

**FIRE AND POLICE DEPARTMENTS IN CITIES OF THE THIRD CLASS -
EXAMINATIONS, APPLICATIONS, ELIGIBILITY LISTS, VACANCIES, PROMOTIONS
AND PHYSICAL EXAMINATIONS**

Act of Oct. 19, 2010, P.L. 527, No. 76

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Session of 2010

No. 2010-76

HB 1516

AN ACT

Amending the act of May 31, 1933 (P.L.1108, No.272), entitled, as amended, "An act providing for the appointment, promotion, reduction, removal and reinstatement of paid officers, firemen and employes of fire departments and of fire alarm operators and fire box inspectors in the bureaus of electricity in cities of the third class; defining the powers and duties of civil service commissions for such purposes; and fixing penalties," further providing for examinations, for applications, for eligibility lists, for vacancies and promotions and for physical examinations.

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

Section 1. Section 4 of the act of May 31, 1933 (P.L.1108, No.272), entitled, as amended "An act providing for the appointment, promotion, reduction, removal and reinstatement of paid officers, firemen and employes of fire departments and of fire alarm operators and fire box inspectors in the bureaus of electricity in cities of the third class; defining the powers and duties of civil service commissions for such purposes; and fixing penalties," amended July 17, 2003 (P.L.29, No.13), is amended to read:

Section 4. **(a)** All examinations for positions or promotions shall be practical in their character, and shall relate to such matters, and include such inquiries, as will fairly and fully test the comparative 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 fulfilled the preliminary requirements required by this act without regard to any applicant's place of residence at or prior to the date of application. All applicants for any position in the fire department and as fire alarm operators and fire box inspectors in the bureau of electricity shall[,]:

(1) be subject to regulations adopted by the civil service commission[, be required to submit to a physical examination before being admitted to the regular examinations held 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 nine of this act.

(b) Adequate public notice of the time and place of every examination held under the provisions of this act, together with information as to the kind of position or place to be filled, shall be given at least one week prior to such examinations. The commission shall adopt reasonable regulations for permitting the presence of representatives of the press at the examinations. The commission shall post, in a public place at its office, the eligible

lists, containing the names and grades of those who have passed examinations, and shall indicate [thereon such] **the** appointments [as may be] made from [said] **the** lists.

Section 2. Sections 5, 6 and 8 of the act are amended to read:

Section 5. **(a)** The civil service commission in each city shall require persons applying for admission to any examination provided for under this act, or under the rules and regulations of the [said] commission, to file in its office, within a reasonable time prior to the proposed examination, a formal application, in which the applicant shall state under oath or affirmation---

First. His full name, residence, and post office address.

Second. His citizenship, age, and the place and date of his birth.

Third. His health, and his physical capacity for public service.

Fourth. His business and employments and residences for at least three years previous.

Fifth. Such other information as may reasonably be required, [touching] **regarding** the applicant's qualifications and fitness for the [public service] **position**.

(b) Blank forms for [such] applications shall be furnished by the commission, without charge, to all persons requesting the same. The commission may require, in connection with [such] **the** application, [such] **all** certificates of citizens, physicians or others, having knowledge of the applicant, as [the good of the service may require] **deemed appropriate**. The commission may refuse to examine an applicant, or, after examination, to certify [as eligible, one who is found to lack] **an applicant who lacks** any of the established preliminary requirements for the examination [or], position or employments for which [he] **the applicant** applies; or who is physically [so disabled as to be rendered] unfit for the performances of the duties of the position to which [he] **the applicant** seeks appointment; or who is [addicted to the habitual use of intoxicating liquors or drugs;] **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 convicted of any crime, or whose conduct is infamous or notoriously disgraceful; or who has been dismissed from the public service for delinquency or misconduct; or who has made a false statement of any material fact, or practiced or attempted to practice any deception or fraud in [his] **the** application, [in his] examination[, or in establishing his] **or establishment of** eligibility; or who refuses to comply with the rules and regulations of the commission.

(c) (1) No application will be accepted if the person applying is less than eighteen years of age or more than thirty-five years of age at the date of application. A person who is over thirty-five years of age shall be eligible for reinstatement at the discretion of the commission if all of the following apply:

(i) The applicant has formerly served in the fire department or as a fire alarm operator or fire box inspector in the bureau of electricity of the city to which application has been made for a period of more than six months.

(ii) No charges of misconduct or other misfeasance were made against the applicant within a period of more than two years preceding the date of application.

(iii) The applicant is a resident of the city.

(2) The applicant, providing the applicant's former term of service was satisfactory, may be reappointed to the fire department or as a fire alarm operator or fire box inspector in the bureau of electricity without examination, other than a physical examination required under section nine of this act. If the person is reinstated, the person shall be the lowest in rank immediately above the probationers of the department.

(d) If any applicant [feels himself] **is** aggrieved by [the action] **refusal** of the commission [in refusing] to examine [him, or, after an examination, to certify him as an] **or certify the applicant as** eligible, as provided in this section, the commission shall, at the request of [such] **the** applicant, appoint a time and place for a public hearing, at which time [such] **the** applicant may appear, [by himself or counsel, or both] **with or without counsel**, and the commission shall [then] **take testimony and** review its refusal to [make such] **provide** examination or certification[, and testimony shall be taken]. The commission shall subpoena, at the expense of the applicant, any competent witnesses requested by [him. After such review] **the applicant. Following the public hearing**, the commission shall file the testimony taken in its records, and shall again make a decision, which decision shall be final.

Section 6. (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 nine of this act, the civil service 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 ranks all passing applicants, assigns veterans' preference points and formally adopts the eligibility list. The commission may, at its sole discretion before the original expiration date, by a vote of the majority of the commission at a duly authorized commission meeting, extend the list for up to an additional twelve months. In the absence of a lawful extension by the commission, the list shall expire.**

(b) Every position or employment, unless filled by promotion, reinstatement, or reduction, shall be filled only in the following manner: The appointing officer shall notify the civil service commission of any vacancy in the service which he desires to fill, and shall request the certification of [eligibles] **an eligibility list**. The commission shall forthwith certify[, from the appropriate eligible list,] the names of the three persons [thereon] who received the highest averages at the last preceding examination [held under the provisions of this act]. The appointing officer shall, [thereupon,] with sole reference to the relative merit and fitness of the candidates, make [an] **a conditional** appointment from the three names [so] certified **on the eligibility list**. If the appointing officer makes objection to the commission to one or more of the persons named for any of the reasons stated in section five of this act, and if such objections are sustained by the commission, **or if a conditional appointee is determined to be unqualified in accordance with the procedures set forth in section nine of this act**, the commission shall [thereupon] strike the name of [such] **the** person from the [eligible] **eligibility list**, and certify the next highest name for each person so stricken off. If any name shall be three times rejected for the same or another position, [such] **the** name shall be stricken from the list. When there are a number of positions of the same kind to be filled at the same time, each appointment shall be made separately and in accordance with the foregoing provisions.

Section 8. Vacancies in positions in the fire department and as fire alarm operators and fire box inspectors in the bureau of electricity shall be filled, so far as practicable, by promotions

from among persons holding positions in the next lower grade in the department. Promotions shall be based upon merit, to be ascertained by tests to be provided by the civil service commission [, and upon the superior qualifications of the persons promoted, as shown by his previous service and experience: Provided, however, That no person] . **The appointing officer shall notify the commission of a vacancy in the position which the appointing officer desires to fill by promotion and shall request the certification of an eligibility list. The commission shall certify for each vacancy the names of the three persons on the eligibility list who have received the highest average in the last promotional 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 shall make an appointment from the names certified based solely on the merits and fitness of the candidate unless the appointing officer makes objections to the commission regarding any person on the eligibility list for any reason provided under section five of this act. No person, however, shall be eligible for promotion from the lower grade to the next higher grade until such person shall have completed at least two years service in the next lower grade in the department. The commission shall have the power to determine in each instance whether an increase in salary constitutes a promotion.**

Section 3. Section 9 of the act, amended June 16, 1972 (P.L.427, No.125), is amended to read:

Section 9. [All applicants for any position in the fire department and as fire alarm operators and fire box inspectors in the bureau of electricity shall undergo a physical examination, which shall be conducted under the supervision of the physician member of the civil service commission, or if there be none, then by a physician appointed by the civil service commission. Said examiner shall certify that an applicant is free from any bodily or mental defects, deformity or diseases that might incapacitate him from the performance of the duties of the position desired before said applicant shall be permitted to take further examinations. No application will be received if the person applying is less than eighteen years of age or more than thirty-five years of age at the date of his application: Provided, however, That in event any applicant has formerly served in the fire department or as a fire alarm operator or fire box inspector in the bureau of electricity of the city to which he makes application for a period of more than six months, and no charges of misconduct or other misfeasance were made against such applicant within a period of two years next preceding the date of his application, and is a resident of the city, then such person shall be eligible for reinstatement, in the discretion of the civil service commission, even though such applicant shall be over the age of thirty-five years. Such applicant, providing his former term of service so justifies, may be reappointed to the fire department or as a fire alarm operator or fire box inspector in the bureau of electricity without examination, other than a physical examination. If such person is reinstated, he shall be the lowest in rank in the department next above the probationers of the department.] **(a) An applicant selected from the eligibility list shall receive a conditional offer of employment. The offer of employment shall be conditioned upon the applicant undergoing a physical and, if required by the rules and regulations of the commission, a psychological medical examination, and a determination by the commission that the applicant 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 the 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 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 the essential functions of the position.

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

(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 any 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."

Section 4. Nothing contained in this act shall affect the validity of any civil service appointments or promotions made prior to the effective date of this section.

Section 5. This act shall take effect immediately.

APPROVED--The 19th day of October, A.D. 2010.

EDWARD G. RENDELL