

Texas Civil Service

Civil Service 101: Back to the Basics

**BY: JERRIS PENROD MAPES
ASSISTANT CITY ATTORNEY
CITY OF KILLEEN**

PURPOSE

LGC 143.001

(a) The purpose of this chapter is to secure efficient fire and police departments composed of capable personnel who are free from political influence and who have permanent employment tenure as public servants.

(b) The members of the Fire Fighters' and Police Officers' Civil Service Commission shall administer this chapter in accordance with this purpose.

Search

Nolanville mayor fires all but one cop

by Patrick Tolbert and Natasha Chen

NOLANVILLE - In a surprising move Thursday, Nolanville Mayor Emma McCullough fired every remaining police officer except the chief.

The city, amidst a financial crisis, cut funding to its volunteer fire department on Tuesday. On July 13, The city announced a number of layoffs and firings ranging from police officers to public works employees.

"I'm really feeling disgust," said Matthew Schuetze, who was laid off on the 13th. "I mean, how can they go around and do this? You need some time to think. You can't make a decision like this."

Det. Charles Cline was out of town today and did not physically see the letter informing him of his termination. But he learned of the situation from the chief. He said, "For them to cut everybody in the police department, it's ridiculous."

"The citizens are the ones that are going to be affected most, because no they don't have coverage for law enforcement," Cline said. "If the chief works during the day, there's not going to be anybody there at night. I'm sure he'll do his best to cover the city, but he's not going to be able to cover the whole city by himself."

Mayor McCullough became emotional when she talked to News Channel 25 about the cutbacks she's had to make in order to save the city from going under. She said that they currently have less than \$13,000 left in the bank.

She said, "I want to assure my citizens that we still have fire and police protection. They have not been left without protection. If they have any questions, contact me directly at city hall, and I'll answer anything you want to know. Thank you."

Councilman Wayne Hamilton explained how the decision came as one of many steps the city has made to save money. "Remember last week we let some folks go? The week before that, we let some people go on half time? We're trying to stay coherent and make it work, without panic and paranoia."

The Bell County Sheriff's office has been informed of the situation and will provide assistance to Nolanville when needed. A representative from the sheriff's office said that there is always at least one person on duty for each district. Nolanville falls into District 3, stretching from Fort Hood to Stillhouse.

The mayor said that she has only five employees left on the city payroll. She has asked everyone to work part time, and is planning on closing the court area to save money. Her decision to cut funding to the fire department earlier this week was based on what she said was a breach of contract, which the volunteer firefighters adamantly refute.

In a [news release](#) sent out Wednesday night, The Nolanville Volunteer Fire Department said it would "continue to serve the citizens of this great city..." and accused the mayor of lying to the news media, the city council and "her own citizens."

ADOPT OR REPEAL CHAPTER



Petition - If the municipality receives a petition requesting an election that is signed by a number of qualified voters of the municipality equal to at least 10% of the number of voters who voted in the most recent municipal election, then an election must be held.

Elections – A municipality may hold an election to adopt or repeal 143. This may be just for fire or police or both. A subsequent election may not be filed for at least one year. According to the election code, this election may appear only on one of the two municipal elections permitted by State law, in April or November.



For a repeal, it must be by a majority of the voters. This means the qualified voters who actually voted in the election. 143.004

COMMISSION

Must be appointed by the Chief Executive of the municipality within 60 days after 143 adopted. The commission consists of three appointed members who must be confirmed by the governing body. Members serve staggered three-year terms with one member expiring each year.

Commission members must:

- **be of good moral character;**
- **be a United States citizen;**
- **be a resident of the municipality who has resided in the municipality for more than three years;**
- **be over 25 years of age; and**
- **not have held a public office within the preceding three years. (AG JM-874 (1988)clarifies public office)143.006**



REMOVAL FROM COMMISSION

If the governing body finds that a commission member is guilty of misconduct in office, the governing body may remove the member.

If a commission member is indicted or charged by information with a criminal offense involving moral turpitude, the member shall be automatically suspended from office until the disposition of the charge. (Unless pleads or is found guilty.) 143.007

COMMISSION ADOPTS AND PUBLISHES RULES

The Commission must adopt local Civil Service Rules.

Note, any rules that the Civil Service Commission adopts prescribing cause for removal or suspension of a police officer must comply with the grounds for removal prescribed by Section 143.051.

***City of Austin v. Banks*, 696 S.W.2d 700(Tex. App.-Austin 1985, no writ).**

The Director shall keep copies of all rules for free distribution to members of the fire and police departments who request copies and for inspection by any interested person. 143.008

COMMISSION INVESTIGATES AND INSPECTS



The Commission or a Commission Member designated by the Commission, may investigate and report on all matters relating to the enforcement and effect of this chapter and any rules adopted under this chapter and shall determine if the chapter and rules are being obeyed.

During an investigation, the Commission or Commission Member may:

- administer oaths;
- issue subpoenas to compel the attendance of witnesses and the production of documents relating to the investigation; and
- cause the deposition of witnesses residing inside or outside the state. 143.009

COMMISSION APPEALS

If an employee wants to appeal to the Commission, he must file within 10 days after the date the discipline was issued.

The appeal must include the basis for the appeal and a request for a hearing. It must also contain a statement denying the truth of the charge as made, a statement taking exception to the legal sufficiency of the charge, a statement alleging that the recommended action does not fit the offense, or a combination. Stating he “wishes to appeal” will not be sufficient. *City of Plano FF and PO’s Civil Service Comm. V. Maxam*, 685 S.W. 2d 125 (Tex. App. – Dallas 1985, writ ref’d n.r.e.).

Commission proceedings shall be held in public. 143.010

DIRECTOR

Upon adoption of 143, a Director must be established. The Commission shall appoint the Director. The Director shall serve as secretary to the commission and perform work incidental to the process as required by the Commission. The Commission may remove the director at any time.

The Director must meet the same requirements as the Commission members, except if population is less than 1.5 million, they do not have the residency requirement.

APPOINTMENT AND REMOVAL OF DEPARTMENT HEAD

Unless elected, the department head may be appointed by the Chief Executive of the city and confirmed by the governing body. For police, he must be eligible for certification by TCOLE and been a law enforcement officer for at least five years. For fire, he must be eligible for certification by the Commission on Fire Protection Personnel Standards and Education at intermediate level and served for five years.

If an individual is removed as the department head, he shall be reinstated in the department at the same rank that he held when appointed.

If an individual department head is also charged with civil service violations, the now lower-ranked individual has a right to all the Civil Service protections.

APPOINTMENT AND REMOVAL OF POSITION IMMEDIATELY BELOW DEPARTMENT HEAD

If approved by the governing body of the municipality by resolution or ordinance, the head of the fire or police department in which at least four classifications exist below the classification of department head, may appoint the positions in the classification immediately below that of department head.

The person appointed must:

- Be employed by the police department as a sworn police officer or as a firefighter;
- Have at least two years' continuous service in that department for police;
- Meet the requirements for department head in 143.013.

APPEAL OF COMMISSION DECISION TO DISTRICT COURT



If an officer is dissatisfied with any commission decision, the officer may file a petition in district court asking that the decision be set aside. The petition must be filed within 10 days after the date the final commission decision:

- is sent to the fire fighter or police officer by certified mail; or**
- is personally received by the employee or by that person's designee.**

An appeal under this section is by trial de novo.

**The court may award reasonable attorney's fees to the prevailing party and assess court costs against the non-prevailing party.
143.015 (see also 143.053)**

PENALTY FOR VIOLATION OF CHAPTER

A firefighter or police officer commits an offense if he violates this chapter.

An offense under this section or Section 143.009 is a misdemeanor punishable by a fine of not less than \$10 or more than \$100, confinement in the county jail for not more than 30 days, or both fine and confinement.

143.016

HIRING PHYSICAL REQUIREMENTS AND EXAMINATION

The commission shall set the age and physical requirements for applicants for beginning and promotional positions in accordance with this chapter. The requirements must be the same for all applicants.

A physical examination is required. The commission may require each applicant take a mental examination. The municipality shall pay for each examination.

If an applicant is rejected by the physician, psychiatrist, or psychologist, as appropriate, the applicant may request another examination by a board of three physicians, psychiatrists, or psychologists, as appropriate, appointed by the commission. The applicant must pay for the board examination. The board's decision is final. 143.022

ELIGIBILITY FOR BEGINNING POSITION

Must be at least 18 years of age.

For fire, the applicant cannot be age 36 years of age or older.

For police, the applicant cannot be age 45 years of age or older.

An applicant must meet all legal requirements necessary to become eligible for future licensing by the Texas Commission on Law Enforcement for police or Commission on Fire Protection for fire.

Each applicant must be able to read and write English.

143.023

TESTING ENTRANCE EXAMINATION NOTICE

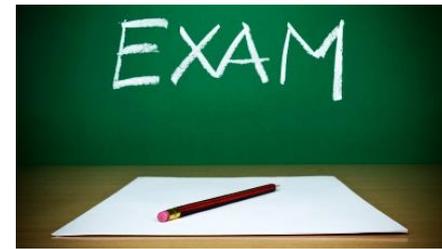


Before the 10th day before the date an entrance examination is held, a notice must be posted in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office.

The notice must show the position to be filled or for which the examination is to be held, and the date, time, and place of the examination.

The notice must also state the period during which the eligibility list created as a result of the examination will be effective. 143.024

ENTRANCE EXAMINATIONS



The commission shall provide for open, competitive, and free entrance examinations to provide eligibility lists for beginning positions. The examinations are open to each person who makes a proper application and meets the requirements prescribed by this chapter.

An eligibility list may only be created only as a result of a competitive examination held in the presence of each applicant for the positions . The examination must be based on the person's general knowledge and aptitude and must inquire into the applicant's general education and mental ability. A person may not be appointed except as a result of the examination.

An applicant may not take an examination unless at least one other applicant taking the examination is present.

An examination for beginning positions must be held at one or more locations in the municipality in which the agency is located and may be held at additional locations outside the municipality. An examination held at multiple locations must be administered on the same day and at the same time at each location at which it is given. Only one eligibility list for a police department may be created from that examination, and only one eligibility list may be in effect at a given time. Each applicant who takes the examination for the eligibility list shall:

- take the same examination; and**
- be examined in the presence of other applicants for that eligibility list.**

ENTRANCE EXAMINATIONS – CONT.

An additional five points shall be added to the examination grade of an applicant who served in the United States armed forces, received an honorable discharge, and made a passing grade on the examination.

An applicant may not take the examination for a particular eligibility list more than once.

The commission shall keep each eligibility list for a beginning position in effect for a period of not less than six months or more than 12 months, unless the names of all applicants on the list have been referred to the appropriate department. The commission shall determine the length of the period. The commission shall give new examinations at times the commission considers necessary to provide required staffing for scheduled fire or police training academies.

The grade to be placed on the eligibility list for each applicant shall be computed by adding military service points, if any, to the applicant's grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 percent and is determined entirely by the correctness of the applicant's answers to the questions. The minimum passing grade on the examination is 70 percent. An applicant must pass the examination to be placed on an eligibility list. 143.025

REAPPOINTMENT AFTER RESIGNATION

The commission may adopt rules to allow a police officer who voluntarily resigns from the department to be reappointed to the department without taking another departmental entrance examination. 143.0251

PROCEDURE FOR FILLING BEGINNING POSITIONS

When a vacancy occurs in a beginning position in a fire or police department, the department head shall request in writing from the Commission the names of suitable persons from the eligibility list. The director shall certify to the municipality's chief executive the names of the three persons having the highest grades on the eligibility list.

From the three names certified, the chief executive shall appoint the person having the highest grade unless there is a valid reason why the person having the second or third highest grade should be appointed.

If the chief executive does not appoint the person having the highest grade, the chief executive shall clearly set forth in writing the *good and sufficient* reason why the person having the highest grade was not appointed.

The reason shall be filed with the Commission and a copy provided to the person having the highest grade. If the chief executive appoints the person having the third highest grade, a copy of the report shall also be furnished to the person having the second highest grade. 143.026

PROBATIONARY PERIOD

A person appointed to a beginning position must serve a probationary period of one year beginning on that person's date of employment. In a municipality with a population of less than 1.9 million, the commission by rule may extend the probationary period by not more than six months for a person who:

- is not employed by a department in which a collective bargaining agreement or a meet-and-confer agreement currently exists or previously existed; and**
- is required to attend a basic training academy for initial certification.**

During the probationary period, the person may not be prohibited from joining or required to join an employee organization.

An officer who was appointed in substantial compliance with this chapter and who serves the entire probationary period automatically becomes a full-fledged civil service employee and has full civil service protection. 143.027

PROMOTION ELIGIBILITY

A firefighter or officer is not eligible for promotion unless the person has served in that department in the next lower position, or other positions specified by the commission, for at least two years immediately before the date the promotional examination is held. A firefighter or police officer is not eligible for promotion to the rank of captain or its equivalent unless the person has at least four years' actual service in that department.

If a person is recalled on active military duty for not more than 60 months, (five years) the two-year service requirements prescribed by Subsections (a) and (b) do not apply and the person is entitled to have time spent on active military duty considered as duty in the respective fire or police department. 143.028

PROMOTIONAL EXAMS

NOTICE - Before the 90th day before the date a promotional examination is held, the commission shall post a notice that lists the sources from which the examination questions will be taken.

Before the 30th day before the date a promotional examination is held, the commission shall post a notice of the examination in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office. The notice must show the position to be filled or for which the examination is to be held, and the date, time, and place of the examination. The commission shall also furnish sufficient copies of the notice for posting in the stations or sub-departments in which the position will be filled.

The notice may also include the name of each source used for the examination, the number of questions taken from each source, and the chapter used in each source. 143.029

ELIGIBILITY FOR FIRE AND POLICE DEPARTMENT PROMOTIONAL EXAMINATIONS

Each promotional examination is open to each firefighter and police officer who for at least two years immediately before the examination date has continuously held a position in the classification that is immediately below, in salary, the classification for which the examination is to be held.

If there are not sufficient firefighters or police officers in the next lower position with two years' service in that position to provide an adequate number of persons to take the examination, the commission shall open the examination to persons in that position with less than two years' service. If there is still an insufficient number, the commission may open the examination to persons in the second lower position, in salary, to the position for which the examination is to be held. 143.030 and 143.031

PROMOTIONAL EXAMINATION PROCEDURE

The commission shall adopt rules governing promotions and shall hold promotional examinations to provide eligibility lists for each classification. Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the examinations shall be held substantially as prescribed by this section.

Each eligible promotional candidate shall be given an identical examination in the presence of the other eligible promotional candidates, except that an eligible promotional candidate who is serving on active military duty outside of this state or in a location that is not within reasonable geographic proximity to the location where the examination is being administered is entitled to take the examination outside of the presence of and at a different time than the other candidates and may be allowed to take an examination that is not identical to the examination administered to the other candidates.

The commission may adopt rules under Subsection (a) providing for the efficient administration of promotional examinations to eligible promotional candidates who are members of the armed forces serving on active military duty. In adopting the rules, the commission shall ensure that the administration of the examination will not result in unnecessary interference with any ongoing military effort. The rules shall require that:

- at the discretion of the administering entity, an examination that is not identical to the examination administered to other eligible promotional candidates may be administered to an eligible promotional candidate who is serving on active military duty; and**
- if a candidate serving on active military duty takes a promotional examination outside the presence of other candidates and passes the examination, the candidate's name shall be included in the eligibility list of names of promotional candidates who took and passed the examination nearest in time to the time at which the candidate on active military duty took the examination.**

PROMOTIONAL EXAMINATION PROCEDURE – CONT.

The examination must be entirely in writing and may not in any part consist of an oral interview.

The examination questions must test the knowledge of the eligible promotional candidates about information and facts and must be based on:

- the duties of the position for which the examination is held;
- material that is of reasonably current publication and that has been made reasonably available to each member of the police department involved in the examination; and
- any study course given by the departmental schools of instruction.

The examination questions must be taken from the sources posted as prescribed by Section 143.029(a).

The examination questions must be prepared and composed so that the grading of the examination can be promptly completed immediately after the examination is over.

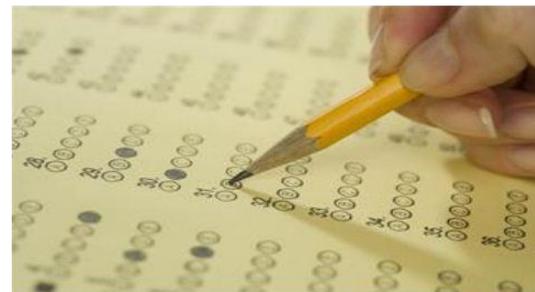
The director is responsible for the preparation and security of each promotional examination. The fairness of the competitive promotional examination is the responsibility of the commission, the director, and each municipal employee involved in the preparation or administration of the examination.

A person commits an offense if the person knowingly or intentionally:

- reveals a part of a promotional examination to an unauthorized person; or
- receives from an authorized or unauthorized person a part of a promotional examination for unfair personal gain or advantage.

An offense under Subsection (h) is a misdemeanor punishable by a fine of not less than \$1,000, confinement in the county jail for not more than one year, or both the fine and the confinement. 143.032

PROMOTIONAL EXAMINATION GRADES



The grading of each promotional examination shall begin when one eligible promotional candidate completes the examination. As the eligible promotional candidates finish the examination, the examinations shall be graded at the examination location and in the presence of any candidate who wants to remain during the grading.

Each firefighter and police officer is entitled to receive one point for each year of seniority as a classified firefighter or police officer in that department, with a maximum of 10 points.

Unless a different procedure is adopted under an alternate promotional system as provided by Section 143.035, the grade that must be placed on the eligibility list for each police officer shall be computed by adding the applicant's points for seniority to the applicant's grade on the written examination. Each applicant's grade on the written examination is based on a maximum grade of 100 points and is determined entirely by the correctness of the applicant's answers to the questions. In a municipality with a population of less than 1.5 million, all police officer applicants who receive a grade of at least 70 points shall be determined to have passed the examination. If a tie score occurs, the commission shall determine a method to break the tie.

(d) Within 24 hours after a promotional examination is held, the commission shall post the individual raw test scores on a bulletin board located in the main lobby of the city hall. 143.033

REVIEW AND APPEAL OF PROMOTIONAL EXAMINATION.



On request, each eligible promotional candidate is entitled to examine the person's promotional examination and answers, the examination grading, and the source material for the examination. If dissatisfied, the candidate may appeal, within five business days, to the commission for review in accordance with this chapter. In computing this period, a Saturday, Sunday, or legal holiday is not considered a business day.

The eligible promotional candidate may not remove the examination or copy a question used in the examination.

143.034

ALTERNATE SYSTEM

On the recommendation of the head of the police department and a majority vote of the sworn police officers in the department, the commission may adopt an alternate promotional system.

The commission shall order the director to conduct an election and to submit the revised promotional system either to all sworn police officers within the rank immediately below the classification for which the promotional examination is to be administered or to all sworn police officers in the department.

The director shall hold the election on or after the 30th day after the date notice of the election is posted at the department.

The revised promotional system must be approved by a majority vote of the sworn police officers voting. A defeated promotional system amendment may not be placed on a ballot for a vote by the sworn police officers for at least 12 months after the date the prior election was held, but this provision does not apply if the head of the department recommends a different proposal to the commission.

ALTERNATE SYSTEM CONT.

At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, the department head may petition the commission to terminate the alternate system, and the commission shall terminate the alternate system.

At any time after an alternate promotional system has been adopted under this section and has been in effect for at least 180 days, a petition signed by at least 35 percent of the sworn police officers may be submitted to the commission asking that the alternate promotional system be reconsidered. If a petition is submitted, the commission shall, within 60 days after the date the petition is filed, hold an election as prescribed by this section. If a majority of those voting vote to terminate, the commission shall terminate the alternate promotional system.

If the alternate system is terminated, an additional list may not be created under the alternate system.

A promotional list may not be created if an election under this section is pending. An existing eligibility list, whether created under the system prescribed by this chapter or created under an alternate system adopted under this section, may not be terminated before or extended beyond its expiration date. A person promoted under an alternate system has the same rights and the same status as a person promoted under this chapter even if the alternate system is later terminated. 143.035

PROCEDURE FOR MAKING PROMOTIONAL APPOINTMENTS

If an eligibility list does not exist on the date a vacancy occurs or a new position is created, the commission shall hold an examination to create a new eligibility list within 90 days after the date the vacancy occurs or a new position is created.

If an eligibility list exists on the date a vacancy occurs, the department head shall fill the vacancy by permanent appointment from the eligibility list furnished by the commission within 60 days after the date the vacancy occurs.

Each promotional eligibility list remains in existence for one year after the date on which the written examination is given, unless exhausted. At the expiration of the one-year period, the eligibility list expires and a new examination may be held. 143.036

TEMPORARY DUTIES IN HIGHER CLASSIFICATION.

The department head may designate a person from the next lower classification to temporarily fill a position in a higher classification. The designated person is entitled to the base salary of the higher position plus the person's own longevity or seniority pay, educational incentive pay, and certification pay during the time the person performs the duties. 143.038

SALARY

All police officers in the same classification are entitled to the same base salary.

In addition to the base salary, each officer is entitled to each of the following types of pay, if applicable:

- longevity or seniority pay;
- educational incentive pay as authorized by Section 143.044;
- assignment pay as authorized by Sections 143.042 and 143.043;
- certification pay as authorized by Section 143.044;
- shift differential pay as authorized by Section 143.047; and
- fitness incentive pay as authorized by Section 143.044.

143.041

ACCUMULATION AND PAYMENT OF SICK LEAVE

A permanent or temporary firefighter or police officer is allowed sick leave with pay accumulated at the rate of 1-1/4 full working days for each full month employed in a calendar year, so as to total 15 working days to a person's credit each 12 months.

A firefighter or police officer may accumulate sick leave without limit and may use the leave if unable to work because of a bona fide illness. If an ill police officer exhausts the sick leave and can conclusively prove that the illness was incurred in the performance of duties, an extension of sick leave shall be granted.

A firefighter or police officer who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount of the person's salary for accumulated sick leave if the person has accumulated not more than 90 days of sick leave. If a police officer has accumulated more than 90 working days of sick leave, the person's employer may limit payment to the amount that the person would have received if the person had been allowed to use 90 days of accumulated sick leave during the last six months of employment. The lump-sum payment is computed by applying the highest pay classification for which the person was eligible during the last six months of employment. 143.045

DISCIPLINE

CAUSE FOR REMOVAL OR SUSPENSION

A commission rule prescribing cause for removal or suspension of a firefighter or police officer is not valid unless it involves one or more of the following grounds:

- conviction of a felony or other crime involving moral turpitude;
 - violations of a municipal charter provision;
 - acts of incompetency;
 - neglect of duty;
 - discourtesy to the public or to a fellow employee while the fire fighter or police officer is in the line of duty;
 - acts showing lack of good moral character;
 - drinking intoxicants while on duty or intoxication while off duty;
 - conduct prejudicial to good order;
 - refusal or neglect to pay just debts;
 - absence without leave;
 - shirking duty or cowardice at fires, if applicable; or
 - violation of an applicable fire or police department rule or special order.
- 143.051

DISCIPLINARY SUSPENSIONS

The head of the police department may suspend a police officer under the department head's supervision or jurisdiction for the violation of a civil service rule. The suspension may be for a reasonable period not to exceed 15 calendar days or for an indefinite period. An indefinite suspension is equivalent to dismissal from the department.

If the department head suspends a police officer, the department head shall, within 120 hours after the hour of suspension, file a written statement with the commission giving the reasons for the suspension. The department head shall immediately deliver a copy of the statement in person to the suspended firefighter or police officer. The copy of the written statement must inform the suspended firefighter or police officer that if the person wants to appeal to the commission, the person must file a written appeal with the commission within 10 days after the date the person receives the copy of the statement.

The written statement filed by the department head with the commission must point out each civil service rule alleged to have been violated by the suspended police officer and must describe the alleged acts of the person that the department head contends are in violation of the civil service rules. It is not sufficient for the department head merely to refer to the provisions of the rules alleged to have been violated.

If the department head does not specifically point out in the written statement the act or acts of the police officer that allegedly violated the civil service rules, the commission shall promptly reinstate the person.

DISCIPLINARY SUSPENSIONS CONT.

If offered by the department head, the firefighter or police officer may agree in writing to voluntarily accept, with no right of appeal, a suspension of 16 to 90 calendar days for the violation of a civil service rule. The employee must accept the offer within five working days after the date the offer is made. If the person refuses the offer and wants to appeal to the commission, the person must file a written appeal with the commission within 15 days after the date the person receives the copy of the written statement of suspension.

In the original written statement and charges and in any hearing conducted under this chapter, the department head may not complain of an act that occurred earlier than the **180th day** preceding the date the department head suspends the police officer. If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the firefighter or police officer is subject to a criminal penalty, the department head may not complain of an act that is discovered earlier than the 180th day preceding the date the department head suspends the firefighter or police officer. The department head must allege that the act complained of is related to criminal activity. 143.052

APPEAL OF DISCIPLINARY SUSPENSION

If a suspended firefighter or police officer appeals the suspension to the commission, the commission shall hold a hearing and render a decision in writing within 30 days after the date it receives notice of appeal. The suspended person and the commission may agree to postpone the hearing for a definite period.

In a hearing conducted under this section, the department head is restricted to the department head's original written statement and charges, which may not be amended.

The commission may deliberate the decision in closed session but may not consider evidence that was not presented at the hearing. The commission shall vote in open session.

In its decision, the commission shall state whether the suspended police officer is:

- permanently dismissed from the fire or police department;
- temporarily suspended from the department; or
- restored to the person's former position or status in the department's classified service.

If the commission finds that the period of disciplinary suspension should be reduced, the commission may order a reduction in the period of suspension. If the suspended police officer is restored to the position or class of service from which the person was suspended, the police officer is entitled to:

- full compensation for the actual time lost as a result of the suspension at the rate of pay provided for the position or class of service from which the person was suspended; and
- restoration of or credit for any other benefits lost as a result of the suspension, including sick leave, vacation leave, and service credit in a retirement system. Standard payroll deductions, if any, for retirement and other benefits restored shall be made from the compensation paid, and the municipality shall make its standard corresponding contributions, if any, to the retirement system or other applicable benefit systems.

The commission may suspend or dismiss a firefighter or police officer only for violation of civil service rules and only after a finding by the commission of the truth of specific charges against the firefighter or police officer. 143.053

DEMOTIONS

If the head of the department wants a firefighter or police officer under his supervision or jurisdiction to be involuntarily demoted, the department head may recommend in writing to the commission that the commission demote the employee.

The department head must include in the recommendation for demotion the reasons the department head recommends the demotion and a request that the commission order the demotion. The department head must immediately furnish a copy of the recommendation in person to the affected firefighter or police officer.

The commission may refuse to grant the request for demotion. If the commission believes that probable cause exists for ordering the demotion, the commission shall give the firefighter or police officer written notice to appear before the commission for a public hearing at a time and place specified in the notice. The commission shall give the notice before the 10th day before the date the hearing will be held.

The firefighter or police officer is entitled to a full and complete public hearing, and the commission may not demote a police officer without that public hearing.

A voluntary demotion in which the police officer has accepted the terms of the demotion in writing is not subject to this section. 143.054

PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT.

If a firefighter or police officer is indicted for a felony or officially charged with the commission of a Class A or B misdemeanor, the department head may temporarily suspend the person with or without pay for a period not to exceed 30 days after the date of final disposition of the specified felony indictment or misdemeanor complaint.

The department head shall notify the suspended employee in writing that the person is being temporarily suspended for a specific period with or without pay and that the temporary suspension is not intended to reflect an opinion on the merits of the indictment or complaint.

If the action directly related to the felony indictment or misdemeanor complaint occurred or was discovered on or after the 180th day before the date of the indictment or complaint, the department head may, within 30 days after the date of final disposition of the indictment or complaint, bring a charge against the firefighter or police officer for a violation of civil service rules.

PROCEDURES AFTER FELONY INDICTMENT OR MISDEMEANOR COMPLAINT. CONT.

A FF or PO indicted for a felony or officially charged with the commission of a Class A or B misdemeanor who has also been charged by the department head with civil service violations directly related to the indictment or complaint may delay the civil service hearing for not more than 30 days after the date of the final disposition of the indictment or complaint.

If the department head temporarily suspends a firefighter or police officer under this section and the employee is not found guilty of the indictment or complaint in a court of competent jurisdiction, the employee may appeal to the commission or to a hearing examiner for recovery of back pay. The commission or hearing examiner may award all or part of the back pay or reject the appeal.

Acquittal or dismissal of an indictment or a complaint does not mean that a firefighter or police officer has not violated civil service rules and does not negate the charges that may have been or may be brought against the firefighter or police officer by the department head.

Conviction of a felony is cause for dismissal, and conviction of a Class A or B misdemeanor may be cause for disciplinary action or indefinite suspension.

The department head may order an indefinite suspension based on an act classified as a felony or a Class A or B misdemeanor after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the department head intends to order an indefinite suspension after the 180-day period, the department head must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred. 143.056

HEARING EXAMINERS

In addition to the other notice requirements prescribed by this chapter, the written notice for a promotional bypass or the letter of disciplinary action, as applicable, issued to a firefighter or police officer must state that in an appeal of an indefinite suspension, a suspension, a promotional bypass, or a recommended demotion, the appealing employee may elect to appeal to an independent third party hearing examiner instead of to the commission. The letter must also state that if the employee elects to appeal to a hearing examiner, the person waives all rights to appeal to a district court .

To exercise the choice of appealing to a hearing examiner, the appealing police officer must submit to the director a written request as part of the original notice of appeal required under this chapter stating the person 's decision to appeal to an independent third party hearing examiner.

The hearing examiner 's decision is final and binding on all parties. If the police officer decides to appeal to an independent third party hearing examiner, the person automatically waives all rights to appeal to a district court.

If the appealing firefighter or police officer chooses to appeal to a hearing examiner, the employee and the department head, or their designees, shall first attempt to agree on the selection of an impartial hearing examiner. If the parties do not agree on the selection of a hearing examiner on or within 10 days after the date the appeal is filed, the director shall immediately request a list of seven qualified neutral arbitrators from the American Arbitration Association or the Federal Mediation and Conciliation Service, or their successors in function. The employee and the department head, or their designees, may agree on one of the seven neutral arbitrators on the list. If they do not agree within five working days after the date they received the list, each party or the party 's designee shall alternate striking a name from the list and the name remaining is the hearing examiner. The parties or their designees shall agree on a date for the hearing.

The appeal hearing shall begin as soon as the hearing examiner can be scheduled. If the hearing examiner cannot begin the hearing within 45 calendar days after the date of selection, the police officer may, within two days after learning of that fact, call for the selection of a new hearing examiner

HEARING EXAMINERS – CONT.

In each hearing conducted under this section, the hearing examiner has the same duties and powers as the commission, including the right to issue subpoenas.

In a hearing conducted under this section, the parties may agree to an expedited hearing procedure. Unless otherwise agreed by the parties, in an expedited procedure the hearing examiner shall render a decision on the appeal within 10 days after the date the hearing ended. In an appeal that does not involve an expedited hearing procedure, the hearing examiner shall make a reasonable effort to render a decision on the appeal within 30 days after the date the hearing ends or the briefs are filed. The hearing examiner's inability to meet the time requirements imposed by this section does not affect the hearing examiner's jurisdiction, the validity of the disciplinary action, or the hearing examiner's final decision.

The hearing examiner's fees and expenses are shared equally by the appealing firefighter or police officer and by the department. The costs of a witness are paid by the party who calls the witness.

A district court may hear an appeal of a hearing examiner's award only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction or that the order was procured by fraud, collusion, or other unlawful means. An appeal must be brought in the district court having jurisdiction in the municipality in which the police department is located. 143.057

DISPARATE TREATMENT – JUST CAUSE

“Employees are similarly situated if their circumstances are comparable in all material respects, including similar standards, supervisors, and conduct.” Ysleta Independent School Dist. v. Monarrez, 177 S.W.3d 915, 917 (2005)

Sample Case: Officer Belver, SAPD



SAPD Officer Belver Coban's dash cam video (WARNING_ Graphic language) - Shortcut.lnk

TX GOVT CODE 614

Sec. 614.002.APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a peace officer or fire fighter employed by:

- (1) the state;
- (2) a municipality with a population of 50,000 or more; or
- (3) a county with a population of 190,000 or more

COMPLAINT AGAINST LAW ENFORCEMENT OFFICER OR FIRE FIGHTER

Sec. 614.022. COMPLAINT TO BE IN WRITING AND SIGNED BY COMPLAINANT.

To be considered by the head of a state agency or by the head of a fire department or local law enforcement agency, the complaint must be:

- (1) in writing; and
- (2) signed by the person making the complaint.

LOUDERMILL

A “Loudermill hearing” is part of the “due process” requirement that must be provided to a government employee prior to removing or impacting the employment property right (e.g. imposing severe discipline).

The purpose of a “Loudermill hearing” is to provide an employee an opportunity to present their side of the story before the employer makes a decision on discipline.

Prior to the hearing, the employee must be given a Loudermill letter—i.e. specific written notice of the charges and an explanation of the employer’s evidence so that the employee can provide a meaningful response and an opportunity to correct factual mistakes in the investigation and to address the type of discipline being considered.

The Supreme Court in *Cleveland Bd. Of Educ. v. Loudermill*, stated that the employer must furnish the employee with “oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story.” The Court also stated that this hearing “need not be elaborate.” In fact, many employers provide a very informal process for this name-clearing opportunity.

Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985)

LEAVES

LEAVES OF ABSENCE; RESTRICTION PROHIBITED.

If a sufficient number of firefighter or police officers are available to carry out the normal functions of the department, a firefighter or police officer may not be refused a reasonable leave of absence without pay to attend a fire or police school, convention, or meeting if the purpose of the school, convention, or meeting is to secure a more efficient department and better working conditions for department personnel.

A rule that affects a firefighter or police officer's constitutional right to appear before or to petition the legislature may not be adopted.

143.071

MILITARY LEAVE OF ABSENCE



On written application of a police officer, the commission shall grant the person a military leave of absence without pay, subject to Section 143.075, to enable the person to enter a branch of the United States military service. The leave of absence may not exceed the period of compulsory military service or the basic minimum enlistment period for the branch of service the police officer enters. The commission shall grant to a police officer a leave of absence for initial training or annual duty in the military reserves or the national guard.

While a police officer who received a military leave of absence serves in the military, the commission shall fill the person's position in the department in accordance with this chapter.

On termination of active military service, a police officer who received a military leave of absence under this section is entitled to be reinstated to the position that the person held in the department at the time the leave of absence was granted if the person:

- receives an honorable discharge;
- remains physically and mentally fit to discharge the duties of that position; and
- makes an application for reinstatement within 90 days after the date the person is discharged from military service.

On reinstatement, the police officer shall receive full seniority credit for the time spent in the military service. If the reinstatement of a police officer who received a military leave of absence causes a surplus in the rank to which the police officer was reinstated, the police officer who has the least seniority in the position shall be returned to the position immediately below the position to which the returning or police officer was reinstated.

If a police officer is returned to a lower position in grade or compensation under this subsection without charges being filed against the person for violation of civil service rules, the police officer shall be placed on a position reinstatement list in order of seniority.

Appointments from the reinstatement list shall be made in order of seniority. A person who is not on the reinstatement list may not be appointed to a position to which the list applies until the list is exhausted.

If a police officer employed by a municipality is called to active military duty for any period, the employing municipality must continue to maintain any health, dental, or life insurance coverage and any health or dental benefits coverage that the police officer received through the municipality on the date the police officer was called to active military duty until the municipality receives written instructions from the police officer to change or discontinue the coverage. 143.072

FITNESS FOR DUTY

If a question arises as to whether a firefighter or police officer is sufficiently physically or mentally fit to continue the person's duties, the employee shall submit to the commission a report from the person's personal physician, psychiatrist, or psychologist, as appropriate.

If the commission, the department head, or the police officer questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the police officer and to submit a report to the commission, the department head, and the person.

If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the police officer's personal physician, psychiatrist, or psychologist, as appropriate, the commission shall appoint a three-member board composed of a physician, a psychiatrist, and a psychologist, or any combination, as appropriate, to examine the police officer. The board's findings as to the person's fitness for duty shall determine the issue.

The police officer shall pay the cost of the services of the person's personal physician, psychiatrist, or psychologist, as appropriate. The municipality shall pay all other costs. 143.081

EFFICIENCY REPORTS

The commission may develop proper procedures and rules for semiannual efficiency reports and grades for each police officer.

If the commission collects efficiency reports on police officers, the commission shall provide each person with a copy of that person's report.

Within 10 calendar days after the date a police officer receives the copy of the person's efficiency report, the person may make a statement in writing concerning the efficiency report. The statement shall be placed in the person's personnel file with the efficiency report.

FORCE REDUCTION AND REINSTATEMENT LIST

If a municipality's governing body adopts an ordinance that vacates or abolishes a police department position, the police officer who holds that position shall be demoted to the position immediately below the vacated or abolished position. If one or more positions of equal rank are vacated or abolished, the police officers who have the least seniority in a position shall be demoted to the position immediately below the vacated or abolished position.

If a police officer is demoted under this subsection without charges being filed against the person for violation of civil service rules, the police officer shall be placed on a position reinstatement list in order of seniority. If the vacated or abolished position is filled or re-created within one year after the date it was vacated or abolished, the position must be filled from the reinstatement list. Appointments from the reinstatement list shall be made in order of seniority. A person who is not on the list may not be appointed to the position during the one-year period until the reinstatement list is exhausted.

If a position in the lowest classification is abolished or vacated and a police officer must be dismissed from the department, the police officer with the least seniority shall be dismissed. If a police officer is dismissed under this subsection without charges being filed against the person for violation of civil service rules, the police officer shall be placed on a reinstatement list in order of seniority. Appointments from the reinstatement list shall be made in order of seniority. Until the reinstatement list is exhausted, a person may not be appointed from an eligibility list. When a person has been on a reinstatement list for three years, the person shall be dropped from the list but shall be restored to the list at the request of the commission.

RECORDS – “A” FILE

The director or the director’s designee shall maintain a personnel file (“a file”) on each firefighter or police officer. The personnel file must contain any letter, memorandum, or document relating to:

- a commendation, congratulation, or honor bestowed on the employee by a member of the public or by the employing department for an action, duty, or activity that relates to the person’s official duties;
- any misconduct by the employee if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and
- the periodic evaluation of the firefighter or police officer by a supervisor.

A letter, memorandum, or document relating to alleged misconduct by the firefighter or police officer may not be placed in the person’s personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

RECORDS – “A” FILE

A letter, memorandum, or document relating to disciplinary action taken against the police officer or to alleged misconduct by the police officer that is placed in the person’s personnel file as provided by Subsection (a)(2) shall be removed from the employee’s file if the commission finds that:

- the disciplinary action was taken without just cause; or
- the charge of misconduct was not supported by sufficient evidence.

If a negative letter, memorandum, document, or other notation of negative impact is included in a police officer’s personnel file, the director or the director’s designee shall, within 30 days after the date of the inclusion, notify the affected police officer. The police officer may, on or before the 15th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document, or other notation.

RECORDS – “A” FILE COPIES

The firefighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person’s personnel file. The municipality may charge the employee a reasonable fee not to exceed actual cost for any copies provided under this subsection.

The director or the director’s designee may not release any information contained in a firefighter or police officer’s personnel file without first obtaining the person’s written permission, unless the release of the information is required by law. (Open Records or Subpoenas)

RECORDS – “G” FILE

A fire or police department may maintain a personnel file on a firefighter or police officer employed by the department for the department’s use, (“g file”) but the department may not release any information contained in the department file to any agency or person requesting information relating to a police officer. The department shall refer to the director or the director’s designee a person or agency that requests information that is maintained in the employee’s personnel file. 143.089

MEET AND CONFER AND COLLECTIVE BARGAINING

Meet and Confer – A process that allows 143 police and fire departments to have agreements in addition to, or in conflict with 143 with regard to wages, benefits and other working conditions. Meet and Confer provides an opportunity to reach an agreement with police and fire. LGC 142

Collective Bargaining – A process that requires negotiations between the employer and a group of employees. LGC 174

There is a strike prohibition for public safety employees. 143.087

Thank You

**Jerris Penrod Mapes
Assistant City Attorney
City of Killeen
jmapes@killeentexas.gov**