



CITY OF SOMERVILLE, MASSACHUSETTS LAW DEPARTMENT

November 25, 2014

Honorable Board of Aldermen
City Hall
93 Highland Avenue
Somerville, MA 02143

Re: Committee on Confirmation of Appointments' Legal Questions on Appointment of Constables

Dear Honorable Board Members:

The Committee on Confirmation of Appointments asked this office to provide legal opinion on the following questions: (1) whether the city may require appointed constables to be Somerville residents; and (2) whether applicants for constable may be subject to a Criminal Offender Record Information (CORI) check. In my opinion, the answer to both questions is, yes.

The appointment of constables is governed by MGL c. 41 and the Somerville City Charter. Section 21(xv) of the Charter provides that the mayor may appoint, subject to confirmation by the board of aldermen the following officers, which includes, "the number of constables as may be deemed advisable". MGL c. 41, s. 109¹ provides that unless otherwise provided by "general or special law, ordinance or by-law, a person need not, in order to accept appointment to a public office" be a resident of the municipality. A constable holds a public office. Koonce v. Aldo Realty Trust, 8 Mass. App. Ct. 199 (1979). Accordingly, in my opinion, a special law or an ordinance may establish a residency requirement for the position of constable.²

¹ Section 109 references towns, but is also applicable to cities. G.L. c. 4, s. 7(34).

² As requested, nearby municipalities' ordinances on the subject include: *City of Cambridge Code, Ch. 2.20* (constables with power to serve civil process shall be city residents upon appointment through tenure in office, except inspectors in Health Department; residency requirement applies to constables with power to serve civil process, not to appointment of constables with power to arrest.); *City of Melrose, Code, Ch. 15, Art. XIII.* (no residency requirement in ordinance); *City of Boston Code, Ch. 2-7.2* (constables shall be residents of city upon appointment, except for housing inspectors in Housing Department); *City of Lowell Code, Ch. 50* (nonresidents of city may be appointed as constables provided that city or town in which applicant is a resident allows Lowell residents to be constables in that respective city or town).

On the second question, although the local-option statute relative to constables has not been accepted by the City, it is instructive. MGL c. 41, s. 91B provides that an "appointing authority shall also investigate the reputation and character of every applicant and his fitness for said office. The chief of police or other official having charge of the police shall upon request give the appointing authority all possible assistance in making such investigation." In my opinion, a CORI check is permissible in accordance with applicable laws relative to CORI access, and I am informed that the Police Department performs a CORI check as part of its assistance in the investigation of applicants.

Please contact me if you have any additional questions.

Very truly yours,



Jason D. Grossfield
Assistant City Solicitor

cc: Mayor Joseph A. Curtatone
John Long, City Clerk