limits on the authority and actions of civilian police directors on multiple occasions.

In addition to the statutory and case-law restrictions placed upon civilian police directors, the Attorney General clarified other limitations inherent in this position. For example, civilian directors 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 specifically directed by the County Prosecutor, from directing the investigation of criminal activity. Nor may a “director,” as a civilian, have access to internal affairs investigative files absent a court order. [*Opinion Letter from Deputy Attorney General O’Grady to Chief Robert DeLitta, Nutley Police Department, September 5, 1997*].

Moreover, a “director” may not examine confidential police reports or other confidential law enforcement documents, not may he

or she access the police department’s terminal for data, including NJCIC and NCIC information, or operate a police vehicle or a vehicle equipped with a police radio. [*Opinion Letter from Deputy Attorney General Keating to Hon. John G. Laky, Warren County Prosecutor, April 9, 1999; Letter Opinion from Deputy Attorney General to Hon. Kevin Sanders, Mayor, City of Asbury Park, September 15, 2003*].



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