

**THE BOROUGH CODE - APPOINTMENTS AND INCOMPATIBLE OFFICES AND  
BACKGROUND INVESTIGATIONS AND EXAMINATIONS FOR POLICE AND  
FIREMEN**

**Act of Nov. 22, 2011, P.L. 417, No. 104**  
Session of 2011  
No. 2011-104

**Cl. 08**

HB 1461

AN ACT

Amending the act of February 1, 1966 (1965 P.L.1656, No.581), entitled "An act concerning boroughs, and revising, amending and consolidating the law relating to boroughs," in functions of appointed officers and employees, further providing for appointments and incompatible offices; and, in civil service for police and firemen, further providing for examinations and for eligibility list and manner of filling appointments.

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

Section 1. Section 1104 of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, amended June 25, 2001 (P.L.651, No.56), is amended to read:

Section 1104. Appointments; Incompatible Offices.--(a)

Unless there is incompatibility in fact, any elective or appointive officer of the borough shall be eligible to serve on any board, commission, bureau or other agency created by or for the borough, or any borough office created or authorized by statute and may accept appointments thereunder, but no mayor or member of council shall receive compensation therefor. [No]

**(b) The following apply to employment:**

**(1) Except as set forth in paragraph (2), no elected borough official of a borough with a population of 3,000 or more may serve as an employee of that borough.**

**(2) This subsection shall not apply to a borough official serving as an employee of that borough prior to the certification of a decennial census which indicates an increase in the population of that borough to 3,000 or more.**

**(c)** Where there is no incompatibility in fact, and subject to the foregoing provisions as to compensation, appointees of council may hold two or more appointive borough offices, but no mayor or member of council may serve as borough manager or as secretary or treasurer.

**(d)** No person holding the office of [justice of the peace] **magisterial district judge** may at the same time hold the office of borough treasurer.

**(e)** The offices of secretary and treasurer may be held by the same person when so authorized by ordinance.

**(f)** Nothing herein contained shall affect the eligibility of any borough official to hold any other public office or receive compensation therefor.

**(g)** All appointments to be made by the council or the corporate authorities shall be made by a majority of the members of council attending the meeting at which the appointment is made, unless a different vote is required by statute.

Section 1.1. Sections 1181 and 1184(a) of the act, amended October 27, 2010 (P.L.884, No.91), are amended to read:

Section 1181. General Provisions Relating to Examinations.--(a) The commission shall make rules and

regulations, to be approved as provided in section 1176 hereof, providing for the examination of applicants for positions in the police force and as paid operators of fire apparatus and for promotions, which rules and regulations shall prescribe the minimum qualifications of all applicants to be examined and the passing grades. All examinations for positions or promotions shall be practical in character and shall relate to such matters and include such inquiries as will fairly test the merit and fitness of the persons examined to discharge the duties of the employment sought by them. All examinations shall be open to all applicants who have the minimum qualifications required by the rules and regulations. Each applicant **for an original position** shall:

(1) be subject to the regulations adopted by the commission;  
(2) either before or after the written examination, be required to submit to a physical fitness or agility examination that is job related and consistent with business necessity;  
[and]

(3) if made a conditional offer of employment, be given a physical and psychological medical examination as provided in section 1189 of this act[.]; and

(4) **be subject to a background investigation. Background investigations may be restricted to those candidates on an eligibility list or those to be certified to borough council for appointment in accordance with section 1184 of this act.**

(a.1) **Each applicant for promotion shall be subject to the regulations adopted by the commission and to examination and selection in accordance with section 1188 of this act. Physical fitness or agility examinations that are job related and consistent with business necessity and physical and psychological medical examinations may, but need not, be required for promotions.**

(b) Public notice of the time and place of every examination, together with the information as to the kind of position or place to be filled, shall be given by publication once in a newspaper of general circulation in the borough, at least two weeks prior to each examination, and a copy of the notice shall be prominently posted in the office of the commission or other public place.

(c) The commission shall post in its office the eligible list, containing the names and grades of those who have passed the examination.

Section 1184. Eligibility List and Manner of Filling Appointments.--(a) At the completion of the testing process, including any [background,] physical agility or other examination, with the exception of any **background investigation to be conducted after the establishment of an eligibility list and** physical and psychological medical examination pursuant to section 1189 of this act, the commission shall rank the candidates who have satisfied the minimum requirements for appointment on an eligibility list. The eligibility list shall contain the names of individuals eligible for appointment listed from highest to lowest based on their scores on the examinations administered by the commission and any points for which the applicant was entitled by virtue of 51 Pa.C.S. Ch. 71 (relating to veterans' preference). The eligibility list will be valid for one year from the date the commission formally adopts the eligibility list. Prior to expiration of the one-year period, the commission may extend the validity of the eligibility list for up to an additional twelve months by a majority vote of the commission at a duly authorized commission

meeting . In the absence of a lawful extension by the commission, the list shall expire.

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Section 2. The amendment of section 1181 of the act shall apply to all promotion examinations conducted on or after October 27, 2010.

Section 3. This act shall take effect as follows:

(1) The amendment of section 1104 of the act shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED--The 22nd day of November, A.D. 2011.

TOM CORBETT