



Texas Civil Service Commission and the Director

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Texas Civil Service Purpose

- ▶ Texas Local Government Code, Section 143.001 (a), states the purpose of Civil Service 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.”
- ▶ The Commission, it further states in (b), “shall administer this chapter in accordance with this purpose.”

What is the Commission?

- ▶ The Commission consists of three members appointed by the municipality's chief executive and confirmed by the governing body of the municipality.
- ▶ Members serve staggered three-year terms with the terms of one member expiring each year.

Who is the Commission?

- ▶ A person appointed to the commission must:
 - 1) be of good moral character;
 - 2) be a United States Citizen;
 - 3) be a resident of the municipality who has resided in the municipality for more than three years;
 - 4) be over 25 years of age; and
 - 5) not have held a public office within the preceding three years.

Director

- ▶ The Commission shall appoint the director
- ▶ The director shall serve as secretary to the commission and perform work incidental to the civil service system as required by the commission.
- ▶ The Commission may remove the director at any time.

143.012

Director

- ▶ A person appointed as director must meet each requirement for appointment to the commission except the person is not required to meet the local residency requirement.
- ▶ A person appointed as director may be a commission member, a municipal employee, or some other person.
- ▶ A director is entitled to qualified immunity from a lawsuit in connection with the performance of his duties. *Mylett v. Mullican*, 992, F.2d 1347 (5th Cir. 1993)

Commission Meetings

- ▶ Civil Service commission meetings must meet the requirements of the Texas Open Meetings Act.
- ▶ The notice must provide reasonable specificity of the subject matter to be considered at the meeting.

Rogers v City of McAllen, No. 13-07-00278-V, 2008 WL 3867679 (Tex. Ct. App. Aug. 21, 2008)

Commission Adoption of Rules

- ▶ A commission shall adopt rules necessary for the proper conduct of commission business.
- ▶ The commission shall adopt rules that prescribe cause for removal or suspension of a fire fighter or police officer. The rules must comply with the grounds for removal prescribed by Section 143.051.
- ▶ The commission shall publish each rule it adopts and each classification and seniority list for the fire and police departments. The rules and lists shall be made available on demand.
- ▶ 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 an interested person.

Commission Investigation and Inspections

- ▶ The commission may investigate and report on all matters to the enforcement and effect of Chapter 143.
- ▶ During an investigation, the commission or the commission member may:
 - 1) administer oaths;
 - 2) issue subpoenas for witnesses or documents
 - 3) cause the deposition of witnesses

An oath administered or a subpoena issued has the same force and effect as an oath administered by a magistrate in the magistrate's judicial capacity.

Commission Appeals

- ▶ If a firefighter or police officer wants to appeal to the commission, he must file an appeal with the commission within 10 days after the action occurred.
- ▶ The appeal must include the basis for the appeal and a request for a commission hearing. It must 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 alleged offense, or a combination of these statements.
- ▶ Note: It's a good idea to use your local civil service rules to establish where someone files this appeal.

Commission Appeals

- ▶ The proceeding shall be held in public.
- ▶ The commission may issue subpoenas for witnesses and documents and the affected employee may request the same from the commission.
- ▶ The commission shall maintain a public record of each proceeding with copies available at cost.

143.010

Commission Appeals

Note: If you provide information prior to the hearing to the commission members, remember to be careful. There is a case where a sworn statement of a witness was included in a packet provided to the commission in advance. The commission's opinion was overturned because the court said the employee's procedural due process was violated.

Firemen's and Policemen's Civil Service Commission of Galveston v. Bonds, 666 S.W.2d 242 (Tex. App.—Houston [14th Dist.] 1984, writ *dism'd*).

Commission Decisions and Records

- ▶ The commission shall keep records of each hearing or case that comes before the commission
- ▶ Each rule, opinion, directive, decision, or order issued by the commission must be written and constitutes a public record that the commission shall retain on file.

143.011

Appeal of Commission Decision to District Court

- ▶ If the employee is dissatisfied with any commission decision, the employee may file a petition in district court asking the decision be set aside. The petition must be filed within 10 days after the date the final commission decision:
 - 1) is sent to the employee by certified mail; or
 - 2) is personally received by the employee or his representative.

Commission/Director – Classification, Applicants

- ▶ The Commission shall provide for the classification of all fire fighters and police officers. The municipality's governing body shall establish the classifications by ordinance. The governing body by ordinance shall prescribe the number of positions in each classification. 143.021
- ▶ The commission shall set the age and physical requirements for applicants for beginning and promotional positions in accordance with this chapter. 143.022
- ▶ Before the 10th day before the date an entrance examination is held, the commission shall cause a notice of the examination to be posted in plain view on a bulletin board located in the main lobby of the city hall and in the commission's office.* 143.024

*Where is your commission's office?

Commission/Director – Beginning Positions

- ▶ The commission shall provide for open, competitive, and free entrance examinations to provide eligibility lists for a beginning position in the fire and police departments.
- ▶ 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.

143.025

Commission/Director – Beginning Positions

- ▶ When a vacancy occurs in a beginning position, 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.
- ▶ The chief executive appoints off the list and if he does not appoint the person with the highest grade, he must put in writing the "good and sufficient reason why" the person was not appointed.
- ▶ This written reason must be filed with the commission and provided to the applicant.

143.026

Commission/Director – Promotional Exams

- ▶ 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 commission shall also furnish sufficient copies of the notice for posting in the stations or subdepartments in which the position will be filled.

Commission/Director – Promotional Exams

- ▶ The commission shall adopt rules governing promotions and shall hold promotional examinations to provide eligibility lists for each classification in the fire and police departments. The rules are listed in 143 unless the department adopts an alternative promotional system.
- ▶ The commission may adopt rules providing for promotional exams to be given to members of the armed forces serving on active duty.
- ▶ 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.

Commission/Director – Promotional Exams

- ▶ In the promotional examination grading process, if a tie score occurs, the commission shall determine a method to break the tie.
- ▶ Within 24 hours after a promotional examination is held, the commission shall post the individual raw test scores on a bulletin board in the main lobby of the city hall.

143.033

- ▶ If an employee is dissatisfied with a question/answer, the candidate may appeal, within five business days, to the commission for review.

143.034

Commission/Director – Alternative Promotional System, Police

- ▶ The Commission may adopt an alternative 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 officers in the department.
- ▶ The director shall hold the election on or after the thirtieth day after the date notice of the election is posted at the department.

Commission/Director – Alternative Promotional System, Police

- ▶ The commission shall canvass the votes within 30 days after the date the election is held.
- ▶ An appeal alleging election irregularity must be filed with the commission within five working days after the date the election closes.
- ▶ If approved by the sworn police officers, the promotional system amendment becomes effective after all election disputes have been ruled on and the election votes have been canvassed by the commission.
- ▶ After in effect for 180 days, the department head may petition the commission to terminate the alternative system and the commission shall terminate it. Or if a petition with at least 35 percent of sworn officers is submitted asking for reconsideration, the commission shall hold an election and if majority votes to terminate, the commission shall terminate.

Commission/Director – Promotional Appointments

- ▶ If an eligibility list exists when a vacancy occurs, the director, on request by the department head, shall certify to the department head the names of the three persons having the highest grades on that eligibility list. The commission shall certify the names within 10 days after the date the commission is notified of the vacancy.
- ▶ If an eligibility list does not exist when a vacancy occurs, the commission shall hold an examination to create a new eligibility list.
- ▶ If a department head skips someone on a list, they must file the written reason with the commission.

Commission/Director - Records

- ▶ When a person is certified and appointed to a position in the fire or police department, the director shall forward the appointed person's record to the proper department head. The director shall also forward a copy of the record to the chief executive and shall retain a copy in the civil service file.
- ▶ If the director intentionally fails to comply with this section, the commission shall immediately remove the director from office.

143.037

Commission/Director – Disciplinary Suspensions

- ▶ If the department head suspends a fire fighter or 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.
- ▶ If the department head does not specifically point out in the written statement the act or acts of the employee that allegedly violated the civil service rules, the commission shall promptly reinstate the person.

143.052

Commission/director – Appeal of Disciplinary Suspension

- ▶ If a suspended fire fighter 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.
- ▶ 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.

Commission/director – Appeal of Disciplinary Suspension

- ▶ In its decision, the commission shall state whether the suspended fire fighter or police officer is:
 - 1) Permanently dismissed from the department;
 - 2) Temporarily suspended from the department; or
 - 3) Restored to the person's former position or status in the department's classified service.

The commission may suspend 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 fire fighter or police officer.

Commission/Director – Demotions

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

143.054

Commission/Director – Demotions

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

Director – Hearing Examiners

- ▶ If requested, appeals may be heard by an independent third party hearing examiner instead of the commission.
- ▶ To exercise the choice of appealing to a hearing examiner, the appealing fire fighter or 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.
- ▶ 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.

Director – Hearing Examiners

- ▶ 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.

143.057

Commission/Director – Military Leave

- ▶ On written application of a fire fighter or 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.

Commission/Director – Military Leave Accounts

- ▶ A municipality shall maintain military leave time accounts for the fire and police departments and must maintain a separate military leave account for each department. This account benefits person who:
 - 1) is a member of the Texas National Guard or the armed forces reserves of the United States;
 - 2) was called to active duty while serving as a fire fighter or police officer;
and
 - 3) has served on active duty for a period of 3 continuous months or longer.

143.075

Commission/Director – Physical and Mental Fitness

- ▶ If a question arises as to whether a fire fighter or police officer is sufficiently physically or mentally fit to continue the person's duties, the fire fighter or police officer 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 fire fighter or police officer questions the report, the commission shall appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the employee and to submit a report to the commission, the department head, and the person.
- ▶ If the report of the appointed doctor disagrees with the report of the employee's personal doctor, the commission shall appoint a three-member board composed of the appropriate type doctor to examine the employee. The board's findings as to the person's fitness for duty shall determine the issue.

Commission/Director – Efficiency Reports

- ▶ The commission may develop proper procedures and rules for semiannual efficiency reports and grades for each fire fighter and police officer.
- ▶ If the commission collects efficiency reports on fire fighters or police officers, the commission shall provide each person with a copy of that person's report.
- ▶ Within 10 calendar days after the date a fire fighter or 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.

Commission/Director – Personnel File

(a)

- ▶ The director or the director's designee shall maintain a personnel file on each fire fighter or police officer. The personnel file must contain any letter, memorandum, or document relating to:
 - 1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employee's department for any action, duty, or activity that relates to the person's official duties;
 - 2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in discipline action by the employing department in accordance with this chapter and;
 - 3) the periodic evaluation of the fire fighter or police officer by a supervisor.

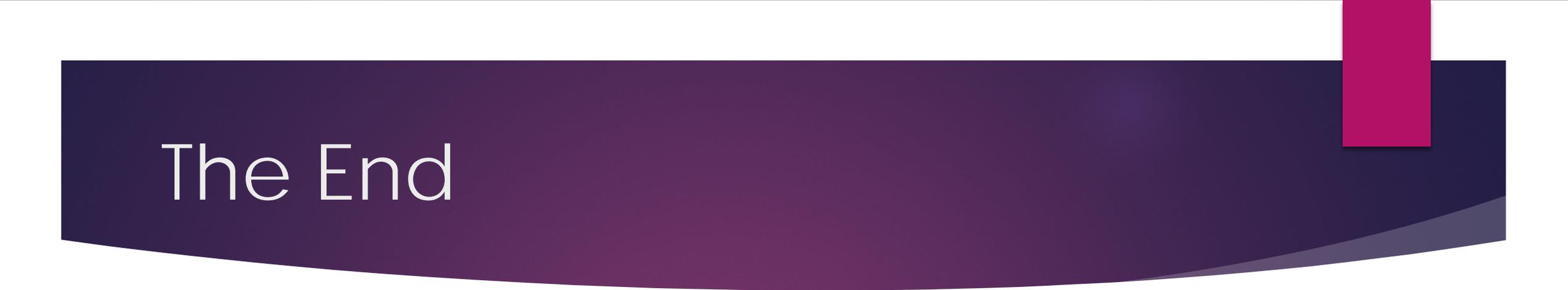
Commission/Director – Personnel file

(a)

- ▶ If a negative letter, memorandum, document, or other notation of negative impact is included in a fire fighter's or 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 fire fighter or police officer. The fire fighter or 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.
- ▶ The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

Commssion/Director – Personnel File (g)

- ▶ A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or 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 fire fighter's or police officer's personnel file.



The End

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