

MAKING PAID FIREMEN CIVIL SERVICE EMPLOYEES

Act of Jun. 1, 1945, P.L. 1232, No. 427

Cl. 08

AN ACT

Providing for and regulating the appointment, promotion and reduction in rank, suspension and removal of paid operators of fire apparatus in boroughs, incorporated towns and townships of the first class; creating a civil service commission in each borough, incorporated town and township of the first class; defining the duties of such civil service commission; imposing certain duties and expenses on boroughs, incorporated towns and townships of the first class; imposing penalties; and repealing inconsistent laws.

Compiler's Note: Section 3501 Act 568 of 1947 provided that Act 427 is repealed insofar as it relates to boroughs.

Compiler's Note: Section 3501 Act 331 of 1931 provided that Act 427 is repealed insofar as it relates to townships of the first class.

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

Section 1. The appointment, promotion and reduction in rank, suspension and removal of paid operators of fire apparatus in boroughs, incorporated towns and townships of the first class, shall be regulated by this act only in boroughs, incorporated towns and townships of the first class having two paid operators of fire apparatus, if a civil service commission created under the act, approved the fifth day of June, one thousand nine hundred forty-one (Pamphlet Laws, eighty-four), has been appointed; or in boroughs, incorporated towns and townships of the first class having three or more paid operators of fire apparatus, if no civil service commission under the act, approved the fifth day of June, one thousand nine hundred forty-one (Pamphlet Laws, eighty-four), has been appointed.

Section 1. (a) Appointments, etc., As Operators of Fire Apparatus in Boroughs, Incorporated Towns and Townships of the First Class.--Hereafter each and every appointment as a fire apparatus operator in every borough, incorporated town and township of the first class (hereinafter referred to as a municipality), shall be made only according to qualifications and fitness to be ascertained by examination, which shall be competitive as hereinafter provided.

No person shall hereinafter be suspended, removed or reduced in rank as a paid operator of fire apparatus of any municipality, except in accordance with the provisions of this act.

Compiler's Note: The two section 1's are mistakes in numbering. The original intent was probably to number the second section 1 as 1-A or to completely renumber this act.

Section 2. Civil Service Commission Created; Appointments; Vacancies.--There is hereby created in each borough, incorporated town and township of the first class, where a fire apparatus operator is being maintained or employed, a civil service commission, hereinafter referred to as a commission: Provided, however, That each borough, incorporated town and township of the first class above mentioned shall have the option and privilege of not appointing a new civil service commission under this act, and in lieu thereof, may utilize and use for the purpose of carrying out the provisions of this act,

the civil service commission already existing and functioning under the provisions of section two of the act, approved the fifth day of June, one thousand nine hundred forty-one (Pamphlet Laws, eighty-four).

Each commission shall consist of three commissioners who shall be qualified electors of the political subdivision for which appointed, and shall be appointed initially to serve for the terms of two, four and six years and as terms thereafter expire, shall be appointed for a period of six years as follows:

In the case of a borough, the appointment shall be made by the borough council; in the case of an incorporated town, the appointments shall be made by the town council; and in the case of the townships of the first class, the appointments shall be made by the township commissioners.

The members of each commission first appointed under the provisions of this act shall be so appointed within thirty days after the effective date of this act.

Any vacancy occurring in any commission for any reason whatsoever shall be filled for the unexpired term within the period of thirty days after such vacancy occurs. Such vacancies shall be filled by the appointing power which made the original appointment.

Each member of the commission created by this act, before entering upon the discharge of the duties of his office, shall take an oath or affirmation to support the Constitution of the United States and of the Commonwealth of Pennsylvania and to perform his official duties with fidelity.

Section 3. Offices Incompatible with Civil Service Commission; Political Activities Prohibited.--No member of the commission shall at the same time hold an elective or appointive office under the United States Government, the Commonwealth of Pennsylvania, or any political subdivision of the Commonwealth, except that one member of the commission may be a member of the council of the borough or incorporated town, or board of township commissioners, as the case may be.

Section 4. Organization of Commission; Quorum.--The commission of each municipality first appointed shall organize within ten days of its appointment, and shall elect one of its members as the chairman and one as the secretary of the commission. Each commission shall thereafter meet and organize on the first Monday of each even numbered year. Each commissioner shall be notified in writing of each and every meeting. Two members of the commission shall constitute a quorum, and no action of the commission shall be valid unless it shall have the concurrence of at least two members.

Section 5. Clerks and Supplies, etc.--The municipality shall furnish to the commission on its requisition, such clerical assistance as may be necessary for the work of the commission. The municipality shall furnish a suitable and convenient room for the use of the commission. The commission shall order from the municipality the necessary stationery, postage, printing or supplies, and the elected and appointed officials of every municipality shall aid the commission in all proper ways in carrying out the provisions of this act.

Section 6. Rules and Regulations.--Each commission shall have power to prescribe, amend and enforce rules and regulations for carrying into effect the provisions of this act and shall be governed thereby. Before any such rules and regulations are in force, the same shall be approved by the council of the borough or incorporated town or the township commissioners, whichever the case may be. When such rules and regulations have been approved they shall not be annulled, amended or added to

without the approval of said council or commissioners. All rules and regulations and modifications thereof shall be printed for public distribution at the expense of the municipality.

Section 7. Minutes and Records.--Each commission shall keep minutes of its proceedings, and records of examinations, and other official actions. All recommendations of applicants for appointments received by the commission shall be kept and preserved for a period of five years, and all such records and all written causes of removal filed with the commission shall be kept, subject to reasonable regulation and open to the public inspection.

Section 8. Investigations.--The commission shall have power to make investigations concerning all matters touching the administration and enforcement of this act and rules and regulations adopted thereunder. The acting chairman of the commission is hereby given power to administer oaths, as oaths are administered by other public officers, with the same force and carrying the same penalties.

Section 9. Subpoenas.--The commission shall have power to issue subpoenas over the signature of the chairman to require the attendance of witnesses and the production of records and papers pertaining to any investigation or inquiry authorized by this act. The fees of such witnesses for attendance and travel shall be the same as for witnesses appearing in the courts, and shall be paid from the appropriations for the incidental expenses of the commission.

All officers in public service and employes shall attend and testify, when required to do so by the commission.

If any person shall refuse or neglect to obey any subpoena issued by the commission, he shall be guilty of violation of this act, and, upon summary conviction thereof, shall be subject to a fine not to exceed one hundred dollars (\$100) or imprisonment not to exceed thirty (30) days.

If any person shall refuse or neglect to obey any subpoena issued by the commission it may apply, by petition, to the court of common pleas of the county for its subpoena, requiring the attendance of such persons before the court there to testify and to produce the necessary papers or records, and, in default thereof, shall be held in contempt of court and punished therefor.

Section 10. Annual Report.--The commission shall make an annual report to the council or commissioners of the municipality, as the case may be, containing a brief summary of its work during the year which shall be available for public inspection five days after filing thereof.

Section 11. General Provisions Relating to Examinations.--(a) Each commission shall make rules and regulations to be approved, as provided in section six hereof, providing for the examinations of applicants for positions as fire apparatus operators and for promotion thereof, which rules and regulations shall prescribe the minimum qualifications of all applicants to be examined and passing grades. All examinations for promotions, or positions as fire apparatus operators of any municipality, shall be practical in character and shall relate to such matters, and include such inquiries as will 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 examination 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 in accordance with section nineteen of this act.

(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 municipality, or in a newspaper circulating generally in the municipality 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 eligibility list containing the names and grades of those who have passed the examination for a position.

(11 amended Oct. 27, 2010, P.L.889, No.92)

Compiler's Note: Section 4 of Act 92 of 2010, which amended section 11, provided that nothing in the amendment shall affect the validity of any civil service appointments or promotions made prior to the effective date of section 4.

Section 12. Application for Examination.--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 (a) his full name and residence or post office address; (b) his citizenship, place and date of birth; (c) his condition of health and physical capacity for public service; (d) his business or employment and his residence for the past five years; (e) 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.

Section 13. Rejection of Applicant; Hearing.--(a) The commission may refuse to examine any applicant, or if examined, may refuse to certify, after examination, any person 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 unfit for the performance of the duties of the position to which he seeks employment, or who is illegally using a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802), 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 in 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 person is aggrieved by refusal of the commission to examine or certify the applicant, or to certify him as eligible after examination, the commission shall, at the request of the applicant, within ten days, appoint a time and place for a public hearing, with or without counsel, at which time the commission shall take testimony and review its refusal to provide examination or certification. The decision of the commission shall be final.

(13 amended Oct. 27, 2010, P.L.889, No.92)

Compiler's Note: Section 4 of Act 92 of 2010, which amended section 13, provided that nothing in the amendment shall affect the validity of any civil service appointments or promotions made prior to the effective date of section 4.

Section 14. Eligibility List and Manner of Filling Appointments.--(a) At the completion of the testing process, including any background, physical agility or other examinations, with the exception of physical and psychological medical examinations pursuant to section nineteen 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 shall be valid for one year from the date the commission ranks all passing applicants, assigns veterans' preference points and 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 at the end of the original one-year period.

(b) Every position or employment, unless filled by promotion, reinstatement or reduction, shall be filled only in the following manner:

The appointing officer or body of the municipality shall notify the commission of any vacancy as a fire apparatus operator which is to be filled and shall request the certification of an eligibility list. The commission shall certify the names of the three persons on the eligibility list who have received the highest average in the last preceding examination for each vacancy. The appointing officer or body shall make a conditional appointment from the three names certified, based solely on the merits and fitness of the candidates, unless the appointing officer or body makes an objection to the commission regarding one or more of the persons on the eligibility list for any reason provided under section thirteen of this act. Should an objection be sustained by the commission, as provided in section thirteen of this act, or if the conditional appointee is determined to be unqualified in accordance with the procedures set forth in section nineteen of this act, the commission shall strike the name of the person from the eligibility list and certify the next highest name for each name stricken from the eligibility list. As each subsequent vacancy occurs in the same or another position precisely the same procedure shall be followed.

(14 amended Oct. 27, 2010, P.L.889, No.92)

Compiler's Note: Section 4 of Act 92 of 2010, which amended section 14, provided that nothing in the amendment shall affect the validity of any civil service appointments or promotions made prior to the effective date of section 4.

Section 15. Age; Residence.--No person shall be eligible to apply for examination unless he is more than twenty-one years old at the date of the application and has been a resident of the municipality for at least one year immediately preceding his application, unless no resident applicants are available.

Section 16. Probationary Period.--All original appointments to positions as fire apparatus operators shall be for a probationary period of six months, but during the probationary period an appointee may be dismissed only for a cause specified in section thirteen of this act or because of incapacity for duty due to the use of alcohol or drugs. If at the close of the probationary period the conduct or fitness of the probationer has not been satisfactory to the appointing body or officer, the probationer shall be notified in writing that he will not receive a permanent appointment, and the appointment shall cease. If the probationer is not notified or dismissed in accordance with this section, his retention shall be equivalent to a permanent appointment.

(16 amended Oct. 27, 2010, P.L.889, No.92)

Compiler's Note: Section 4 of Act 92 of 2010, which amended section 16, provided that nothing in the amendment shall affect the validity of any civil service appointments or promotions made prior to the effective date of section 4.

Section 17. Provisional Appointments.--Whenever there are urgent reasons for the filling of a vacancy in any position, and there are no names on the eligible list for such appointment, the appointing officer or body may nominate to the commission for noncompetitive examination, and if such nominees shall be certified by the commission as qualified after such noncompetitive examination, he may be appointed provisionally to fill such vacancy until a selection and appointment can be made, after competitive examination, in the manner prescribed in this act. No such provisional appointment shall continue for a period longer than three months, nor shall a successive provisional appointment be made to the same position. It shall thereafter be the duty of the commission to hold a competitive examination and certify the names of a list of eligibles and a regular appointment shall then be made from the names or name submitted by the commission: Provided, however, That nothing herein contained shall prevent the temporary appointment without examination of persons as fire apparatus operators in emergency cases.

Section 18. Promotions.--Promotions shall be based on merits to be ascertained by examination to be prescribed by 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 appointing officer or body shall notify the commission of a vacancy in the police force which is to be filled by promotion and shall request the certification of an eligibility list. The commission shall certify for each existing vacancy the names of the three persons on the eligibility list who have received the highest average score in the last preceding promotion examination held within a period of two years preceding the date of the request for the eligibility list. If three names are not available, the commission shall certify the names remaining on the eligibility list. The appointing officer or body shall make an appointment from the names certified based solely on the merits and fitness of the candidate unless the appointing officer or body makes objections to the commission regarding any of the persons on the eligibility list for any reason provided under section thirteen of this act.

The appointing body or officer shall have power to determine whether an increase in salary shall constitute a promotion.

(18 amended Oct. 27, 2010, P.L.889, No.92)

Section 19. Physical and Psychological Medical Examinations.--(a) An applicant selected from the eligibility list shall receive a conditional offer of employment. The offer of employment shall be conditioned upon the conditional appointee undergoing a physical and psychological medical examination and a determination that the conditional appointee is capable of performing all the essential functions of the position. Physical medical examinations shall be under the direction of a physician or other qualified medical professional. Psychological medical examinations shall be under the direction of a psychiatrist or psychologist.

(b) The physician or other qualified medical professional and the psychiatrist or psychologist shall be appointed by council and shall render an opinion as to whether the conditional appointee has a physical or mental condition which calls into question the person's ability to perform all of the essential functions of the position for which the person was conditionally appointed.

(c) If the opinion rendered by the physician, other qualified medical professional, psychiatrist or psychologist calls into question the conditional appointee's ability to perform all essential functions of a position, a person designated by the appointing officer or body shall meet with the conditional appointee for the purpose of having one or more interactive discussions on whether the conditional appointee can, with or without reasonable accommodation, perform all of the essential functions of the position.

(d) If, at the conclusion of the interactive discussion under subsection (c), the appointing officer or body determines that the conditional appointee is not qualified, the appointing officer or body shall give written notice to the conditional appointee and the commission.

(e) Nothing in this act shall be construed to authorize physical or psychological medical examinations prior to conditional appointment.

(f) As used in this section, the following definitions shall apply:

"Medical examination" shall mean an examination, procedure, inquiry or test designed to obtain information about medical history or a physical or mental condition which might disqualify an applicant if it would prevent the applicant from performing, with or without a reasonable accommodation, all of the essential functions of the position.

"Physician" shall have the meaning given to it in 1 Pa.C.S. § 1991 (relating to definitions).

"Qualified medical professional" shall mean an individual, in collaboration with or under the supervision or direction of a physician, as may be required by law, who is licensed:

(1) as a physician assistant pursuant to the act of December 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act of 1985," or the act of October 5, 1978 (P.L.1109, No.261), known as the "Osteopathic Medical Practice Act"; or

(2) as a certified registered nurse practitioner pursuant to the act of May 22, 1951 (P.L.317, No.69), known as "The Professional Nursing Law."

(19 amended Oct. 27, 2010, P.L.889, No.92)

Section 20. Removals.--No person employed as a fire apparatus operator of any political subdivision shall be suspended, removed or reduced in rank except for the following reasons: (a) physical or mental disability affecting his ability to keep in service, in which cases the person shall receive an

honorable discharge from service; (b) neglect or violation of any official duty; (c) violation of any law of this Commonwealth, which provided that such a violation constitutes a felony; (d) inefficiency, neglect, intemperance, disobedience of orders or conduct unbecoming a public servant; (e) intoxication while on duty; (f) participation in the conducting of any political or election campaign otherwise than to exercise his own right of suffrage. A person so employed shall not be removed for religious, racial or political reasons. A written statement of any charges made against any person so employed shall be furnished to such person within five days after the same are filed.

If for reasons of economy or other reasons it shall be deemed necessary by any municipality to reduce the number of paid employes of fire apparatus operators, then such political subdivision shall apply the following procedure: (a) if there are any employes eligible for retirement under the terms of any retirement or pension law, then such reduction in number shall be made if the party to be retired 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"; (b) if the number of paid employes is insufficient to effect the necessary reduction, or if there are no persons eligible for retirement, or if no retirement or pension fund exists, then the reduction shall be effected by furloughing the man or men including probationers last appointed as fire apparatus operators. Such furloughing shall be effected by furloughing in numerical order from the last man appointed until such reduction shall have been accomplished.

In the event the said fire apparatus operators shall again be increased, the employes furloughed shall be reinstated in the order of their seniority in the service.

(20 amended May 9, 1984, P.L.254, No.57)

Section 21. Hearings on Dismissals and Reductions.--If the person sought to be suspended, removed or reduced in rank shall demand a hearing by the commission, the demand shall be made to the commission. Such person may make written answers to any charges filed against him. The commission shall grant him a hearing which shall be held within a period of ten days from the filing of charges in writing, and written answers thereto filed within five days, and may be continued by the commission for cause or at the request of the accused. At any such hearing the person against whom the charges are made may be present in person and by counsel. The appointing officer or body may suspend any such person without pay, pending the determination of the charges against him, but in the event the commission fails to uphold the charges then the person sought to be suspended, removed or demoted shall be reinstated with full pay for the period during which he was suspended, and no charges shall be officially recorded against his record.

A stenographic record of all testimony taken at such a hearing shall be filed with, and preserved by, the commission which record shall be sealed and not available for public inspection in case the charges are dismissed.

In the event the commission shall sustain the charges and order the suspension, removal or reduction in rank, the person suspended, removed or reduced in rank shall have immediate right to appeal to the court of common pleas of the county, and the case shall be there determined as the court deems proper. No order or suspension made by the commission shall be for a longer period than a year. Such appeal shall be taken within sixty 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 a hearing and shall proceed to hear the appeal on the original record, and no such additional proof or testimony as the person sought to be removed or reduced in rank may desire to offer in evidence shall be permitted to be introduced. The decision of the courts affirming or reversing the decision of the commission shall be final, and the employe shall be suspended, discharged, demoted or reinstated according to the order of the court. The appointing officer and body, and the person sought to be suspended, removed or demoted shall at all times have the right to employ counsel before the commission, and the aggrieved party or parties shall have the right to appeal to the court of common pleas.

(21 repealed in part June 3, 1971, P.L.118, No.6)

Section 22. Present Employes Exempted.--All appointments as fire apparatus operators of municipalities upon the effective date of this act shall continue to hold their positions and shall not be required to take any examination under the provisions of this act, except such as may be required for promotion: Provided, however, That this section shall not be construed to apply to persons employed temporarily in emergency cases.

Section 23. Discrimination on Account of Political or Religious Affiliations.--No question in any form of application for examination, or in any examination shall be so framed as to elicit information concerning the political or religious opinion of any applicant, nor shall inquiry be made concerning such opinion or affiliation and all disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened or promised against, or in favour of, any applicant or employe because of racial, political or religious opinions or affiliations, or race, and no benefit, direct or indirect, shall be paid to, or received by, any person for any act done, or duty omitted, or to be done under this act.

Section 24. Penalty.--Any councilman or township commissioner, who by his vote, causes to be appointed any person as a fire apparatus operator of any municipality contrary to the provisions of this act, or any councilman, township commissioner or members of the commission, who wilfully refuses to comply with, or conform to the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof shall be sentenced to pay a fine not exceeding one hundred dollars (\$100), or suffer imprisonment not exceeding three (3) months, or both.

Section 25. Military Service.--If any operator of fire apparatus be called, or enter the armed service of this country, he shall be reinstated upon his return.

In the event that a retirement, or pension act or system is in effect, the time spent in the armed service shall count towards said retirement or pension.

Section 26. Salaries of Civil Service Commission.--The civil service commission shall receive no compensation.

Section 27. Repeal and Construction.--Except as provided in section one of the act, approved the twenty-first day of May, one thousand nine hundred forty-three (Pamphlet Laws, four hundred ninety-two), providing for the relaxation of civil service requirements during the war emergency and six months thereafter, all other acts and parts of acts inconsistent with this act are hereby repealed.

It is the purpose of this act to furnish a complete and exclusive system for the appointment, promotion, reduction, or

suspension or removal of operators of fire apparatus in every borough, incorporated town and township of the first class within the Commonwealth which maintains fire apparatus.

Section 28. Fire Apparatus Operators Defined.--"Fire apparatus operators" as used in this act shall mean any person who operates fire apparatus and devotes his normal working hours to operating any piece of fire apparatus, or other services directly connected with fire protection work and who are paid a stated salary or compensation for such work, directly or indirectly, by the municipality.

Section 29. Effective Date.--The provisions of this act shall become effective immediately upon final enactment.