

APPOINTMENT, PROMOTION, ETC. OF DEPUTY SHERIFFS IN SECOND CLASS COUNTIES

Act of May 31, 1974, P.L. 296, No. 94

Cl. 16

AN ACT

Providing for the appointment, promotion, reduction in rank, suspension, furlough, discharge and reinstatement of deputy sheriffs in counties of the second class; extending civil service coverage to such deputies; and providing penalties.

Compiler's Note: Section 9 of Act 1 of 1998 provided that Act 94 is repealed insofar as inconsistent with Act 1.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Appointment of Deputy Sheriffs.--(a) The sheriff of a county of the second class may subject to Article XVIII of the Second Class County Code, act of July 28, 1953 (P.L.723, No.230) appoint such deputies as may be necessary to properly transact the business of his office: Provided, however, That hereafter every appointment to and promotion in the force of deputy sheriffs of such counties shall be made only according to qualifications and fitness to be ascertained by examinations which shall be competitive as provided in this act. The compensation of deputy sheriffs shall be paid by the county.

(b) No deputy sheriff in the county of the second class, except those not covered by this act, shall be appointed, promoted, reduced in rank, suspended, furloughed, discharged or reinstated, except in accordance with provisions of this act.

(c) All positions of the rank of sergeant and below shall be classified as competitive.

Section 2. Civil Service Commission.--(a) The provisions of this act shall be administered by the Civil Service Commission, hereinafter referred to as the commission, created pursuant to section 1503 of the Second Class County Code, act of July 28, 1953 (P.L.723, No.230).

(b) In addition to the powers conferred and duties imposed under the provisions of this act in administering this act, the commission may exercise the powers and perform the duties provided for in sections 1503, 1504, 1505, 1506, 1507, 1508 and 1509 of the Second Class County Code, except that rules and regulations and examinations shall be approved by, and annual reports shall be submitted to, the sheriff.

Section 3. Application for Examination.--(a) Each person desiring to apply for examination shall file with the commission a formal application in which the applicant shall state under oath or affirmation (i) his full name and residence or post office address, (ii) his citizenship, place and date of birth, (iii) his condition of health and physical capacity for public service, (iv) his business or employment and his residence for the past five years, and (v) such other information as may be required by the commission's rules and regulations, showing the applicant's qualifications for the position for which he is

being examined.

(b) No person shall be eligible to apply for examination unless he is at least eighteen years of age on the date of application and has been a resident of the county for at least one year immediately preceding his application.

Section 4. Rejection of Applicant; Hearing.--(a) The commission may refuse to examine, or, if examined, may refuse to certify as eligible, after examination, any applicant who is found to lack any of the minimum qualifications for examination prescribed in the rules and regulations adopted for the position or employment for which he has applied, or who is physically disabled and unfit for the performance of the duties of the position to which he seeks employment, or who is addicted to the habitual use of intoxicating liquors or narcotic drugs, or who has been guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, or who has been dismissed from public service for delinquency or misconduct of office, or who is affiliated with any group whose policies or activities are subversive to the form of government set forth in the constitutions and laws of the United States and Pennsylvania.

(b) If any applicant or other person feels himself aggrieved by the action of the commission, in refusing to examine him or to certify him as eligible after examination, the commission shall, at the request of such person, within ten days, appoint a time and place where he may appear personally and by counsel. Thereupon the commission shall then review its refusal to make such examination or certification and take such testimony as may be offered. The decision of the commission shall be final except for abuse of discretion in the making of such decision.

Section 5. Manner of Making Appointments.--Every position of employment, unless filled by promotion or reinstatement, shall be filled only in the following manner: The sheriff of the county shall notify the commission of any vacancy in the force of deputy sheriffs which is to be filled and shall request certification of a list of eligibles. The commission shall certify to the sheriff all those eligible from the last preceding examination held within a period of three years next preceding the date of the request for such eligibles. The sheriff of the county shall thereupon make an appointment from the eligible list certified to him.

(5 amended July 3, 1986, P.L.387, No.83)

Section 6. Probationary Period.--All appointments to positions in the force of deputy sheriffs shall be for a probationary period of nine months. During that period an appointee may not be promoted nor may he be dismissed except for cause as specified in section 10 of this act. If, at the close of the probationary period, the conduct or fitness of the probationary has not been satisfactory to the sheriff of the county, the probationer shall be notified in writing that he will not receive a permanent appointment. Thereupon, the appointment shall cease. Otherwise, his retention shall be equivalent to a permanent appointment.

Section 7. Provisional Appointments.--Whenever there are urgent reasons for the filling of a vacancy in any position in

the force of deputy sheriffs and there are no names on the eligible list for such appointment, the sheriff of the county may nominate a person to the commission for a noncompetitive examination and if such nominee shall be certified by the commission as qualified, after such noncompetitive examination, he may be appointed provisionally to fill such vacancy until an examination for such position can be held. It shall thereupon become the duty of the commission, within three weeks from the date of provisional appointment, to hold a competitive examination for such position and certify a list of eligibles to the sheriff of the county and a regular appointment shall then be made as prescribed in this act. Nothing herein contained shall prevent the appointment of deputy sheriffs without examination to act in emergency cases, for the suppression of riots, breaches of the peace, tumults, in times of war, pestilence, conflagration, or public celebration.

Section 8. Promotions.--Promotions shall be based on merit to be ascertained by examinations to be prescribed by the sheriff and the commission. All questions relative to promotions shall be practical in character and such as will fairly test the merit and fitness of persons seeking promotion. The sheriff of the county shall have the discretion to promote the person or persons of his choice from the list of those who have successfully completed the appropriate examination and are certified as eligible for promotion by the commission.

The sheriff of the county shall have the power to determine whether an increase in salary shall constitute a promotion.

Section 9. Physical Examinations.--All applicants for examination shall undergo a physical examination, which shall be conducted under the supervision of a doctor of medicine appointed by the sheriff of the county. No person shall be eligible to take an examination until said doctor certifies to the commission that the applicant is free from any bodily or mental defects, deformity or disease that might incapacitate him from the discharge of the duties of a deputy sheriff.

Section 10. Reducing in Rank; Suspension; Furloughing; Discharging.--(a) No deputy sheriff covered by this act shall be reduced in rank, suspended, furloughed or discharged, except for the following reasons: (i) neglect or violation of official duty, (ii) violation of a law of this Commonwealth which provides that such violation constitutes a misdemeanor or a felony, (iii) inefficiency, except as hereinafter provided, wilful disobedience of orders, or conduct unbecoming a police officer, (iv) drinking of intoxicating liquor while on duty or the use of which renders him unfit when called upon for duty.

(b) In every case of reduction of rank, suspension, furlough or discharge, a copy or statement of the reasons therefor and written answers thereto shall be furnished to the person sought to be reduced in rank, suspended, furloughed or discharged if he shall make demand therefor. He shall have the right to appeal to the commission for a hearing on the reasons or charges preferred against him within ninety days of the date of service of a copy or statement of the reasons or charges. ((b) amended July 3, 1986, P.L.387, No.83)

(c) Upon receipt of a written request for a hearing, the

commission shall arrange for the hearing within ten days therefrom. The person against whom the charge is made may be present in person and by counsel and the burden shall be upon the party making the charges to justify his action.

(d) In the event the commission fails to uphold the action of the party who made the charge then the person against whom the charge was preferred shall be paid his salary for the time he may have been prevented from performing his usual employment as a deputy sheriff and no record of the case shall be made a part of his service record.

(e) A written stenographic record of all testimony shall be taken at each hearing held by the commission and the records thereof shall be sealed and not be available to public inspection in the event no appeals are taken from the action of the commission: Provided, however, That the party against whom charges have been brought shall have the right, upon request, to a public and open hearing.

(f) If the commission sustains the party who preferred the charge, the party against whom the charge was made shall have an immediate right of appeal to the court of common pleas of the county. Such appeal shall be taken within the period of ninety days from the date of entry by the commission of its final order and shall be by petition. Upon such appeal being taken and docketed, the court of common pleas shall fix a day for the hearing and proceed to hear the appeal on the original record and such additional proof or testimony as the parties concerned may desire to offer in evidence. The decision of the court affirming or revising the decision of the commission shall be final and the employe shall be suspended, discharged, demoted or reinstated in accordance with the order of the court.

The person sought to be suspended, removed or demoted shall at all times have the right to employ counsel before the commission and upon appeal to the court of common pleas and shall have the further right of appealing to the Commonwealth, Superior and Supreme Courts in the manner provided by law.

Section 11. Reduction in Number of Deputy Sheriffs; Reinstatements.--If for reasons of economy or otherwise, it shall be deemed necessary by the sheriff of the county to reduce the number of deputy sheriffs then such reduction in numbers shall be made in the following manner: (i) if there are any deputy sheriffs eligible for retirement under the terms of any retirement or pension system or law, then such reduction in numbers shall be made by retirement, if the party to be retired has served in the force of deputy sheriffs for a period of at least twenty-five years and his age exceeds the maximum age as defined in the act of October 27, 1955 (P.L.744, No.222), known as the "Pennsylvania Human Relations Act," (ii) if the number of deputy sheriffs eligible for retirement is insufficient to effect the reduction in numbers decided upon by the sheriff of the county, or if no retirement or pension system or law exists, or if there are no deputy sheriffs eligible for retirement or pension, then the reduction shall be made by furloughing the last deputy sheriff including the probationers that have been appointed to the force and continue in numerical order until the reduction decided upon by the sheriff of the county has been

affected. In any case where there has been more than one employee appointed at the same time then such furloughing shall be determined by the alphabetical order of the first letter of their surname. In the event the said force of deputy sheriffs shall again be increased in numbers then the employees furloughed shall be reinstated in the inverse order of that in which they were furloughed before any new appointments shall be made to the deputy sheriffs' force.

(11 amended May 9, 1984, P.L.260, No.60)

Section 12. Present Employees Exempted.--(a) All members of the force of deputy sheriffs upon the effective date of this act shall continue to hold their positions and shall not be required to take any examination whatsoever under this act except such as may be required for subsequent promotion.

(b) Each member of the force of deputy sheriffs now or hereafter serving in the armed forces of the United States during any war or any police action in which the United States is engaged shall, upon his honorable discharge from such service and return to such force, be reinstated in the force in a position of equal grade to that which he held immediately before entering the armed forces of the United States. He shall continue to hold such position and shall not be required to take any examination under the provisions of this act except such as may be required for promotion.

Section 13. Discrimination on Account of Religious or Political Affiliations.--No question in any form of application for any examination or in any examination shall be so framed as to elicit information concerning the religious or political opinions of any applicant, nor shall inquiry be made concerning such opinions or affiliations and all such disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened or promised by any person in or interested in the force of deputy sheriffs against or in favor of an applicant on the eligible list for appointment to or promotion in the force because of his religious or political opinions or affiliations.

Section 14. Hours of Service; Exceptions; Vacations.--Every member of the force of deputy sheriffs shall have at least twenty-four consecutive hours of rest in each calendar week, except in emergency cases for the suppression of riots or tumults or the preservation of the public peace, in times of war, riot, conflagration or public celebration or whenever the sheriff deems it necessary to maintain good order. No member shall be required to work more than eight consecutive hours in any twenty-four hours except in the aforesaid cases of emergency. Every member shall be allowed one day's vacation for each month of service for the first twelve months of service, and thereafter an annual vacation of not less than fourteen days. He shall also be allowed an annual sick leave of not less than fourteen days. All such vacation and sick leave shall be without any deduction or diminution of salary or compensation as fixed by the salary board.

Section 15. Compensation and Expenses to Deputy Sheriff Injured or Ill.--After the effective date of this act any member of the force of deputy sheriffs of all ranks, including chief deputy, who may be injured or become sick through the

performance of his duties and by reason thereof is temporarily incapacitated from performing his duties, shall be paid by the county his full rate of salary as fixed by the salary board until the disability arising therefrom has ceased. All medical and hospital bills incurred in connection with any such injury or sickness shall be paid by the county. All benefits under the Workmen's Compensation Law which shall be reviewed or collected by any such member during the period he has received salary for temporary disability shall be paid over to the county and paid into the treasury thereof. If any such payment or payments shall not be so made by the member of the force, the amount so directed to be paid to the county shall be deducted from any salary which shall then or thereafter become due and owing to such member.

Section 16. Penalties.--The sheriff of the county or anyone acting for him who shall cause any person to be appointed to or promoted in the force of deputy sheriffs contrary to the provisions of this act, or who violates any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction, shall be sentenced to pay a fine of not more than five hundred dollars (\$500) or suffer imprisonment not exceeding one year, or both.

Section 17. General Repealer.--All acts and parts of acts are repealed in so far as they are inconsistent herewith.

Section 18. Effective Date.--This act shall take effect immediately.