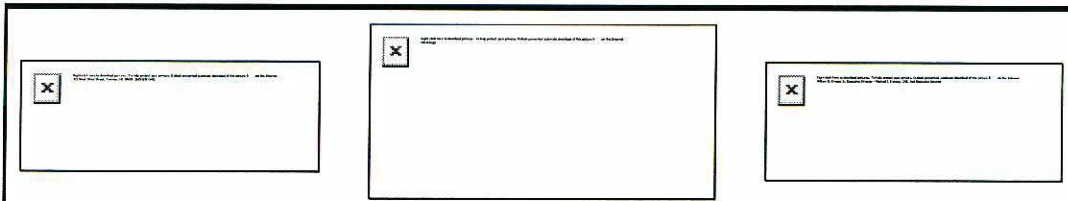


9

Lashway, Lisa

From: NJLM - Municipal Clerks [njlm-clerks@cityconnections.com]
Sent: Tuesday, April 29, 2008 4:17 PM
To: Lashway, Lisa
Subject: Municipal Clerks from NJLM



LEAGUE ALERT

Municipal Clerk: Please forward to Mayor and Governing Body.

April 29, 2008

Re: Appellate Division Rules that Mayor Can Make Police Appointments under Mayor-Council Government

Dear Mayor:

In a decision handed down today, the New Jersey Appellate Division ruled that a municipality governed under the Mayor-Council form of government of the Faulkner Act could delegate to the mayor the authority to make appointments to and promotions within the police department. In *Hawthorne PBA Local 200 v. the Borough of Hawthorne* (Docket No. A-4504-06T2), the police union sued the municipality, seeking to invalidate the ordinance giving the mayor this power, on the basis that these appointments and promotions had to be made by the council, by ordinance. The lower court upheld the procedure set forth in Hawthorne's ordinance, and the Appellate Division affirmed this holding.

In ruling for the municipality, the court discussed the interplay between the mayor-council statutes and the general statute concerning the establishment of police departments. While the prior New Jersey Supreme Court case of *Reuter v. Borough Council of Fort Lee*, 167 NJ 38 (2001), interprets the general law to require that the structure and positions in a municipal police department must be established by ordinance, it does not specify that the appointments themselves need to be made by ordinance.

Given the silence of the police statute and prior case law on this issue, the court looked to the provisions of the Faulkner Act for guidance. The opinion noted that the mayor has the executive and administrative functions and makes many municipal appointments under the mayor-council form of the Faulkner Act, and

in the police department. In *Hawthorne PBA Local 200*

therefore the delegation of police appointment and promotion powers to the mayor fit in with the general structure of governance. Furthermore, the municipality had, by ordinance, designated the mayor as the "appropriate authority" to whom the police chief reported. For all of these reasons, the court found that "The decision of the Borough to authorize the mayor...to appoint and promote police officers is a valid exercise of municipal discretion."

View the case at: <http://www.judiciary.state.nj.us/opinions/index.htm>

If you have any questions or concerns about this communication, please contact Deborah M. Kole, Staff Attorney, at the League, ex. 137, or at dkole@njslom.com

Very truly yours,

William G. Dressel, Jr.
Executive Director

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