

In the cited case, an ordinance of the Town of North Hempstead prohibited "through or transient vehicular traffic" on streets in or near the area of New Hyde Park, the ordinance being passed as a result of complaints from residents who objected to the volume of traffic at particular hours of the day, mainly because of the large number of automobiles driven by persons going to and from work at the Sperry Gyroscope Company plant situated just north of the area. In holding the ordinance invalid the Court said,

"Political subdivisions and municipal corporations hold * * * streets for the benefit of the public, consisting of the whole of the people, and regulation of the streets is the exercise of a governmental function in that they are subject exclusively to regulation and control by the state as a sovereign except to the extent that the Legislature delegates power over them to political subdivisions and municipal corporations."

It is our opinion that the "no through street" ordinance proposed by the Borough of Demarest, and similar ordinances proposed by other municipalities, have no legislative sanction.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JAMES T. KIRK,
Deputy Attorney General.

JTK/LL

MARCH 4, 1955.

HONORABLE WILLIAM F. KELLY, JR.,
President, Civil Service Commission,
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1955. No. '6.

DEAR PRESIDENT KELLY:

You have recently requested advice concerning the power of a municipal governing body to set minimum and maximum age limits for Patrolmen and Firemen. Your memorandum states that the City of Union City adopted two ordinances in 1925 the effect of which is to establish the minimum age at 21 and the maximum age at 30 for Patrolmen and Firemen. These age limits coincide with those set by R. S. 40:47-4, as amended. However, prior to its amendment, approved April 24, 1945, the statute provided for a thirty-five year maximum age.

N. J. S. A. 38:23A 2, enacted in 1944, provides as follows.

"When the qualifications for any examination or test for, or appointment or election to any office, position or employment under the government of this State, or of any county, municipality, school district or other political subdivision of this State, or under any board, body, agency or commission of this State, or of any county, municipality or school district, includes a maximum age limit, any person, who, heretofore and subsequent to July first, one thousand nine hundred and forty, entered or hereafter, in time of war, shall enter the active military or naval service of the United States or the active service of the Women's Army Corps, the Women's Reserve of the Naval Reserve or any similar organization authorized by the United

States to serve with the Army or Navy, shall be deemed to meet such maximum age requirement, if his actual age, less the period of such service, would meet the maximum age requirement in effect on the date the person entered into such service of the United States."

The public announcements issued by your Department for examinations for Patrolmen and Firemen contain the following provision with respect to age.

"Not less than 21 nor more than 30 years of age at the announced closing date for filing applications for these examinations, except that for veterans who entered active service with the armed forces after July 1, 1940 and prior to April 24, 1945, the maximum age limit is 35 years.

We are of the opinion that the age limits set by the municipal ordinance are valid and must be regarded as controlling. The governing body of each municipality is empowered by R. S. 40:47-1 to make ordinances for the establishment and regulation of a police force. R. S. 40:47-3, as amended, and R. S. 40:47-4 set up restrictions within which the municipalities must operate in the appointment of police officers. We see no reason, however, why a municipality may not make more stringent regulations so long as they comply as well with the statutory prohibitions on the subject. In 62 C. J. S., Municipal Corporations, p. 1094 it is stated,

"The appointment of police officers is generally regulated by statute setting up rules of eligibility of prospective appointees; and the municipality may prescribe requirements in addition to, although not in contravention of, those prescribed by statute."

Your announcement is correct as to municipalities which have not set any age limits and as to those in which the age limits were set at 21 years of age to 35 years of age prior to April 24, 1945. However, with respect to Union City and other municipalities with similar ordinances where the age limit was or is more restrictive than that in effect by state law, the more restrictive provisions of the municipal ordinance are controlling. Thus veteran applicants for police and fire positions in Union City must be no older at the time of appointment than 30 years of age, plus a period of time, computed in accordance with the terms of the statute. Even though prior to April 24, 1945 the statutory maximum age was 35, the age of 30 set by the ordinance was "the maximum age requirement in effect" within the meaning of N. J. S. A. 38:23A—2, *supra*.

One other aspect of your announcement requires attention. The statute R. S. 40:47—4, as amended, provides,

"No person shall be appointed a member of the paid fire or police department or force of any municipality who is less than twenty-one or more than thirty years of age * * *"

The critical time is the time of appointment. At that time the appointee must be above the minimum and below the maximum. See *Wentzell v. Stechman*, 8 N. J. Misc. 503 (Sup. Ct. 1930). Your announcement makes the announced closing date the critical time. In this respect it is incorrect. Language should be substituted to make it clear that at the time of appointment the applicant must be within the prescribed age limits.

Yours very truly,

GROVER C. RICHMAN, JR.,
Attorney General

By: JOHN F. CRANE,
Deputy Attorney General