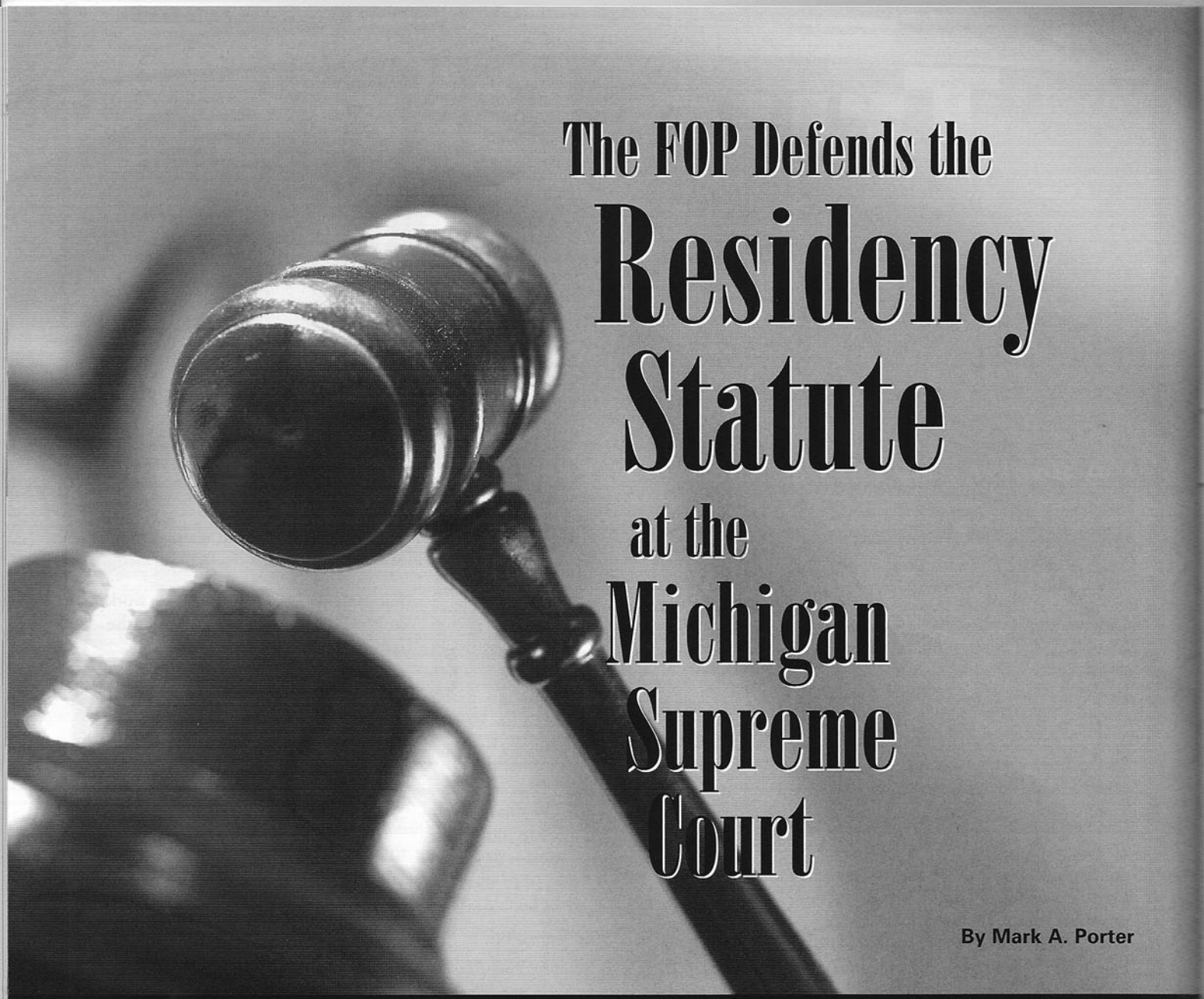

The FOP Defends the Residency Statute at the Michigan Supreme Court

By Mark A. Porter

Mark A. Porter is a retired police officer who has been an active member of the FOP since 1973. He is currently a partner at the law firm of Alonzi, Porter, & Associates, PLLC in Pontiac.

How far is it from your home to your work? Did you answer "as the crow flies," or by "road miles?" A simple question can become legally complicated when those two methods of measurement collide at the intersection that runs by a court house.

In late 1999, after years of effort by the FOP, the Michigan Legislature passed a law that created a statewide, uniform residency standard for all county and local public employees.[1]

The legislation was vigorously opposed by some local governments, who wanted to require all public employees to live within the borders of their employers.

Indeed, some local governments had expended great time, money, and manpower to follow their own employees to and from work, trying to "prove" that the "primary domicile" of the employee was somewhere beyond the public employer's border. The accused employees were then fired.

In order to get a residency Bill passed in Lansing, a conference committee was convened in December, 1999, to reconcile two competing Bills from the House and Senate. The result that came out from the closed-door conference – and which became law – said the following:

> **(1):** Except as provided in subsection (2), a public employer shall not require, by collective bargaining agreement or otherwise, that a person reside within a specified geographic area or within a specified distance or travel time from his or her place of employment as a condition of employment or promotion by the public employer.

(2): Subsection (1) does not prohibit a public employer from requiring, by collective bargaining agreement or otherwise, that a person reside within a specified distance from the nearest boundary of the public employer. However, the specified distance ***shall be 20 miles or another specified distance greater than 20 miles.*** (MCL 15.602)

But did the Legislature mean 20-miles "as the crow flies," or in "road miles?" That question lay dormant for several years until a certified police officer applied for employment at Traverse City. The City, after taking the officer through the application procedure, refused to hire him, claiming that his property was more than ***"15-miles radius or 20-road miles*** from the nearest City limit."

The language that the City cited was contained in the City's labor contract with its police officers – but ***applicants*** are not covered by a labor contract which applies only to ***employees.***

The more immediate problem was the direct conflict of the labor contract with Section-2 of the residency statute. Nowhere in the statute was there a provision that allows a "15 mile radius" for public employees – nor was there any reference to "20 road miles."

A lawsuit was filed against Traverse City, but dismissed at the trial level by the Circuit Court. Once the case went up on appeal to the Michigan Court of Appeals, the FOP became involved and filed its *amicus curiae* brief on the side of the certified officer.[2] The State Lodge stressed that "20 miles" must be measured in a straight line – not by the twists and turns of local roadways.

The FOP was the ***only*** law enforcement organization to take up the cause before the Courts – and in June, 2006, the Court of Appeals reversed the trial court. The Court of Appeals ruled that unless the Legislature said otherwise, "the straight line" rule applied for measuring 20-miles.

But the panel of three judges split the decision into three separate opinions on the case – almost guaranteeing a review by the Michigan Supreme Court.

The City did, in fact, appeal to the Michigan Supreme Court, and once again the FOP went into Court to file its *amicus curiae* brief in support of the Straight Line Rule. The FOP cited numerous Michigan cases where Michigan's Legislature and Courts use measurements in straight lines – such as the minimum distances that are required between churches and taverns.

The Supreme Court heard oral arguments on the case in early 2007, and released its final ruling in July.[3] It upheld the Court of Appeals, ruling that:

> ***We hold that the 20-mile distance permitted in MCL 15.602 is to be measured in a straight line between the employee's place of residence and nearest boundary of the public employer.***

The Court's decision on the Straight Line Rule was unanimous – a ringing endorsement for the residency statute and for the FOP's vigorous advocacy at the Court of Appeals and Supreme Court.

MCL 15.603 states that all public employee labor contracts that are renewed or agreed to after 1999 must conform to the residency statute. The Supreme Court's ruling in the Traverse City case has now officially voided the residency language in labor contracts that don't measure a minimum of 20-miles, in a straight line, from the boundary of the employer.

The Supreme Court, however, split into a 4-3 decision on another matter raised by the lawsuit. The Court's majority also ruled that a plaintiff who sues to enforce the residency statute cannot collect monetary damages from a public employer that illegally side-stepped the statute.

The Court's majority based this second part of its decision upon the broad immunity laws that protect Michigan's local governments from litigation. And it stated that only the Legislature has the power to authorize monetary damages for violations of a statute.

The aggrieved person [or the public employee's association] is limited to what the Courts term "equitable" relief – such as taking out an injunction against the employer, and a declaratory judgment that orders the employer to comply with the statute.

In return, the dissenting justices noted that "a violation of the statute has significant consequences for an employee or potential employee." By the time an employee or applicant finds out about the damage caused by the local government's action, an injunction will prove to be of little value.

In any case, the applicant or employee association will not likely recover the costs of the litigation, nor the damages that flowed from the violation of the statute.

But for now, a major legal question about the residency statute has been answered in favor of all public employees – thanks in no small part to the aggressive defense of the statute by the FOP.

The Michigan Municipal League filed an *amicus curiae* legal brief on behalf of the City in this case – but only the FOP filed legal arguments on behalf of Michigan's public safety employees.

The constant vigilance – and willingness to act – makes the FOP stand apart from other organizations that are content to sit and watch employee rights shrivel and disappear.

It's something to think about, the next time you wonder which group truly looks out for the public safety officers of Michigan.

[1] MCL 15.601-603 at www.michiganlegislature.org.

[2] Lash – v – Traverse City, 271 Mich App 207 (2006).

[3] Lash – v – Traverse City, docket #131632; 735 NW2d 638 NW2d (2007)