TO: H.L.B.

FROM: J.B.P.

RE: Memorandum on right of City of Atlanta Firemen to strike.

"Although there have been many strikes by public employees, very few of them have reached the courts, or at least, very few have been reported. However, in every case that has been reported, the right of public employees to strike has been emphatically denied. Unlike the right of labor in private industry, public employees do not possess the rights of collective bargaining, the right to strike, or the right to picket." 31 ALR 2d 1149 § 3, 1159 § 11.

"Furthermore, the courts have generally denied union membership to policemen and firemen because they owe undivided allegiance to the public, and because it is absolutely necessary to the maintenance of discipline in the two services that public authorities have complete control over them." 31 Am Jur 429 § 56.

The constant argument of strikers in reported cases is that the right to strike is an inherent right protected by the provisions of the Constitution.

The universal view of the courts is that "there is no inherent right in employees to strike against their governmental employer, whether federal, state or political subdivision thereof, and strike of municipal employees for any purpose is illegal". Board of Education of Community Unit School District #2, Appellant, vs. Doris Redding, et al., Supreme Court of Illinois, May 20, 1965. This was a case of first impression in the Supreme Court of Illinois. Custodial employees, in this case, were conducting a strike against their school board employer and were picketing the schools in support of the strike.

"In absence of legislative authority, public employees in general have no right to strike against the government." Los Angeles Metropolitan Transit Authority vs. Brotherhood of Railroad Trainmen, 355 P.2d 905. This right must be deliberately expressed and is not to

be implied. The Delaware River and Bay Authority vs. The International Organization of Masters, Mates and Pilots, 211 A2d 789.

"In absence of legislation, right of employees of the Port of Seattle, a political subdivision of the State and a municipal corporation, to strike is subordinate to the immunity therefrom of the Port of Seattle." Port of Seattle vs. International Longshoremens and Warehousemens Union, 324 P2d 1099.

A search of Georgia laws reveals that there is no State statute which gives public employees the authority to strike against their employer.

The Supreme Court of Georgia, in the case of International Longshoremens Association, AFL-CIO, et al., vs. Georgia Ports Authority, held that "it is contrary to the public policy of the State of Georgia for State employees to strike". Several out-of-state cases were cited in support of this finding. This case involved the right of employees of the State Ports Authority to strike. In further support of this ruling, Georgia Laws 1962, p.459 was cited and Section 1 of said Act provides:

> "Section 1. No person holding a position by appointment or employment in the government of the State of Georgia or any agency, authority, board, commission, or public institution thereof shall promote, encourage or participate in any strike."

The question arises as to whether or not this State law is applicable to an employee of a municipality. Is a municipality an agent, authority, board, commission or public institution of the State of Georgia?

Municipalities, in the following cases, have been classified as agencies or departments of the State:

> " 'Municipalities' are agencies of the commonwealth created by the sovereignty of the people." Adams v. Oklahoma City, 95 P. 975, 979, 20 Okl. 519.

> "A 'municipality' is merely a political subdivision or department of the state." Jersey City v. Martin, 19A.2d 40, 45, 126 N.J.L. 353; Storrs v. Heck, 190 So. 78, 84, 238 Ala. 196.

"A municipality, being no more than a governmental agency of the state with the powers limited and defined by statute. . ." Valentine v. Road Directors of Allegany County, 126 A. 147, 150, 146 Md. 199.

"A municipality is a state agency for governmental purposes. It exercises political governmental powers delegated by the state." City of Lexington v. Thompson, 68 S.W., 477, 479, 113 Ky. 540, 57 L.R.A. 775.

"A 'municipal corporation' is a department of the government of state, created by the Legislature. . . and is synonymous with 'public corporation' and 'municipality'." Neuenschwander v. Washington Suburban Sanitary Commission, 48 A.2d 593, 597, 187 Md. 67.

" 'Municipality' is, in its governmental aspect, an agency of the state for the administration, within the prescribed limits, of the governmental function and powers of the state." Public Service Electric & Gas Co. v. City of Camden, 192 A. 222, 226, 118 N.J.L. 245.

No reported cases have been found wherein a municipal employer attempted to bring itself within the purview of the 1962 Act. Even though a court might hold that a municipal employer does not come within the scope of the 1962 Act, it appears that a strike could be successfully enjoined on the grounds that municipal employees have no express right to strike, that a strike by municipal employees is contrary to public policy and that the municipal employer is immune from strikes by its employees.