

BOROUGH CODE - CIVIL SERVICE FOR POLICE AND FIREMEN, EXAMINATIONS,  
REJECTION OF APPLICANT AND HEARING, APPOINTMENTS, PROBATIONARY  
PERIOD, PHYSICAL EXAMINATION AND PROMOTIONS

Act of Oct. 27, 2010, P.L. 884, No. 91

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Session of 2010

No. 2010-91

SB 910

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," as to civil service for police and firemen, further providing for general provisions relating to examinations, for rejection of applicant and hearing, for manner of filling appointments, for probationary period, for physical examination and for promotions.

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

Section 1. Sections 1181 and 1183 of the act of February 1, 1966 (1965 P.L.1656, No.581), known as The Borough Code, 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 shall:

(1) be subject to the regulations adopted by the commission[, and shall be required to submit to a physical examination];

**(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.**

**(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. [Persons, male or female, who served in the military or naval service of the United States during any war in which the United States has been, is now, or shall hereafter be, engaged and who have honorable discharges from such service, who have successfully passed the examination, shall be given the additional

credits and preference in appointment and promotion provided for by law.]

Section 1183. Rejection of Applicant; Hearing.--(a) The commission may refuse to examine, or, if examined, may refuse to certify after examination as eligible, 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,] **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 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] **person is** aggrieved by [the action] **refusal** of the commission[, in refusing] to examine [him or to certify him] **or certify the applicant** as eligible after examination, the commission shall, at the request of [such person] **the applicant**, within ten days, appoint a time and place [where he may appear personally and by counsel. Whereupon] **for a public hearing, with or without counsel, at which time** the commission shall [then] **take testimony and** review its refusal to [make such] **provide** examination or certification [and take such testimony as may be offered]. The decision of the commission shall be final.

Section 2. Section 1184 of the act, amended May 2, 1986 (P.L.148, No.46), is amended to read:

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 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.**

(b) Except as provided in subsection [(b)] (c), every original position or employment in the police force or as paid operators of fire apparatus, except that of chief of police or chief of the fire department, or equivalent, shall be filled only in the following manner: the council shall notify the commission of any vacancy which is to be filled and shall request the certification of [a list of eligibles] **an eligibility list**. The commission shall certify for each existing vacancy from the [eligible] **eligibility list**, the names of **the** three persons [thereon], or a lesser number where three are not available, who have received the highest average. The council shall [thereupon, with sole reference to the merits and fitness of the candidates,] make [an] **a conditional** appointment

from the three names certified, [unless they make] **based solely on the merits and fitness of the candidates, unless borough council makes** objections to the commission [as to] **regarding** one or more of the [persons so] certified **persons** for any of the reasons stated in section 1183 of this act. Should such objections be sustained by the commission, as provided in [said section,] **section 1183 of this act, or if the conditional appointee is determined to be unqualified in accordance with the procedures set forth in section 1189 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 name stricken [off] **from the eligibility list.** As each subsequent vacancy occurs in the same or another position precisely the same procedure shall be followed.

[(b)] **(c)** Any vacancy in an existing position in the police force or as a paid operator of fire apparatus which occurs as a result of retirement, resignation, disability or death may be filled by council by the reappointment or reinstatement of a former employe of the police force or fire department who had previously complied with the provisions of this section. No examination, other than a physical examination as directed by the civil service commission, shall be required in any case of reappointment or reinstatement.

[(c)] **(d)** In the case of a vacancy in the office of chief of police or chief of the fire department, or equivalent official, the appointive power may nominate a person to the commission. It shall thereupon become the duty of the commission to subject [such] **the** person to a non-competitive examination, and if [such] **the** person shall be certified by the commission as qualified, he may then be appointed to [such] **the** position, and thereafter shall be subject to all the provisions of this subdivision.

Section 3. Sections 1186 and 1188 of the act are amended to read:

Section 1186. Probationary Period.--All original appointments to any position in the police force or as paid operators of fire apparatus shall be for a probationary period of not less than six months, and not more than one year, but during the probationary period an appointee may be dismissed only for a cause specified in section 1183 of this act **or because of incapacity for duty due to the use of alcohol or drugs.** If at the close of a probationary period the conduct [of] **or** fitness of the probationer has not been satisfactory to the council, the probationer shall be notified in writing that he will not receive a permanent appointment[. Thereupon, his], **and the** appointment shall cease[; otherwise]. **If the probationer is not notified or dismissed in accordance with this section,** his retention shall be equivalent to a permanent appointment.

Section 1188. Promotions.--Promotions shall be based on merit to be ascertained by examinations 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. **Borough council shall notify the commission of a vacancy in the police force or as a paid operator of fire apparatus in the borough which is to be filled by promotion and shall request the certification of an eligibility list. The commission shall certify for each vacancy the names of three persons on the eligibility list who have received the highest average in the last preceding 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 borough council shall make an appointment from the names certified, based solely on the merits and fitness of the candidate, unless council makes objections to the commission regarding one or more of the persons**

so certified for any reason provided under section 1183 of this act.

The council shall have power to determine in each instance whether an increase in salary shall constitute a promotion.

Section 4. Section 1189 of the act, amended October 17, 1980 (P.L.1082, No.182), is amended to read:

Section 1189. **Physical and Psychological Medical Examination.**--[All applicants for examination shall undergo a physical examination, either before or after the written examination, which shall be conducted under the supervision of a physician appointed by the commission. No person shall be eligible for appointment until such physician certifies that the applicant is free from any bodily or mental defect, deformity or disease that might incapacitate him for the discharge of the duties of the position desired.] **(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 council 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), council determines that the conditional appointee is not qualified, council 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 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 5. Nothing contained in this act shall affect the validity of any civil service appointment or promotion made prior to the effective date of this section.

Section 6. This act shall take effect immediately.

APPROVED--The 27th day of October, A.D. 2010.

EDWARD G. RENDELL