

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1583

H. P. 1248

House of Representatives, June 5, 1969

Reported by a Minority of the Committee on Legal Affairs. Printed under Joint Rules No. 18.

BERTHA W. JOHNSON, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Relating to Civil Service Commission in City of Auburn.

Be it enacted by the People of the State of Maine, as follows:

P. & S. L., 1967, c. 109, Art. VI, § 3, repealed and replaced. Section 3 of Article VI of chapter 109 of the private and special laws of 1967 is repealed and the following enacted in place thereof:

Sec. 3. Civil service commission. The civil service commission shall consist of 3 members, who shall hold no other elective or appointive office under this charter. Members of the commission shall be appointed by the mayor subject to confirmation by the council and shall serve for a term of 3 years, with one appointed each year. Members of the commission holding office when this charter takes effect shall continue in office until the expiration of their terms.

The commission shall elect by ballot annually a chairman from its membership and shall meet on call of the chairman at the city building in the city council chamber.

Any vacancy in the office of a civil service commissioner shall be filled by the mayor for the unexpired term subject to confirmation by the council.

The commission shall establish written rules of procedure to govern the calling of meeting and the conduct of its affairs. At least one up-to-date copy of the rules of the commission shall be on file in the office of the city clerk.

The commission shall annually prepare a written report of its doings in the manner and form required by the city manager.

1. The commission shall supervise and control, under this charter, the selection for appointment and promotion, reinstatement, suspension and removal of the members of the fire department, the fire chief and the city electrician. The commission shall examine all applicants for appointment as firemen, fire chief and city electrician. All appointments to such positions shall be made from eligibility lists prepared by the commission.

A. All appointments to the office of fire chief and city electrician shall be made by the city manager from an eligibility list prepared by the civil service commission. The eligibility list shall contain the names of the 3 persons attaining the highest rank in the examination listed in order of rank attained except that a lesser number may be submitted by the commission upon certification by it that less than 3 have been found to be eligible. The manner of examining applicants and preparation of a certified list shall be the same as that prescribed for examination and certification of applicants for original appointment to the fire department.

The appointees to such offices shall be physically fit and in good health and shall be not less than 30 years of age nor more than 50 years of age and shall have extensive experience in his respective field.

B. Appointments to the offices of fire chief and city electrician shall be during good behavior, and shall terminate when the appointee shall have attained the maximum age limitation for such office.

C. Applicants for appointment to the office of fire chief shall be considered on the basis of executive and administrative abilities; shall be a high school graduate, or the equivalent; and need not be a resident of the City of Auburn, or the State of Maine at the time of his appointment, but shall be a resident of the City of Auburn during his tenure of office.

D. If there shall be a vacancy for any reason, including incapacity, in the office of fire chief, until a person shall have been appointed to permanently fill said vacancy, the city manager shall designate one of the officers in the next highest grade in the department as acting chief and said acting chief shall be vested with all the rights, powers, duties and privileges of the regular chief.

All initial appointments shall be made in the first instance for a probationary period of 6 months. During the 6 month probationary period any employee may be suspended or otherwise disciplined for cause without such action being subject to appeal or review, and such employee shall be given a written statement to be forwarded to the commission. Within 60 days after his appointment, every new employee who has not already done so shall establish his residence within an 8 mile radius of the present location of the Auburn city building.

Whenever the city manager shall notify the civil service commission that a vacancy exists, the commission shall present to the fire chief a certified list containing the names of at least 2 more persons than the number of vacancies to be filled. The names listed shall be the highest on the eligibility list for the vacancy or vacancies in question and shall be listed in order of rank

achieved on the most recent competitive examination. Appointments shall be made by the fire chief from the certified list. After a selection has been made from the certified list, the commission shall be notified so that the name of the applicant chosen can be deleted from the eligibility list.

Whenever there are insufficient names remaining on the eligibility list to make up a certified list, the commission shall proceed to hold a written examination for the purpose of producing the names of additional persons eligible for appointment. Persons who have filed applications in accordance with this section shall be notified by the city clerk of the time and place of such examination. The commission shall also cause the examination to be duly advertised and shall invite applications from all persons who may be qualified and interested in securing the appointment. Where the vacancy to be filled is promotional, notice of the examination shall be conspicuously posted in one or more places within the department in a manner calculated to reach the attention of all persons who might be interested in such appointment.

The examination may be both written and oral and shall be designed to test as accurately as possible the relative fitness of the applicants to discharge the duties of the position to which they seek to be appointed. The examination shall include a standardized test of general intelligence.

The results of the examination shall be filed with the city clerk not later than 30 days after the date of the examination. The examination results shall not be public information, but each applicant shall be entitled to review his own examination records. When the commission intends to use the same examination again, it may decline to make available to an applicant any information about his examination except his over-all scores on the oral and written portions of the examination. In such case the commission shall also indicate to the applicant those subject areas on the written examination in which he failed to obtain a passing grade.

The commission shall grade the examinations and shall make a list for the department of those persons deemed by virtue of said tests including the physical examinations to be eligible for appointment or promotion in the department. The eligibility list shall contain the name and examination grade of each successful candidate in order of their rank with the highest first. The eligibility list for original appointments shall expire one year from the date of the examination from which the list was made. The eligibility list for promotional appointment shall expire 6 months from the date of the examination from which the list was made. Any applicant who has been placed on the eligibility list may nevertheless elect to retake the examination if one is held within the period during which the list remains in effect rather than retain his status on the list based on his previous examination score.

Appointments to positions above the rank of firefighter in the fire department, excepting the chief, shall be made from the eligibility list resulting from competitive examinations in the same manner as original appointments are made except as hereinafter provided. Any member of the fire department may apply for any such promotional appointment and may take any examina-

tion given in connection with the preparation of a certified list of persons qualified for the appointment. However, persons who have not served at least 12 months in the grade below that at which the promotion is to be made shall be added to the certified list only when the appointing authority would otherwise have only one man to choose from for at least one of the vacant positions. Seniority shall be given substantial weight in making an appointment from a certified list containing the names of one or more persons who have not served at least 12 months in the grade below that at which the promotion is to be made.

When the civil service commission had presented certified names for promotion to the chief for deputy, captain or lieutenant, promotions shall be made and posted one week or 7 days after said chief has received the list of said certified names. In case of illness of the said chief of the department, the officer acting in the chief's capacity shall make said promotions.

All promotional appointments shall be made for a probationary period of 6 months. During the 6 month probationary period the employee may be demoted to his previous rang for cause without such action being subject to appeal or review except that he shall be given a written statement of the reasons for such demotion with a copy of such statement to be forwarded to the commission.

Any member of the department may be demoted, suspended or removed for just cause and for reasons specifically given in writing to such member within 24 hours of his demotion, suspension or removal. Sickness or other physical incapacity of sufficient severity to permanently render any member of said department physically unfit to ever adequately perform the duties of his office shall be considered as cause for removal but in every such case, such member shall be entitled to an honorable discharge.

The demotion, removal or suspension of the fire chief, deputy fire chief and city electrician, shall be by the city manager. A copy of the report containing the action taken with reasons therefor shall be forwarded to the civil service commission and to the person involved by the city manager. These officers shall have the right of appeal within 10 days of receipt of the report to the civil service commission, by filing with the city clerk a written request for a hearing directed to the commission. The commission shall grant a hearing within 15 days from the date of the appeal and shall give written notice of the time and place thereof to the officer and the officer shall have the right of representation by counsel.

Demotion, removal or suspension of other members shall be by the chief, subject to the approval of the city manager. If such action is confirmed by the city manager, the accused member shall have the same right of appeal as would the fire chief, deputy fire chiefs and city electrician.

If any person is appointed to the office of fire chief, and should he resign said office or be removed therefrom for any causes other than a cause involving moral turpitude, and who, prior to said appointment, shall have been a members of the fire department, he shall be permitted to remain a member

of the department and shall return to the grade or rank which he held immediately prior to the date of the said appointment.

At any such hearing, the city shall have the burden of proving good cause for the disciplinary action taken. The aggrieved employee may cross-examine witnesses presented by the city and present witnesses in his own behalf. The commission shall record or otherwise transcribe the testimony given and the other evidence presented for its consideration in the event of an appeal. Strict rules of evidence shall not be applied, and the commission may consider any evidence deemed to be relevant to the decision of the issues before it.

The commission shall promptly following the close of the hearing file a written decision containing findings of fact and its order respecting the disposition of the employee's appeal. The commission may affirm the action taken by the city or may order a modification in the same where it is determined that the action taken was too severe. The commission may also order the employee reinstated with or without loss of benefits and order payment of back pay and payment of counsel and witness fees actually incurred by the employee.

Either the city or the employee may appeal the decision of the commission to the Superior Court within 30 days of the date upon which it is filed in the manner provided by Rule 80B of the Maine Rules of Civil Procedure. The appeal shall be limited to issues of law except that the decision of the commission may be modified or reversed where there is no substantial evidence to support it.

Every member of the fire department whose position falls within the requirements of civil service as herein provided shall have a tenure of office which shall continue during good behavior until he attains the maximum age limitation, only subject to removal for cause as hereinbefore provided.

Every member of the fire department whose position is subject to civil service under the foregoing provisions of this section shall be automatically retired from service in said department when he attains the maximum age limitation.

The commission may exclude from examination, refuse to certify as eligible, or remove from the eligibility list upon sufficient evidence of the following conditions:

1. Has been convicted of a felony within the last 5 years prior to filing his or her application without being pardoned, or
2. Habitually uses intoxicating liquors or drugs, or
3. Has a bad moral character, or
4. Has knowingly made a materially false statement in his or her application for appointment.

The burden or proof of good character shall in all cases be upon the applicant, who may be required to furnish evidence in addition to the certificates required in his application.

Before the commission shall take final action under this rule, it shall give the person affected an opportunity to be heard at a reasonable time, upon reasonable notice and be counseled if such person so elects.

Applicants for appointment to the fire department shall be:

- A. Not less than 5 feet 7 inches in height;
- B. Not less than 140 pounds;
- C. Not less than 21 years nor over 34 years of age;
- D. At least a high school graduate or its equivalent;

Applications shall be filed in the office of the city clerk at the city hall. The city clerk shall forward to the chairman of the civil service commission all applications filed. No applicant will be examined unless the application has been filed, together with such physical examination report as the commission may require, at least 10 days prior to the date of any examination of the fire department.

Application shall be in the following form:

**APPLICATION FOR APPOINTMENT ON THE FIRE DEPARTMENT
OF THE CITY OF AUBURN**

The applicant will answer the following questions in his own handwriting, date and subscribe the same, and return to the city clerk:

1. State date of birth.
2. Are you married?
3. Where were you born?
4. What is your present address?
5. What is your present occupation, and what has it been for the past two years?
6. What is your height?
7. What is your weight?
9. Have you been in any branch of the United States Armed Services?
10. Have you ever been convicted of a felony, either in this State or elsewhere? If so, give details in full.
11. Have you ever been a member of any fire department? If so, when, where and how long?

12. What is the present state of your health? Have you ever suffered any severe sickness? If so, when and what was its nature? Have you a regular physician, and if so, whom?

Dated this day of, 19.....

Applicant

Subscribed and sworn to by said on the day and year first above written.

Before me,

Notary Public—Justice of the Peace

The applicant shall submit 2 letters of reference, one of which must be from a former employer. Both letters of reference shall answer the following questions:

1. Is the applicant related to you?
2. Has the applicant ever been in your employ?
3. Would you employ him if the opportunity arose?
4. Do you know if the applicant has ever been convicted of a felony, either in this State or elsewhere?
5. I have known the applicant herein mentioned for the period and I have observed his conduct during the period so stated, and found him to be honest, of good character, and recommend him as a fit person to be a fireman for the City of Auburn.

Referendum; effective date. This Act shall take effect when approved, only for the purpose of permitting its submission to the legal voters of the City of Auburn at the next regular election to be held on November 4, 1969.

The city clerk shall prepare the required ballots, on which he shall reduce the subject matter of this Act to the following question:

“Shall the Act Relating to civil service commission in City of Auburn, passed by the 104th Legislature, be accepted?”

The voters shall indicate by a cross or check mark placed against the words “Yes” or “No” their opinion of the same.

This Act shall take effect for all the purposes hereof immediately upon its acceptance by a majority vote of the legal voters voting at said election; provided that the total number of votes cast for and against the acceptance of this Act at said election equaled or exceeded 20% of the total vote for all candidates for Governor in said City at the next preceding gubernatorial election.

The result of such election shall be declared by the municipal officers of the City of Auburn and due certificate thereof shall be filed by the city clerk with the Secretary of State.