

Village Law §§ 8-800, 8-800(1); Session Laws 1985 Ch 810, 1985 Ch 840; Town Law § 150; Civil Service Law §§ 58, 58(1-c)

A village that has a police department must have a chief of police, unless the grandfather clause applies.

September 6, 2012

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Informal Opinion
No. 2012-8

Dear Mr. Byrne:

You have requested an opinion regarding whether the Village must employ a chief of police for its police department. The police department currently has a part-time police chief, three fulltime officers, and several part-time officers. The Village established and has maintained the position of chief of police since at least 1975. You have explained that the current police chief anticipates retiring in the near future, and the Village board of trustees would like to eliminate the position of chief of police upon his retirement. As explained below, we are of the opinion that the Village must employ a police chief.

Village Law § 8-800(1) provides that "[t]he board of trustees of a village may, by resolution, establish a police department in such village and appoint a chief of police and such personnel as may be needed" You have suggested that this language permits but does not require that a chief of police be appointed. We disagree. As you know, we previously have interpreted the phrase, "may, by resolution, establish a police department in such village and appoint a chief of police," as permissive with respect to the establishment of a police department but, upon such establishment, mandatory with respect to the appointment of a police chief. Op. Att'y Gen. (Inf.) No. 95-58; 1975 Op. Att'y Gen. (Inf.) 229 (identical language in Town Law § 150); *see also* Op. St. Comptr. No. 63-293. Thus, a village need not establish a police department but if it does, it must also establish the position of chief of police.

This conclusion is consistent with the legislative history to the statute. In 1985, the phrase "a chief of police" was added to section 8-800 to impose a

requirement that a village with a police department appoint a chief of police. Mem. of Intro., *reprinted in* Bill Jacket for ch. 810 (1985), at 5. The expressed intent was to address the increasing complexity and demands of running a police department. *Id.* at 6. The amendment also established uniformity between the police departments of villages and towns, required to have a chief of police by Town Law § 150, throughout the state. Letter from A. Seminerio, Assembly Member, to G. Crotty, Counsel to Governor (June 29, 1985), *reprinted in* Bill Jacket for ch. 810 (1985), at 10. The amendment included a grandfather clause excepting from the law's application a village that, as of the law's effective date (August 2, 1985), had a police department and had not established the office of chief of police. Act. of Aug. 2, 1985, ch. 810, § 2.

Applying these provisions to the Village, because it established a police department and the position of chief of police before 1985, pursuant to Village Law § 8-800(1) the Village must employ a chief of police as long as it continues to have a police department.

Nor does Civil Service Law § 58(1-c) compel a different conclusion. Civil Service Law § 58 provides that "any political subdivision maintaining a police department serving a population of [150,000] or less and with positions for more than four full-time police officers, shall maintain the office of chief of police." That provision does not apply to the Village, because you have advised that the Village has a population of about 2700 and, as described above, has only three fulltime officers. We are of the opinion, however, that the Village Law's provision requiring a police chief is not affected by the fact that the Civil Service Law's provision requiring a police chief does not also apply here.

Amendments requiring employment of a police chief were added to the Village Law and the Civil Service Law in the same legislative session, introduced by the same sponsors, and enacted on the same date, both with immediate effective dates. Act of Aug. 2, 1985, ch. 810 (Village Law); Act of Aug. 2, 1985, ch. 840 (Civil Service Law). Both measures were intended to professionalize the leadership of municipal police departments. Mem. of Intro., *reprinted in* Bill Jacket for ch. 810 (1985), at 6; Sponsor's Mem., *reprinted in* Bill Jacket for ch. 840 (1985), at 5. The coverage provisions of the two measures use language that is similar, but not identical. The Village Law provision applies to all villages, while the Civil Service Law provision applies to all political subdivisions with a police department of a certain size that serves a population of a specified size. In light of the shared history and purpose of the two provisions, and the differences in the language of their coverage provisions, we are of the opinion that Civil Service Law § 58(1-c) most sensibly is understood not as limiting the reach of other police chief provisions, but rather as extending the requirement of a police chief to those political

subdivisions with a police department of a certain size that serves a population of a specified size that were not already covered by the police chief provisions contained in other law, such as Village Law § 8-800 and Town Law § 150. So viewed, Opinion of the Attorney General No. 95-58 is consistent with both Village Law § 8-800(1) and Civil Service Law § 58(1-c).

The Attorney General issues formal opinions only to officers and departments of state government. Thus, this is an informal opinion rendered to assist you in advising the municipality you represent.

Very truly yours,

KATHRYN SHEINGOLD
Assistant Solicitor General
in Charge of Opinions