



CITY OF SACRAMENTO

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DEPARTMENT OF LAW
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September 30, 1981

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Hon. City Council
Council Chamber
City Hall
Sacramento, CA 95814

Members in Session:

I recommend that the City Council join as amicus curiae in the cases of Cresap v. County of San Diego and Whalen v. Wilde. These two cases are explained in the attached memoranda from Deputy City Attorney William Carnazzo and the League of California Cities.

Very truly yours,

James P. Jackson
JAMES P. JACKSON
City Attorney

JPJ/pl

Recommendation approved:

Walter J. Slupe
WALTER J. SLUPE, City Manager

APPROVED
BY THE CITY COUNCIL

OCT -6 1981

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CITY CLERK



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DEPARTMENT OF LAW

812 TENTH ST. SACRAMENTO, CALIF. 95814
SUITE 201 TELEPHONE (916) 449-5346

September 29, 1981

Hon. City Council
Council Chamber
City Hall
Sacramento, CA 95814

CONFIDENTIAL

Re: Participation as Amicus in Cresap v. County of San Diego, et al

Members in Session:

Summary

The County of San Diego has filed a petition for hearing in the Supreme Court on Cresap v. County of San Diego (1981), 121 CA 3d 591. The Cresap case holds that "judicially cognizable good cause" is required in order to terminate a temporary employee, thus obliterating a long-standing distinction between permanent and temporary employees. It is recommended that the City Attorney's office write a letter to the Supreme Court supporting the County of San Diego's petition for hearing.

Background and Analysis

Cresap was employed for six years as a temporary sheriff's bailiff. The court found that Cresap was indeed "temporary." When his temporary appointment expired, he challenged his termination, claiming that he should have been accorded all of the substantial and procedural rights of a permanent civil service employee prior to his termination.

In its decision the Court of Appeal acknowledged that a temporary employee cannot gain permanent status by mere longevity, and that there are basic and well-defined civil service distinctions between permanent and temporary status. Nevertheless, the court held that "special facts" in this case required giving this temporary employee procedural protectives prior to removal. These "special facts" are the duration of employment, prior Civil Service Commission disciplinary decisions in other cases, and certain private-sector employment cases (Tameny v. ARCO, Cleary v. American Airlines, and Pugh v. See's Candies.) The court's

conclusion was that Cresap is entitled to "fair procedure on any termination of his employment, including a showing of cause for termination upon proper notice, and after hearing if requested." These rights have never before been judicially accorded temporary employees. "Good cause" was defined by the court in a later modification of its opinion to mean "fair and honest cause or reason, regulated by good faith on the part of the exercising power." Heretofore temporary employees could be discharged for any reason or no reason, except not for an unconstitutional reason or in such a manner as to infringe on constitutionally protected rights.


This case impacts the City of Sacramento, inasmuch as temporary employees are not accorded the same pre-termination rights as are permanent employees, and there are positions which are "temporary" or "limited term" which may be held for long periods of time due to departmental or other needs or circumstances. The City would be unable to terminate those persons on the expiration of the limited term except for "good cause."

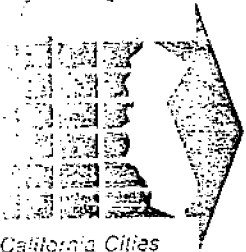
Recommendation

It is recommended that the City Attorney direct a letter to the Supreme Court in support of the County of San Diego petition for hearing.

Respectfully submitted,

JAMES P. JACKSON
City Attorney

By 
WILLIAM P. CARNAZZO
Deputy City Attorney



League of California Cities

California Cities
Work Together

Sacramento, CA 95814

September 21, 1981

TO: All City Attorneys

FROM: Carlyn Galway

RE: Amicus Participation in Whalen v. Wilds et al.

The above-referenced case is now pending on appeal following a trial court judgment holding appellants, as Lake County Supervisors, personally liable for public expenditures to defend them in an action challenging the validity of their salary increase. Plaintiff was also awarded attorneys fees for which the Supervisors were held personally liable.

The County Counsel of Marin County will file an amicus brief in which cities, as well as counties, may join. While other issues are involved in the case, the County Counsel has stated that the amicus brief will be limited "solely to the premise that the Court, in whatever opinion it ultimately renders, should make it clear that County Supervisors should not be held personally liable for erroneous expenditure of public funds or defense of lawsuits, in which they have no personal interest, in the absence of actual fraud, corruption or malice."

Prior to perfection of the appeal, the Legal Advocacy and League Board of Directors took action recommending that consenting cities join as amici in the Marin County brief. As the brief must be filed no later than October 15, City Attorneys wishing to join therein should contact as soon as possible:

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Telephone: (916) 499-6117