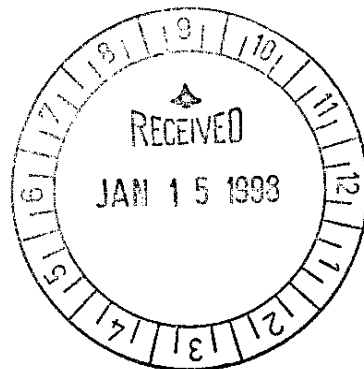




COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA STATE POLICE
1800 ELMERTON AVENUE
HARRISBURG, PA 17110

COLONEL PAUL J. EVANKO
COMMISSIONER

January 8, 1998



Mr. Virgil F. Puskarich
Executive Director
Local Government Commission
Senate Box 203078
Main Capitol Building
Harrisburg, Pennsylvania 17120-3078

Dear Mr. Puskarich:

As a result of the House Resolution 167 Task Force meeting held on December 11, 1997, this correspondence is being submitted for consideration. Specifically, this responds to the request for information concerning municipal police jurisdiction, training, and the power for municipalities to establish their own police departments. Additional information requested, as it relates to the assessment of cost to municipalities, will be forthcoming in subsequent correspondence.

Enclosure (1) is a report containing a summary of the requested information. Enclosures (2) - (12) are copies of pertinent sections of the Pennsylvania Consolidated Statutes that give the various governing bodies the authority to establish police departments. Enclosure (13) is a copy of that portion of Title 42, Pennsylvania Consolidated Statutes Amended, Judiciary and Judicial Procedure, which gives municipal police officers their authority to enforce the laws of this Commonwealth anywhere within their primary jurisdiction, defined as the geographical area within the territorial limits of the municipality which employs them. Enclosure (14), which is a copy of Title 53, Pennsylvania Consolidated Statutes Amended, Municipalities Generally, provides the duties and responsibilities of the Municipal Police Officers' Education and Training Commission, including the task of training all municipal police officers.

I trust that this additional information will help to answer some of the questions in regard to municipal police establishment and authority.

Sincerely,

Colonel Paul J. Evanko
Commissioner
Pennsylvania State Police

Enclosures

BACKGROUND

House Resolution No. 167, adopted on June 17, 1997, provided for the appointment and assemblage of a Local Law Enforcement Task Force to conduct an investigation and prepare a report to the General Assembly concerning the alternative means by which law enforcement and police protection are being or may be provided to the over 2,000 municipalities in Pennsylvania. The task force investigation was therefore resolved to consider the respective cost, availability and efficiency of providing an alternative means of providing police protection to Pennsylvania.

Each class of municipality in Pennsylvania operates under its own code of laws which sets forth its governmental structure as well as the general and specific powers of local government. Not every municipality in Pennsylvania has its own police department; however, each municipal unit does have the authority, granted by the General Assembly, to enact ordinances creating a police force. The enactment of such an ordinance does not necessarily require the approval of the citizenry, but can be approved by an act of the municipality's governing body.

CITIES OF THE FIRST CLASS

Title 53, P.S., Municipal and Quasi-Municipal Corporations, Chapter 31, empowers the mayor and city council in cities of the first class in Pennsylvania to enact ordinances providing for the proper and effective conduct of the affairs of the city including matters pertaining to the police force. Within cities of the first class in Pennsylvania, of which there is only one (the city of Philadelphia), a Department of Public Safety is required to manage, administer, and supervise police affairs and all matters relating to the police force.

CITIES OF THE SECOND CLASS

Title 53, P.S., Municipal and Quasi-Municipal Corporations, Chapter 54, empowers cities of the second class in Pennsylvania, of which there are two (Pittsburgh and Scranton) to enact ordinances for the establishment and maintenance of a police force. A Department of Public Safety is required to manage, administer, and supervise police affairs.

CITIES OF THE THIRD CLASS

Title 53, P.S., Municipal and Quasi-Municipal Corporations, Chapter 81, Third Class City Code, grants the council of each third class city in Pennsylvania with the power, by ordinance, to establish and maintain a police force. The council of these cities are required, by ordinance, to fix the number, grades and compensation of the members of the city police force. Management and administration of the police force in third class cities is the

responsibility of a designated police chief, who reports to the city's mayor.

BOROUGHS

Title 53, P.S., Municipal and Quasi-Municipal Corporations, Chapter 91, Borough Code, empowers the Borough council, by ordinance, to establish a police department consisting of a chief, captain, lieutenant, sergeants, or any other classification desired by council. Council may also appoint policemen or establish a police department by an action of council rather than pursuant to an ordinance.

Borough council is also authorized to enter into contracts with the proper authorities of near or adjacent cities, boroughs, or townships, either for mutual aid or assistance in police protection, or for the furnishing to, or receiving from, such cities, boroughs, or townships, aid and assistance in police protection.

TOWNSHIPS

Title 53, P.S., Municipal and Quasi-Municipal Corporations, Chapter 131, First Class Township Code, authorizes the Board of Township Commissioners to appoint and fix the members of the township police force. The Board of Township Commissioners may also provide for police protection by entering into contracts with the proper authorities of near or adjacent municipalities either for mutual aid or assistance in police protection.

MUNICIPAL POLICE JURISDICTION

Title 42, Pa.C.S.A, Judiciary and Judicial Procedure, Municipal Police Jurisdiction, provides that any duly employed municipal police officer has the power and authority to enforce the laws of this Commonwealth anywhere within his primary jurisdiction, which is defined as the geographical area within the territorial limits of the municipality which employs him or any lawful combination of municipalities which employs a municipal police officer.

Duly employed municipal police officers, under certain legally defined circumstances, are also empowered with statewide municipal jurisdiction. A municipal police officer is permitted to execute arrest and search warrants outside his primary jurisdiction providing he receives permission from the chief law enforcement officer in the municipality where the warrant is to be served. Municipal police officers may also exercise statewide authority during a hot vehicle pursuit or when a request for assistance is received from a State or Federal Law enforcement officer. Municipal police can also assume statewide authority if they view an offense which is a felony or one which presents an immediate clear and present danger to persons or property. Under most circumstances where a municipal police officer is permitted to exercise statewide jurisdiction, he must

relinquish authority and control over any persons arrested upon the request of the chief law enforcement officer of the agency which regularly provides primary police services in the municipality where the arrest was executed.

MUNICIPAL POLICE EDUCATION AND TRAINING

Title 53, Pa. C.S.A, Municipalities Generally, Chapter 21, established the Municipal Police Officers' Education and Training Commission (MPOETC), which is required by law to promulgate and administer a course of study for the training and certification of municipal police officers. Every municipal police officer in Pennsylvania is required to not only meet established physical, psychological and educational prerequisites but to also satisfactorily complete basic educational and training requirements in order to receive certification from the commission. Each officer is also required to receive twelve hours of in-service training on an annual basis.

During 1996, the Pennsylvania State Police, through its five training facilities, devoted approximately 27% of its overall instructional activity in training over 2,000 municipal police officers. The Municipal Police Officers' Education and Training Commission, through contracted training schools or academies, provided basic certification training to approximately 1,200 individuals and mandatory in-service training to over 21,000 municipal police officers in 1996.

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Counties

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§§ 3101 to 9100

§ 3101

to

§ 9100

ARTICLE XV. POLICE AND EMPLOYEES OF JAILS AND WORKHOUSES

(a) POLICE

§ 4501. Employment of police

(a) The county commissioners shall have power to employ such number of police as may be fixed by the salary board of the county. The compensation of such police officers shall be paid by the county.

(b) Such police officers shall have jurisdiction anywhere within the county by which employed, and shall have and possess all the following powers:

(1) To make arrests, without warrant, for all violations of the law which they may witness, and to serve and execute warrants issued by the proper authorities. In cases of offenses for violation of any of the provisions of the Vehicle Code,¹ the power to make arrests without warrant shall be limited to cases where the offense is designated a felony or a misdemeanor, and cases causing or contributing to an accident resulting in injury or death to any person.

(2) The powers and prerogatives conferred by law upon members of the police force of cities of the first class.

(3) The powers and prerogatives conferred by law upon constables of the Commonwealth.

(4) To serve subpoenas issued for any examination investigation or trial had pursuant to any law of the Commonwealth. 1953, July 28, P.L. 723, art. XV, § 1501.

¹ Section 1 et seq. of Title 75, Vehicles.

Historical Note

Prior Laws:

- 1937, March 30, P.L. 114, § 1.
- 1929, May 2, P.L. 1278, art. III, § 330.

Notes of Decisions

1. Construction and application

A county which built bridge and approaches under authority of state and was given complete authority to supervise and control the highway could adopt regulations for traffic or to pro-

tect the traveling public, notwithstanding that the actual policing of the highway was carried on by the borough. Breinig v. Allegheny County, 2 A.2d 842, 322 Pa. 474, 1939.

Commonwealth, so far as shall serve substantially in a court of

county detective, and junior county soever, but shall board, together with expenses, detective, assistant chief county detective approved by the county, on a controller of the according to law.

308, § 16.
466, § 1.
401, § 1.
278, art. III, § 276.

with approval of

approval of the district attorney assignment, assist in obtaining by for the Court may direct incurred in the

police officer and by the existing crimes or criminal 1441.

98, § 21.
73, art. III, § 281.

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Title 53

**Municipal and
Quasi-Municipal
Corporations**

§§ 12101 to 22100

§ 12205. Decision of court of impeachment

The decision of the court of impeachment shall be entered upon the record of its proceedings, and certified by the clerk to the court in which the complaint was filed. If the accused shall be found guilty on any of the specifications, the said court of common pleas shall enter judgment accordingly, and declare the said office vacant: 1919, June 25, P.L. 581, art. IV, § 9[g].

Notes of Decisions

Constitutionality 1
Validity 1
Vote required 2

... council is necessary in order that the accused may be found guilty. In re Marshall, 69 A.2d 619, 363 Pa. 326, 1950.

The method of removal of receiver of taxes of Philadelphia from office is statutory and a majority vote of all the councilmen elected to the council is required as distinguished from a majority vote of the members present. Id.

In proceeding to impeach the receiver of taxes of city of Philadelphia, twelve councilmen constituting a majority of the members elected to the council must concur in finding the accused guilty before the court of common pleas may enter judgment accordingly and declare the office vacant. Id.

Under section 12199 et seq. of this title provision of Const. art. 6, § 2 for a two-thirds vote does not apply. Id.

1. Validity

Sections 12203-12205 of this title are not subject to the objection that they are so vague, indefinite and uncertain that the courts are unable to determine with reasonable degree of certainty what the legislature intended. In re Marshall, 69 A.2d 619, 363 Pa. 326, 1950.

The city council must determine from the evidence whether a municipal officer is guilty of the charges preferred against him and if the officer is found guilty the law provides for his removal and hence there was no improper delegation of legislative power. Id.

2. Vote required

Affirmative vote of a majority of all the councilmen elected to the city council.

ARTICLE V.—DEPARTMENT OF PUBLIC SAFETY

Cross References

- Power of mayor to take command of police force in emergency, see section 12127 of this title.
- Provisions of the general municipal law relating to police, see sections 737, 761-763 and 831, 832 of this title.
- Provisions relating to public safety, see sections 13350, 14591 of this title.
- Rules and regulations, see section 12163 of this title.

§ 12231. Director of public safety; appointment

There shall be a department of public safety of which the director of public safety shall be the head. He shall be appointed by the mayor, by and with the advice and consent of the council, and shall hold office during the term for which the mayor appointing him was

qualified. 1919,

trical lighting), erection of fire-escapes, and the inspection of buildings, elevators, engines, and boilers. 1919, June 25, P.L. 581, art. V, § 3; 1933, May 25, P.L. 1025, No. 234, § 1.

Cross References

Firemen, consecutive hours of rest, see section 13346 of this title.
Platoon system for firemen, see section 13348 of this title.
Policemen, consecutive hours of rest, see section 13347 of this title.

Notes of Decisions

Construction and application 1
Discretionary acts 3
Punishment of police officers 2
Removal of patrolmen 4

3. Discretionary acts
The superintendent of bureau of police, department of public safety of city of Philadelphia, who is a subordinate officer charged with the general duty of superintending the police force, has discretionary power and latitude in the performance of his duties; as regards whether failure to perform alleged duty constitutes misbehavior in office. Com. v. Hubbs, 8 A.2d 618, 137 Pa.Super. 244, 1939.

1. Construction and application
In view of this section and sections 12127 and 12231 of this title the Superintendent of Police of Philadelphia is directly responsible to the Director of Public Safety, who, in turn, is responsible to the Mayor, the latter being primarily accountable for law enforcement in the City of Philadelphia. Com. v. Hubbs, 8 A.2d 618, 137 Pa.Super. 244, 1939.

Record held not to warrant inference that public safety director, in selecting 130 patrolmen to be laid off because of appropriation ordinance reducing police force for 1932, abused discretion, though during last half of December, 1931, he filled 179 vacancies and none of them was among 130 men thereafter laid off. Leary v. City of Philadelphia, 172 A. 459, 314 Pa. 458, 1934.

Under act 1903, April 8, P.L. 155 (repealed), the duties and authority of the superintendent of the police and fire-alarm telegraph passed to the department of public safety, which was vested with the authority to issue licenses for telegraph poles, etc. The power being administrative in its nature and lodged in an executive department could not be controlled by councils. Com. v. Warwick, 40 A. 93, 135 Pa. 623, 1898.

In determining whether public safety director abused discretion or was actuated by wrongful motives in selecting patrolmen to be separated from force so as to effect required reduction in force, director's innocence is to be presumed. Id.

Since the act made no provision as to what department of the city should have charge of the electric lighting of the city, the duty would not be transferred from the department of public safety to the department of public works in the absence of fraud or injury, especially as the department of public safety had been exercising such duty for a number of years. McIntyre v. Philadelphia, 24 C.C. 439, 9 Dist. 714, 1900.

4. Removal of patrolmen
Where separation of 130 patrolmen from Philadelphia police force was necessitated by council's reduction of force in appropriation ordinance for reasons of economy, and total membership of force was then actually reduced by public safety director, no action by civil service commission was required. Leary v. City of Philadelphia, 172 A. 459, 314 Pa. 458, 1934.

2. Punishment of police officers
Philadelphia public safety director has power, independent of civil service commission, to impose reasonable fine upon police officer. Witkin v. City of Philadelphia, 168 A. 491, 110 Pa.Super. 489, 1933.

Where Philadelphia appropriation ordinance, for reasons of economy, required reduction of police force by 130 patrolmen, patrolmen thereupon laid off by public safety director held effectually separated from their offices, though not named in ordinance. Id.

the latter being preferable for law enforcement of Philadelphia. Com. 618, 137 Pa.Super. 244.

Officers and employees

Power to appoint an officer of the director all the duties of the director is removed as hereinbefore and other officers and 1919, June 25, P.L.

ordinance reducing force vacancy in department cannot legally be in minus will not lie to com. Id.

ity for acts of director responsible, under doctrine superior, for public safety-misfeasance or misfeasance of patrolmen to be separated force as result of appropriation reducing the action is government-city. Leary v. City of 172 A. 459, 314 Pa. 458,

tion care, management, affairs and all matters service (except elec-

Where Philadelphia appropriation ordinance required reduction of police force by 130 patrolmen without naming official who should select men to be removed, public safety director held authorized to select such men. Id.

Public safety director, in selecting patrolmen to be separated from police force as required by appropriation ordinance reducing force for reasons of economy, was not bound to select new appointees instead of veterans. Id.

§ 12234. Qualifications of policemen and firemen

No person shall be employed in the department of public safety as a policeman or fireman who is not a citizen of the United States, or who has been convicted of crime unless pardoned, or who cannot read or write understandingly in the English language, or who shall not have resided within the State at least one year preceding his appointment. 1919, June 25, P.L. 581, art. V, § 4.

Notes of Decisions

Construction and application 1. Office of patrolman 2

2. Office of patrolman

1. Construction and application. The provision in act 1885, June 1, P.L. 37 (repealed), which forbade the employment of any person as a policeman who had been convicted of crime, related only to the qualification of the person at the time of his appointment, and did not apply to an officer convicted of an offense after his appointment. Such a conviction would not justify the director in dismissing the officer, where dismissal had not been recommended by the trial board. Casper v. City of Philadelphia, 55 Pa.Super. 266, 1913.

Under act of 1885, June 1, P.L. 37 (repealed) there was such an office as that of a patrolman of the city of Philadelphia, though there was no such office as patrolman of separate police districts specified in the police department, composed of different wards or parts of wards. Smith v. City of Philadelphia, 21 Dist. 287, 1912.

The civil service commission had no power to create more than one list of eligibles for patrolman in the city of Philadelphia by splitting up the city into fragments in accordance with the regulations of the police department. Id.

§ 12235. Uniforms of policemen and firemen; penalty for false personation

The department shall make suitable regulations under which the officers and members of the fire and police forces shall be required to wear appropriate uniforms. It shall be a misdemeanor, punishable by fine not exceeding five hundred dollars, or imprisonment not exceeding six months, or both, in the discretion of the court, for any person falsely to personate, by uniform, insignia, or otherwise, any officer or member of the department. 1919, June 25, P.L. 581, art. V, § 5.

Cross References

See, also, section 13350 of this title.

Change of regulation, supplying new uniforms, see section 1334 of this title.

§ 12236. Additional patrolmen for special places

The director of public safety may appoint, and cause to be sworn in, any number of additional patrolmen to do duty at any place in the city designated by, and at the charge and expense of, the person or persons who may ask for such appointment. They shall be subject to and obey the orders, rules, and regulations of the department, and conform to the general discipline and special regulations thereof. 1919, June 25, P.L. 581, art. V, § 6.

Cross References

See, also, act of 1870, April 26, P.L. 1269, providing for employment of special watchmen in Philadelphia.

Notes of Decisions

1. Pay of special police. A city corporation is responsible for the pay of special policemen employed to keep order on a public occasion. Bergner v. Harrisburg, 1 Pears. 291, 1867.

ARTICLE VI.—DEPARTMENT OF PUBLIC WORKS

Cross References

Parks and other public grounds, see section 14101 of this title. Streets and highways, see sections 13812-13814 of this title. Rules and regulations, see section 12163 of this title.

§ 12261. Director of public works; appointment

There shall be a department of public works of which the director of public works shall be the head. He shall be appointed by the mayor, by and with the advice and consent of the council, and shall hold office during the term for which the mayor appointing him was elected and until his successor is appointed and qualified. 1919, June 25, P.L. 581, art. VI, § 1.

Cross References

Bond of Director, see section 12165. Council, see section 12521 et seq. of this title. Mayor, see section 12121 et seq. of this title.

Notes of Decisions

1. Liability of director. Though the director of public works must award a contract to the lowest responsible bidder, he cannot be held liable for a mistaken exercise of his discretion. American Stone Pavement Co. v. Wagner, 21 A. 160, 139 Pa. 623, 1891, affirming 7 C.C. 385.

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Title 53

**Municipal and
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§§ 12101 to 22100**

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§ 13350. Penalty for wearing or possessing police badge without authority

From and after the passage of this act, any person, except such as may be authorized by the Director of Public Safety, in cities of the first class in this Commonwealth, who may be in possession of or found wearing the badge of the Bureau of Police, of said cities of the first class, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than twenty nor more than one hundred dollars, or imprisoned for a term not exceeding six months, or both or either, at the discretion of the court; all fines that may be imposed shall be for the use of the police pension-fund of said cities of the first class. 1915, June 1, P.L. 708, § 1.

Historical Note

Section 2 of this act repeals all acts or parts of acts inconsistent therewith.

Cross References

General municipal laws relating to police pension funds, see sections 761-763 of this title.
Penalty for false personation, see, also, section 12235 of this title.

ARTICLE II.—COUNCIL

Cross References

Zoning ordinances, conflict with other laws, see section 14762 of this title.

§ 13371. General power to enact and enforce ordinances

The cities of the first class of this Commonwealth shall have the power to make all such ordinances, by-laws, rules, and regulations not inconsistent with or restrained by the Constitution and laws of this Commonwealth as may be expedient or necessary for the proper management, care, and control of the city and its finances, and the maintenance of the peace, good government, safety, and welfare of the city and its trade, commerce, manufactures; and the exercise of full and complete powers for local self-government in matters of police, and the same to alter, modify and repeal at pleasure; and to enforce all ordinances by imposing fines upon inhabitants or other persons for violation thereof, not exceeding one hundred dollars for any one offense, recoverable with costs, together with judgment of imprisonment not exceeding thirty days if the amount of said fines and costs shall not be paid into the court imposing the fines within ten days from the date of the imposition thereof. 1929, March 25, P.L. 66, No. 75, § 1.

ENCLOSURE (5)

**PURDON'S
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§§ 22101 to 35100

All property of the city, real and personal, used in carrying on the functions of the Department of Public Welfare, and all records of said department, shall be transferred to the county institution district on the effective day of this act. All indebtedness of the city, whether current or bonded, incurred in the acquisition of any such property, shall continue the debt and obligation of the city and shall be paid by it. 1901, March 7, P.L. 20, art. X, § 1; 1923, June 29, P. L. 963, § 2; 1943, May 27, P.L. 752, § 1.

1 Sections 2201-2391 of Title 62, Poor Persons and Public Assistance.

Historical Note

Provision was made for a department of charities and correction by the act of 1901, March 7, P.L. 20, art. X, § 1, which became the department of public welfare by the act of 1923, June 29, P.L. 963, § 2. The act which added this section deleted reference to the department of public welfare from section 22501.

Cross References

Houses of detention for dependent and delinquent children, see sections 421-429 of Title 11, Children.

Notes of Decisions

1. Construction and application

The department of public charities of a city of the second class is not a corporation or quasi-corporation, as are the overseers of the poor of the several poor districts of the state, but is simply a bureau of the city government; and hence notice to that department of proceedings under the act of 1869, April 20, P.L. 80, § 9 (repealed), of an application for an order of maintenance, is not notice to the city upon which the duty of such maintenance is sought to be imposed. *Butler County v. Department of Public Charities*, 14 Pa.Super. Ct. 70, 1900.

ARTICLE II.—DEPARTMENT OF PUBLIC SAFETY

Cross References

Fire protection, see sections 801, 3861 and sections 25081-25095 of this title.
 Fireman's Relief and Pension Fund, see sections 23601-23620 of this title.
 Fireworks and firearms, see section 3703 of this title.
 General municipal laws relating to police, see sections 737, 831, 832 of this title.
 Ordinances regulating building, see section 4101 of this title.
 Plastering, see sections 4171-4179 of this title.
 Plumbers and plumbing, regulation and licensing, see sections 4591-4669 of this title.
 Police bureau, appointments, promotions, etc., see sections 23531-23540 of this title.
 Regulation of elevators, see sections 4141-4144 of this title.
 Scaffolding, see sections 4201-4204 of this title.
 Traffic regulation by department, see section 23163 of this title.

§ 22531 CITIES OF THE SECOND CLASS Pt. 3

§ 22531. Director of public safety; jurisdiction of department

The department of public safety shall be under the charge of one director, who shall be the head thereof. The care, management, administration and supervision of the police affairs, and all matters relating to the public health, to the fire and police force, fire alarm telegraph, erection of fire-escapes, and the inspection of buildings and boilers, markets and food sold therein, and the construction, protection and repair of buildings erected for police and fire purposes, shall be in charge of this department. 1901, March 7, P.L. 20, art. III, § 1; 1901, June 20, P.L. 586, § 1; 1937, May 14, P.L. 625, § 1; 1951, Sept. 26, P.L. 1528, § 1.

Repealed in Part

Repealed as to the removal and dismissal of policemen in cities of the second class by act 1951, Aug. 10, P.L. 1189, § 11.

This section is repealed by act of 1931, April 14, P.L. 38, § 3, as amended, 1933, May 25, P.L. 1048, § 1, in so far as it relates to the removal and dismissal of policemen and firemen in cities of the second class A, and in so far as it relates to the removal and dismissal of policemen in cities of the second class.

Historical Note

The amendatory acts of 1951 and of 1937 made no change in this section. The amendatory act of 1901 added the words "and fire" in the clause "for police and fire purposes" as now appearing toward the end of the section.

The act of 1931, April 14, P.L. 38, as amended 1933, May 25, P.L. 1048, § 1, is repealed by act of 1937, June 15, P.L. 1761, § 2, in so far as it relates to cities of the second class.

Cross References

Examination and licensing of engineers having charge of steam-boilers, steam-engines, and appliances connected therewith, see sections 25311-25325 of this title.

Firemen's civil service, see section 23491 et seq. of this title.

Police civil service, see section 23531 et seq. of this title.

Power of city to organize fire department, see section 23149 of this title.

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Courts, power to control choice by city of site for emergency pest house 6
Sidewalks, power to prohibit obstruction 5

Special municipal commission, validity of creation 3
Validity 1

1. Validity
The 1937 amendment is unconstitutional and void in that it violates Const-

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art. 3, § 3, in that its subject is not clearly expressed in its title. *Freeborn v. City of Pittsburgh*, 85 Pitts. 739, 1937.

2. Construction and application

1901 act providing for appointment of firemen and policemen in cities of second class and procedure whereby appointees could be dismissed, 1907 act with respect to civil service, and 1931 act enacting procedure for removal or dismissal of policemen and firemen in cities of second class A are in pari materia and must be read together. *Com. ex rel. Lisk v. Davis*, 190 A. 403, 126 Pa. Super. 136, 1937.

3. Special municipal commission, validity of creation

Act 1913, June 27, P.L. 638, which creates bureau of public morals in department of public safety in cities of second class, consisting of seven directors appointed by mayor and confirmed by council and subject to removal by mayor, and having power to investigate questions affecting public morals and to enforce police laws and prosecute violations thereof and to that end to exercise such police powers as were necessary, is unconstitutional, being violation of Const. art. 3, § 20, prohibiting special municipal commissions. *Moll v. Morrow*, 63 Pitts. 177, 24 Dist. 451 (1915); *Moll v. Morrow*, 98 A. 650, 253 Pa. 442, 1916.

4. Approval by council of rules of department, necessity

When an ordinance authorizing the making of rules by the department of

public safety requires that the rules so made be approved by councils, a rule of the department is of no validity unless so approved. And when the superintendent of the bureau of electricity of Pittsburgh cancelled a permit for electric wiring on the ground that the work did not conform to a rule of the department, but it appeared that the rule was not in force, and that the work was not dangerous, and was satisfactory to the national board of fire underwriters, it was held that the superintendent had no right to revoke the permit. *Morgensten v. Herron*, 54 Pitts. 80, 1906.

5. Sidewalks, power to prohibit obstruction

A fruit stand which obstructs the sidewalk is a nuisance, and may be prohibited by ordinance. *Com. v. Wentworth*, 4 Clark, 324, *Bright, N.P.* 318, 1823; *Pittsburgh v. Daub*, 32 Pitts. 24, 1 *Lanc.* 306, 1884.

6. Courts, power to control choice by city of site for emergency pest house

See, also, notes under section 22504 of this title.

Notwithstanding the emergency powers vested by this section and section 24667 of this title in the city authorities, when a city has for many years owned and used a pest house hospital (with ample room for extensions and additions), a court of equity will not permit the use of another building for like purposes in a different location, densely populated. *Hanzell v. Allegheny*, 50 Pitts. 313, 1903.

§ 22532. Qualifications of employees; hours of duty

No person shall be employed in this department as a policeman or fireman who is not a citizen of the United States, or who has been convicted of crime, unless pardoned, or who cannot read and write understandingly in the English language, or who shall not have resided within the State at least one year preceding his appointment.

No policeman shall be required to be on duty for more than nine out of any twenty-four consecutive hours, nor for more than forty-four hours in any calendar week, and every policeman shall be allowed to have at least forty-eight consecutive hours off duty in every calendar week, except in emergency cases for the suppression of riots or tumults or the preservation of the public peace in times of riot, conflagration, or public celebrations; and in such

cases, council shall provide for the payment of extra compensation or time off at the same rate as paid for regular service. The existing salary or compensation of any Policeman shall not be diminished because of the reduced number of hours of duty prescribed by this amendment. 1901, March 7, P.L. 20, art. III, § 1; 1937, May 14, P.L. 625, § 1; 1951, Sept. 26, P.L. 1528, § 1; 1953, July 17, P.L. 473, § 1.

Repealed in Part

Repealed as to the removal and dismissal of policemen in cities of the second class by act 1951, Aug. 10, P.L. 1189, § 11.

This section is repealed by act 1931, April 14, P.L. 38, § 3, as amended, 1933, May 25, P.L. 1048, § 1, in so far as it relates to the removal and dismissal of policemen and firemen in cities of the second class A, and in so far as it relates to the removal and dismissal of policemen in cities of the second class.

Historical Note

The 1953 amendment, in the second paragraph, referred to "policeman" instead of "patrolman"; it increased the maximum daily duty hours from eight to nine; it reduced the work week from forty-eight to forty-four hours; and it added the provision for at least forty-eight consecutive hours off duty.

The second paragraph of the section was added in 1951.

The amendatory act of 1937 made no change in this section.

The act of 1931, April 14, P.L. 38, as amended 1933, May 25, P.L. 1048, § 1, is repealed by act of 1937, June 15, P.L. 1761, § 2, in so far as it relates to cities of the second class.

Provisions from the act 1901, March 7, P.L. 20, art. III, § 1, relating to the appointment of additional patrolmen at the expense of the person seeking the appointment and to the command of the police force by the city recorder, and the appointment of special patrolmen upon any emergency or apprehension of riot or mob, were omitted by amendment of 1937, May 14, P.L. 625, § 1. They were again omitted by the act of 1951, Sept. 26, P.L. 1528, § 1. The partial repeals mentioned in the italicized note also applied to these sections.

Notes of Decisions

Constitutionality 1
Labor unions, disqualification of members as firemen 2
Validity 1

2. Labor unions, disqualification of members as firemen

Firemen of city of second class are properly dismissed from fire bureau upon their refusal to resign from labor union, whose objects and organization are inimical to interests of public and detrimental to efficiency and discipline of service. *Hutchinson v. Magee*, 88 Pitts. 945, 1922.

1. Validity

The amendment of 1937 is unconstitutional and void because it violates Const. art. 3, § 3, in that its subject is not clearly expressed in its title. *Freeborn v. City of Pittsburgh*, 85 Pitts. 739, 1937.

§ 22533. Uniforms

The department shall make suitable regulations, under which the officers and members of the fire, telegraph and police force shall be required to wear an appropriate uniform. 1901, March 7, P.L. 20, art. III, § 1; 1937, May 14, P.L. 625, § 1; 1951, Sept. 26, P.L. 1528, § 1.

Repealed in Part

Repealed as to the removal and dismissal of policemen in cities of the second class by act 1951, Aug. 10, P.L. 1189, § 11.

This section is repealed by act of 1931, April 14, P.L. 38, § 3, as amended, 1933, May 25, P.L. 1048, § 1, in so far as it relates to the removal and dismissal of policemen and firemen in cities of the second class A, and in so far as it relates to the removal and dismissal of policemen in cities of the second class.

Historical Note

The amendatory acts of 1937 and of 1951 made no change in this section. The act of 1931, April 14, P.L. 38, as amended 1933, May 25, P.L. 1048, § 1, is repealed by act of 1937, June 15, P.L. 1761, § 2, in so far as it relates to cities of the second class.

§ 22534. False personation of officer a misdemeanor; penalty

It shall be a misdemeanor, punishable by a fine not exceeding five hundred (\$500) dollars and imprisonment not exceeding six (6) months, or either or both, in the discretion of the court, for any person to falsely personate by uniform, insignia or otherwise any officer or member of the department. 1901, March 7, P.L. 20, art. III, § 1; 1937, May 14, P.L. 625, § 1; 1951, Sept. 26, P.L. 1528, § 1.

Repealed in Part

Repealed as to the removal and dismissal of policemen in cities of the second class by act 1951, Aug. 10, P.L. 1189, § 11.

This section is repealed by act of 1931, April 14, P.L. 38, § 3, as amended, 1933, May 25, P.L. 1048, § 1, in so far as it relates to the removal and dismissal of policemen and firemen in cities of the second class A, and in so far as it relates to the removal and dismissal of policemen in cities of the second class.

Historical Note

The amendatory acts of 1937 and 1951 made no change in this section. The act of 1931, April 14, P.L. 38, as amended 1933, May 25, P.L. 1048, § 1, is repealed by act of 1937, June 15, P.L. 1761, § 2, in so far as it relates to cities of the second class.

PURDON
PENNA

53

Municipal Corporations

§22101

to

§35100

PURDON'S
PENNA. STATUTES
ANNOTATED
PERMANENT EDITION

Title 53

Municipal and
Quasi-Municipal
Corporations
§§ 22101 to 35100

ARTICLE XVII.—DEPARTMENT OF WATER

§ 22881. Department created

An additional department in the government of cities of the second class, is hereby created to be known as the Department of Water. 1955, March 21, P.L. 5, § 1.

Historical Note

Section 4 of the act of 1955 repealed all inconsistent acts and parts of acts. Section 5 provided that the act should take effect immediately upon final enactment.

nine hundred and one (Pamphlet Laws 20), entitled "An act for the government of cities of the second class," establishing a Department of Water in said cities, providing for its officers and employees, and defining the powers, duties and jurisdiction of said department. 1955, March 21, P.L. 5.

Title of Act:

A supplement to the act approved the seventh day of March, one thousand

§ 22882. Director; jurisdiction of department

The Department of Water shall be under the charge of a director, who shall be the head thereof. The operation, construction, alteration, repair and maintenance of the water works, owned and controlled by the city, the supply and distribution of water, and the supervision of all officers and employees deemed proper for the purpose of carrying out the provisions of this act, shall be under the jurisdiction of this department. 1955, March 21, P.L. 5, § 2.

§ 22883. Transfer of powers and duties

All the powers and duties as set forth in section two hereof,¹ which are now under the jurisdiction of any other department of said cities, are hereby transferred to the Department of Water. 1955, March 21, P.L. 5, § 3.

¹ Section 22882 of this title.

CHAPTER 54.—MUNICIPAL POWERS IN GENERAL

- Sec.
- 23101. Corporate powers to remain as heretofore, unless otherwise provided.
- 23102. General powers.
- 23103. Purposes for which ordinances may be enacted.
- 23104. To levy and collect taxes for general purposes.
- 23105. To levy additional taxes.
- 23106. To levy poll tax.
- 23107. To levy license taxes.

CITIES OF THE SECOND CLASS

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23109.	To issue and apply bonds to funding of indebtedness.	231
23110.	To provide for sinking fund.	231
23111.	To provide for payment of debts and expenses.	231
23112.	To create offices and prescribe powers, duties and compensation of officers.	231
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23125.	To offer rewards for detection of criminals.	231
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23128.	To regulate public bathing.	231
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23137.	To regulate the weighing and measuring of commodities.	231
23138.	To provide for construction of levees, ferries, wharves, etc.	231
23139.	To establish and change the channels of watercourses.	231
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23141.	To acquire playgrounds.	and
23142.	Damages and benefits.	Approp
23143.	To provide pens, pounds, etc., and to regulate the running at large of animals.	titi
23144.	To tax and destroy dogs.	§ 23
23145.	To secure the general health.	
23146.	To establish a quarantine.	
23147.	To set aside portions of parks as sites for certain institutions or schools.	The
23148.	To purchase land, not included in city limits, for hospitals.	duties, by virt

§ 23117. To establish zones for construction and maintenance of signs over streets

To make and establish zones or districts within which special provisions may be made regulating the construction and maintenance of signs over or upon streets, which regulations may be different in one district from another, and the boundaries of which districts may be defined by the ordinance creating them. 1901, March 7, P.L. 20, art. XIX, § 3, cl. XIII A, added 1931, June 12, P. L. 549, § 1.

§ 23118. To regulate railway bridges, crossings, safety-gates and flagmen

To provide for and require the construction and maintenance of bridges or other crossings over or under railroad tracks, and to enter into contracts with railroad companies for the construction and maintenance of the same; to require the erection of safety-gates, and the placing of flagmen at the intersection of railroads with public streets; to forbid the obstruction of the said crossings by locomotives or railroad cars, and also to make reasonable regulations concerning the rate of speed at which locomotives, cars or trains shall pass upon or across the streets within the built-up portions of the city. 1901, March 7, P.L. 20, art. XIX, § 3, cl. XIV.

Cross References

- Grade crossings, see section 381 et seq., of Title 67, Railroads, Railways and Canals.
 Railroad bridges, generally, see sections 271, 341-344, 455, 607, 784, 789 of Title 67, Railroads, Railways, and Canals.
 Safety-gates, see section 385 of Title 67, Railroads, Railways and Canals.

§ 23119. To maintain night watch and police

To establish and maintain night watch and police, and define the duties of the same. 1901, March 7, P.L. 20, art. XIX, § 3, cl. XV.

Cross References

- Auxiliary police, see sections 731-736 of this title.
 Civil service, generally, see sections 23431-23462.
 Civil service, Bureau of Police, see sections 23531-23540 of this title.
 Compensation and fees, see sections 633-635, of this title.
 Dance hall inspection by police, see section 4739 of this title.
 Department of Public Safety, see sections 22531-22540, 23402, 23403.
 Dogs, duties and liabilities, see sections 3909-3911, 3924, 3930 of this title.
 Hours, see section 23403 of this title.
 Injuries, compensation for, see section 637 of this title.

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Pensions, see sections 761-778, 23641-23666, 30491-30498 of this title.
Police matrons, see sections 831, 832 of this title.
Protection of persons and property at places of public resort, see section 23124 of this title.
Regulation of police, see section 737 of this title.
Removal or dismissal, see sections 30471-30475 of this title.
Rewards, see section 23125 of this title.
Suspension, see section 30473 of this title.

§ 23120. To regulate police and impose fines, etc.

To regulate the police of the city and to impose fines, forfeitures and penalties for the violation of any ordinance, and provide for the recovery and collection of the same, and in default of payment to provide for confinement in the city or county prison, or to hard labor upon the streets or elsewhere, for the benefit of the city. 1901, March 7, P.L. 20, art. XIX, § 3, cl. XVI.

Cross References

Convict labor, see, also, sections 184, 187 and 222 of Title 61, Penal and Correctional Institutions.
Police, see Cross References under section 23119 of this title.

§ 23121. To provide lock-ups or watch-houses; detention of prisoners therein

To provide for the erection or purchase of lock-ups or watch-houses in some convenient part of the city, for the detention and confinement of vagrants and persons arrested by the police officers, until the person so arrested can be taken before the proper magistrate for hearing and committed to prison or discharged, but no person shall be detained therein for a longer time than twenty-four hours, except upon the order of a magistrate legally authorized, who may commit such person for further hearing. 1901, March 7, P.L. 20, art. XIX, § 3, cl. XVII.

Cross References

General provisions relating to prisons, see Title 61, Penal and Correctional Institutions.
Police, see Cross References under section 23119 of this title.

§ 23122. To erect and maintain public buildings, hospitals, etc.

To erect or purchase, establish and maintain hospitals, prisons, workhouses and houses of correction for juvenile or other offenders, and to prescribe regulations for the government thereof, and also to

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ENCLOSURE (7)

PURDON

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53

Municipal Corporations

§ 35101

TO

§ 45000

PURDON'S
PENNA. STATUTES
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8. Estoppel and ratification

A city which has power to authorize a contract for curbing, but does not expressly do so, may, after the work has been performed by the contractor, validate the action. *Chester v. Eyre*, 37 A. 837, 181 Pa. 642, 1897.

Councils may adopt an unauthorized act done for the benefit of the city by one of the municipal officers, and assume a debt so contracted. *Silsby Manufacturing Co. v. Allentown*, 26 A. 646, 153 Pa. 319, 1893.

When a contract has been signed by the mayor, sealed with the corporate seal, and approved by councils, and the city has received the benefit thereof, it is estopped to deny the contract. *Allegheny v. McClurkan*, 14 Pa. 81, 1850.

9. Suits by and against cities

An action against a city must be brought and tried in the county in which the city is situated; such actions are local, not transitory. *Church v. Scranton*, 2 Kulp, 515, 12 Luz. 400, 1882; *Potts v. Pittsburgh*, 14 W.N.C. 38, 1883, reversing 23 Pitts. 81; *Heckscher v. Philadelphia*, 9 A. 281, 8 Cent.Rep. 426, 1887; *Chester v. Philadelphia*, 8 York, 49, 1893.

Before suit can be brought against a municipality, a demand for the amount of the claim must be presented to the proper officers. *Cawley v. Allentown*, 2 Leh. 58, 1906.

10. Enforcement of claims

When a judgment is obtained against a city for personal injuries, the city has no right to deduct from the amount of the judgment a sum spent by it for the maintenance of the plaintiff as a public charge pending the litigation; and when the plaintiff does not appeal from an order awarding a mandamus for the balance of the judgment, after deducting the sum paid for maintenance, and is paid the amount of the order, she may nevertheless subsequently by a

second mandamus recover the amount wrongfully deducted from the judgment. *Miller v. Bradford City*, 19 Pa.Super. 297, 1902.

11. Councilman holding another office

Council of third class city could not legally appoint one of its members to Board of a Municipal Authority formed by the city, such appointment being against "public policy", and court properly ousted councilman from membership. *Commonwealth ex rel. McCreary v. Major*, 22 A.2d 686, 343 Pa. 355, 1942.

Although General Assembly has inherent power to declare public policy of commonwealth, and may confer upon members of council of municipality power to appoint themselves to membership upon boards of authorities formed under Municipal Authorities Act, and to fix their own salaries, such granted power must be strictly construed, and unless the intention is clear, the power will be denied because of its extraordinary character. *Id.*

It is against "public policy" for the other members of the council of a third class city to appoint a member of the council to the board of a municipal authority formed by the city. *Id.*

Court had power to determine that it was against public policy for council of third class city to appoint one of its members of Board of a Municipal Authority formed by city, there being a virtual unanimity of opinion among all reasonable men that it is against "public policy" for a public official to appoint himself to another public office within his gift. *Id.*

Members of city council appointing themselves members of Board of Municipal Authority illegally, appointment being against public policy, were nevertheless "de facto officers" of the authority while serving, and their acts as members of the authority for proper corporate purposes were valid so far as respected the public. *Id.*

§ 37403. Specific powers

In addition to other powers granted by this act, the council of each city shall have power, by ordinance:

1. Payment of debts and expenses.—To provide for the payment of the debts and expenses of the city, and to appropriate money therefor.

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CORPORATE POWERS

§ 37403

2. Hiring of employes; salaries.—To provide for and regulate the manner of hiring and discharging employes and laborers, and the fixing of their salaries or compensation.

3. Creation of necessary offices, boards or departments.—To create any office, public board, or department which it may deem necessary for the good government and interests of the city, and, unless otherwise provided by this act, appoint the members of any board, bureau or commission; to prescribe the powers thereof, and to regulate and prescribe the terms, duties, and compensation of all such officers, and of all officers who are members of any public board or any department so created, but no ordinance shall be passed increasing or diminishing the salary or compensation of any officer, or of any member of any board, bureau or commission, after his or their appointment. The provisions of this clause as to the creation of any public board, bureau or commission, and prescribing the duties thereof, shall not apply to the creation of any board of commissioners of water-works of any city wherein the title to the water-works therein located is in the name of the commissioners of water-works.

4. Lock-ups and police stations.—To provide for the erection, lease or purchase of lock-ups and police stations for the detention and confinement of persons arrested for any cause, or of persons convicted under city ordinances and sentenced for periods not in excess of ten days.

5. Market houses and milk depots.—To purchase, lease and own ground for, and to erect, maintain, and establish, market houses, milk depots, and market places, for which latter purpose parts of any streets, sidewalks or city property may be temporarily used; to provide and enforce suitable general market regulations; to contract with any person or persons or association of persons, companies, or corporations, for the erection and regulation of market houses, milk depots, and market places, on such terms and conditions and in such manner as the council may prescribe; to raise all necessary revenue therefor as herein provided; and to levy and collect a license tax from every person or persons who may be authorized by council to occupy any portion of the streets, sidewalks or city property for temporary market purposes.

6. Collection and removal of garbage.—To provide for and regulate the collection, removal and disposal of garbage, ashes and other waste or refuse material, either by contract or by municipal conduct of such services, and to impose and collect, by lien or

otherwise, reasonable fees and charges therefor, and to prescribe fines and penalties for the violation of ordinances regulating such matters.

7. Comfort and waiting stations and drinking fountains; waiting rooms in court houses.—To take, purchase or acquire, property for the purpose of erecting, providing, maintaining, and operating thereon comfort stations, waiting stations and drinking fountains; and to construct and maintain such stations and fountains on such property or in any of the streets or public places within its corporate limits; to provide and equip and maintain in the court house, in cooperation with the county commissioners of the county wherein the city is situated, whenever such city is the county seat, rest or waiting rooms and provide attendants therefor. The cost of providing such waiting and rest rooms, and of maintaining the same, including salaries and all incidental expenses, shall be paid by the county, and by the city, in such proportion as may be agreed upon.

8. Running at large of animals, et cetera.—To provide for the erection of all needful pens, pounds, and other means of confinement, within or without the city limits; to appoint keepers thereof; and to regulate or prohibit the running or being at large of stock and domestic animals, and fowls; and to cause such as may be at large to be impounded and sold to discharge the costs and penalties provided for the violations of such prohibitions and the expenses of impounding and of keeping the same and of such sale. To regulate the maintaining and care of dogs within the city. To regulate or prohibit the keeping of bee hives within the city.

9. Destruction of dogs.—To destroy dogs found at large contrary to the laws of the Commonwealth, or to prohibit or regulate, by its own ordinance, the running at large of dogs, cats or other animals, and, in the enforcement of such regulations, to direct the killing of dogs, cats or other animals, or their seizure and detention, including reasonable charges therefor, or to provide for their sale for the benefit of the city. The powers herein expressed shall be exercised in conformity with the Dog Law of 1921.²

10. Inspection and regulation of fireplaces, chimneys, et cetera; smoke regulations.—To regulate the construction and inspection of fireplaces, chimneys, stoves, stovepipes, ovens, boilers, kettles, forges, or any apparatus used in any building, manufactory, or business, and to order the suppression or cleaning thereof when deemed necessary; to regulate and control the production and

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emission of unnecessary smoke or fly-ash from any chimney or other source, except railroad locomotives.

11. Manufacture, sale, storage and transportation of explosives; offensive business.—To regulate or prohibit the manufacture, sale, storage, or transportation of inflammable or explosive substances within the city, and to regulate or prohibit dangerous, obnoxious, or offensive business within the city.

12. Regulation of division fences, party walls, foundations.—To provide regulations for party walls and division fences and for the foundations of buildings, to enter upon the land or lands, lot or lots, of any person or persons, within the city, at all reasonable hours, by its duly appointed city engineer, or building inspectors, in order to enforce such regulations and set out foundations; and to prescribe reasonable fees for the service of city officers in the inspection and regulation of party walls, division fences and foundations, and to enforce the payment of the same. To provide fines or penalties for violations of such regulations. In setting out foundations and regulating party walls as to breadth and thickness, the city shall cause the foundations to be laid equally upon the lands of the persons between whom the party wall is to be made, and the builder thereof or his successor in interest shall be reimbursed one moiety of the charge of said wall or for so much thereof as the next builder shall have occasion to make use of before such next builder shall or may use or break into said wall.

13. Public wells, cisterns, aqueducts, and reservoirs.—To establish, make, and regulate public wells, cisterns, aqueducts, and reservoirs, and to provide for filling the same.

14. Construction of levees and ferries; deepening of channels.—Subject to the provisions of State law, to provide for the construction and maintenance of levees and ferries within the jurisdiction of the city and within the limits thereof; to erect wharves on navigable waters adjacent to the city, regulate the use thereof, collect wharfage, and establish wharf and dock lines; to provide for protection against floods; to construct and maintain docks, retaining walls, dams, or embankments; and to remove obstructions from, deepen and widen the channels of rivers and streams flowing through or adjacent to the city.

15. Railroad crossing; flagmen; speed of locomotives.—Subject to the provisions of the Public Utility Law,³ to provide for and require the construction and maintenance of bridges or other crossings over or under railroad tracks; and to enter into con-

tracts with railroad companies for the construction and maintenance of the same; to require the erection of safety-gates and the placing of flagmen or warning devices at the intersection of railroads with streets; to forbid the obstruction of the said crossings by locomotives or railroad cars; and to regulate the rate of speed at which locomotives, cars or trains shall pass upon or across the streets within the built-up portions of the city.

15.1 Railroad companies; conveyances and grants of rights of way.—Subject to the provisions of the Public Utility Law, to lease, license or grant rights of way to railroad companies through tunnels or over bridges and viaducts, to enter into agreements with railroad companies for the maintenance of any such tunnels, bridges or viaducts, and to convey such tunnels, bridges or viaducts to railroad companies that have paid in part for their construction, where legal title to said tunnels, bridges or viaducts is not vested in the city but will vest in the city by operation of law or under the terms of any contract.

16. Nuisances and obstructions.—To prohibit nuisances, including, but not limited to, accumulations of garbage and rubbish and the storage of abandoned or junked automobiles or other vehicles on private or public property, and the carrying on of any offensive manufacture or business, and to require the removal of any nuisance or dangerous structure from public or private places upon notice to the owner, and, upon his default, to cause such removal and collect the cost thereof, together with a penalty of ten per centum of such cost, from the owner, by an action in assumpsit. The cost of removal and the penalty may be entered as a lien against such property in accordance with existing provisions of law. In the exercise of the powers herein conferred, the city may institute proceedings in courts of equity.

17. Regulation of signs, porches, et cetera.—To regulate, by uniform rules and regulations, porches, porticoes, benches, door-steps, railings, bulk, bay or jut windows, areas, cellar doors and cellar windows, signs and sign posts, boards, poles or frames, awnings, awning posts, or other devices or things, projecting over, under, into or otherwise occupying the sidewalks or other portion of any of the streets, the building of cellars and basement ways and other excavations through or under the sidewalks, and boxes, bales, barrels, hogsheads, crates, or articles of merchandise, lumber, coal, wood, ashes, building materials, or any other article or thing whatsoever, placed in or upon any of the said sidewalks or other portion of said streets; and also to prevent and require or

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cause the removal of, upon notice, all encroachments thereon. In the exercise of the powers herein conferred, the city shall have the same remedies, penalties and procedures as are expressed in clause 16 of this article.

18. Trees.—To regulate the planting, trimming, care and protection of shade trees in or extending over the streets.

19. Numbering of buildings.—To require and regulate the numbering of buildings and lots.

20. Cab-stands.—To establish stands for coaches, cabs, omnibuses, carriages, wagons, automobiles, and other vehicles for hire, and to enforce the observance and use thereof.

21. Police force.—To establish and maintain a police force, and define the duties of the same.

22. Police protection, et cetera, parks, et cetera; commitment of professional thieves.—To establish and enforce suitable police regulations for the protection of persons and property at public squares, parks, depots, depot grounds, and other places of public resort, owned, controlled or managed by the city or an agency or bureau thereof, whether within or without the city, in whole or in part, and for the arrest and commitment of professional thieves, and suspicious persons found in any part of the city who can give no reasonable account of themselves.

23. Rewards for apprehension of certain criminals.—To offer rewards for the arrest and conviction of persons guilty of capital or other crimes within the city.

24. Gaming, prostitution, et cetera.—To restrain, prohibit, and suppress houses of prostitution, gambling houses, gaming, cock or dog fighting, and other disorderly or unlawful establishments or practices, desecration of the Sabbath day, commonly called Sunday, and all kinds of public indecencies.

25. Prevent riots.—To prevent and restrain riots, noises, disturbances, or disorderly assemblies in any street, house, or place in the city.

26. Regulate guns, et cetera.—To regulate, prohibit, and prevent the discharge of guns, rockets, powder, or any other dangerous instrument or combustible material within the city, and to prevent the carrying of concealed deadly weapons.

27. Sale and use of fireworks.—To regulate or prohibit and prevent the sale, use and discharge of fireworks, firecrackers, sparklers, and other pyrotechnics.

**PURDON'S
PENNA. STATUTES
ANNOTATED**

PERMANENT EDITION

Title 53

**Municipal and
Quasi-Municipal
Corporations
§§ 35101 to 45000**

ARTICLE XX.—POLICE BUREAU

§ 37001. Appointment, number, grade, compensation and qualifications of policemen

The council shall fix, by ordinance, the number, grades and compensation of the members of the city police force, who shall be appointed in accordance with the civil service provisions of this act. No policeman shall, after his appointment and qualification, hold at the same time the office of constable. Council shall prescribe all necessary rules and regulations for the organization and government of the police force. 1931, June 23, P.L. 932, art. XX, § 2001; 1951, June 28, P.L. 662, § 20.

Historical Note

The 1951 amendatory act substituted the word "grades" for "rank."	Prior Laws: 1927, April 23, P.L. 374. 1913, June 27, P.L. 568, art. VII, § 6.
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Cross References

Auxiliary police, see sections 731-736 of this title.
Civil service, see sections 39401-39410 of this title.
Constables generally, see Title 13, Constables.
Night watchmen, employment by individuals, general municipal law, see section 3704 of this title.
Regulation of police generally, see section 737 of this title.

Notes of Decisions

Appointment 2
Compensation 2
Construction and application 1
Misconduct and removal 5
Ordinance abolishing position 6
Promotion or demotion 4
Rules and regulations 7

and merely assisted in other police work in his available time. Mack v. Hoover, 20 A.2d 757, 342 Pa. 291, 1941.

Under provisions of act of 1888, May 20, P.L. 277, art. 7, § 4 (supplied), the councils had power to increase the police force at their discretion; and the city controller could not refuse to pay additional policemen appointed under authority from councils, on the ground that at the time of the increase in the police force, there was no money available to pay them. Driscoll v. Chester, 5 Del. 387, 1893.

1. Construction and application

An ordinance of city of Dubois transferring, purportedly for sake of economy, the occupant of office of sanitary inspector to bureau of police with rank of sergeant, as result of which policeman holding office of sergeant under civil service protection was dropped from police force, was invalid as permitting appointment to position in bureau of police without passing civil service examination as required by this section and section 39401 of this title, notwithstanding that after enactment of ordinance, the sanitary inspector continued to perform the same functions

2. Appointment

An appointment to a position of a certain grade in the police department of a municipality in excess of number allowed for that grade by a municipal ordinance is invalid. Appeal of Duffy, 33 Lack.Jur. 117, 1952.

Appellant's appointment to a police force was invalid where it was made without compliance with the civil serv-

ice sections of the Third Class City Code, in violation of the Veterans' Preference Act, to a position in a grade in excess of number allowed for such grade by city ordinance, and to a position of the police force not provided for by appropriate ordinance. Id.

3. Compensation

A policeman is entitled to the compensation attached to his office, even when physically disabled from performing his duties, unless there is some valid law or regulation to the contrary. But if there is such a law or regulation he cannot recover compensation for the time he is absent, without showing that he is within the exceptions, if any, and also showing that he has complied with all the requirements of the law or regulation. *Wilkes-Barre v. Meyers*, 6 A. 110, 113 Pa. 395, 1886; *Cox v. Oil City*, 27 A. 786, 157 Pa. 613, 1893; *Williams v. Harrisburg*, 4 Dauph. 47, 1894; *Craighead v. Philadelphia*, 5 Dist. 310, 1896.

In view of similar provision in act of 1889, May 23, P.L. 277, art. 7, § 4 (supplied) as to fixing of compensation, policemen were held not to be officers whose compensation could not be increased or diminished after their appointment. *Russell v. Williamsport*, 9 C.C. 129, 1890.

4. Promotion or demotion

The Third Class City Act did not manifest an intent to require examinations for promotion or demotion within a department, but section 39406 of this title implied that an examination was not necessary for promotion or demotion within a department, and under such section a third class city council retains its power to promote and demote within the police department under this section and section 37002 of this title. *Perrillo v. City of Farrell*, 29 A.2d 84, 345 Pa. 518, 1943.

Where member of police force of third class city was appointed to rank of captain and subsequently was demoted to patrolman, he remained a member of the force for which he had qualified. Id.

The council of a third class city may choose from the legally appointed members of the police force a chief and captains without further examination by the civil service board and may demote such appointees to a lower rank without a hearing, provided the person so demoted is continued as a member of the force. Id.

A member of the police force of a third class city was not entitled to a

hearing before demotion from rank of captain to that of patrolman on ground that the civil service article of the Third Class City Law, section 39401 et seq. of this title, should receive the same construction as a corresponding article of the law applying to cities of the first class, section 12621 et seq. of this title, where the terms and plans employed in the two acts were radically different and every item justifying construction requiring hearing under the First Class City Law was absent from the Third Class City Law. Id.

Where member of police force of third class city was not charged with dereliction of duty, he was not entitled to a hearing before demotion from rank of captain to that of patrolman, although another captain having less years of service as captain was retained where the same number of men were retained as police officers. Id.

Plaintiff as Chief of Police status could not be revoked or reduced by council. *Sposito v. City of Farrell*, 34 West. 221, 1953.

5. Misconduct and removal

Prior to act of 1901, May 16, P.L. 224, § 20 (supplied) the mayor could not remove a policeman without the concurrence of select council. *Saul v. Scranton*, 9 Dist. 156, 1900; *Com. v. Black*, 50 A. 1008, 201 Pa. 433, 1902, reversing, pro forma, 48 Pitts. 1.

Where borough became city of third class prior to act 1917, June 20, P.L. 618, repealed, and chief of police of borough is continued as chief of police of city, and he continues to perform duties of police until after passage of act 1917, June 20, he may be removed by councils notwithstanding provisions of section 5 of act 1917, June 20, inasmuch as there is no repugnance between act 1917, June 20, and act 1913, June 27, P.L. 568 (repealed). *Com. v. Morrison*, 46 C.C. 362, 16 Just. 233, 1918; *Com. v. Peace*, 27 Dist. 897, 1918.

Policemen are petty officers or subordinate ministerial officers or employes, and are not included among the officers intended by article 6, § 4, of the state constitution; and the legislature may therefore regulate and restrict the power and manner of removing them from office. *Com. v. Black*, 50 A. 1008, 201 Pa. 433, 1902, reversing, pro forma, 48 Pitts. 1, and overruling *Com. v. Rutherford*, 22 C.C. 425, 8 Dist. 349, 47 Pitts. 9, 7 North. 26, 5 Lack.L.N. 226, 2 Dauph. 202, 13 York, 54, 15 Montg. 151, 1899.

The mayor and not the councils has the right to hear and determine in the first instance, charges of misconduct against policemen. Nichols v. Weiss, 9 Kulp, 548, 1899.

Chief of police status could not be revoked or reduced by council. Sposito v. City of Farrell, 34 West, 221, 1952.

6. Ordinance abolishing position

Where the city of Altoona, by ordinance providing for reorganization of police department, abolished position of chief of police and mayor issued an order designating the former chief as a lieutenant, former chief could not compel reinstatement as chief of police on ground that ordinance was a mere subterfuge to effect his demotion and not honestly intended to reorganize department, since where an office is abolished by ordinance the court will not pry into motives of legislators who voted for its passage. Carey v. City of Altoona, 16 A.2d 1, 339 Pa. 541, 1940.

Under this section, section 37002, authorizing council to designate from the force the chief and other officers, establishing or maintaining the position of chief of police, is not "mandatory", and council may enact an ordinance doing away entirely with position of chief of police, and provision of section 39407 that appointment should be for and during good behavior does not limit the power of the council to abolish the office

when deemed no longer necessary or desirable. Id.

The reasons prompting the removal of an employee may be judicially investigated in order to ascertain whether they were such as are made illegal by statutory provisions, but, where the office itself is abolished by legislative act or ordinance, a court will not pry into the motives of the legislators who voted for its passage. Id.

7. Rules and regulations

A chief of police duly appointed by mayor and directed by him to serve in plain clothes may not be denied his compensation by reason of an ordinance requiring all patrolmen to be in uniform, such ordinance being inapplicable to the chief, though if it required all policemen to serve in uniform, mayor would be bound thereby. Sposito v. City of Farrell, 32 D. & C. 465, 34 West, 221, 1952.

Authority of mayor to appoint a chief of police includes power to invest appointee with powers and duties commonly accorded to office, and council may not so limit the duties as to render the appointment meaningless. Id.

Ordinance fixing rank of policemen at a uniform salary does not comply with this section, for while number of grades to be designated is left to council, that body may not wholly ignore the requirements. Id.

§ 37002. Designation of chief and other officers

The mayor shall designate, from the force, the chief and other officers who shall serve as such officers until their successors are appointed and qualified. 1931, June 23, P.L. 932, art. XX, § 2002; 1951, June 28, P.L. 662, § 20.

Historical Note

The 1951 amendatory act provided that the mayor rather than the council should designate the officers of police force.

Prior Laws:

1927, April 23, P.L. 374.
1913, June 27, P.L. 563, art. VII, § 6.

Notes of Decisions

- Abolition of position 3
- Appointment 2
- Constitutionality 1
- Promotion and demotion 4
- Validity 1

1. Validity

The investiture of mayor of third class city with power to demote a

chief of police or other police officer, who was originally designated by city council under its former power, does not render this section, giving mayor such power, violative of Const. art. 6, § 4, providing that appointed officers may be removed at pleasure of power by which they shall have been appointed. Zeloye v. Bettor, 91 A.2d 901, 371 Pa. 546, 1952.

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This section is constitutional. *Zeloye v. Bettor*, 34 West. 213, 1953, affirmed 91 A.2d 901, 371 Pa. 546.

2. Appointment

A city council may not nullify mayor's appointment of a chief of police by providing that all policemen shall be of a single grade, under 37001 of this title, especially where its action would decrease salary for chief. *Sposito v. City of Farrell*, 82 D. & C. 465, 34 West. 221, 1953.

The 1951 amendment of this act transfers authority to appoint a chief of police from council to mayor and makes such appointment mandatory. *Id.*

Mayor could demote chief of police and appoint a new one. *Zeloye v. Bettor*, 34 West. 213, 1953, affirmed 91 A.2d 901, 371 Pa. 546.

3. Abolition of position

Under this section and section 37001 of this title, authorizing council to designate from the force the chief and other officers, establishing or maintaining the position of chief of police, is not "mandatory", and council may enact an ordinance doing away entirely with position of chief of police, and provisions of section 39407 of this title that appointment should be for and during good behavior does not limit the power of the council to abolish the office when deemed no longer necessary or desirable. *Carey v. City of Altoona*, 16 A.2d 1, 339 Pa. 541, 1940.

4. Promotion and demotion

Regulations promulgated by civil service board of third class city did not affect power of mayor to designate and demote police force officers. *Zeloye v. Bettor*, 91 A.2d 901, 371 Pa. 546, 1953.

Mayor of third class city had power to demote chief of police, who had been designated by city council in exercise of its former power under prior law, and mayor had right to appoint another as chief of police. *Id.*

The demotion of chief of police by mayor of third class city without a hearing did not violate civil service rights of chief of police, since such rights attached to chief of police only in his position as policeman and not as chief of police. *Id.*

One who was appointed chief of police by council of third class city did not come within protection of Const. art. 3, § 13, providing that no law shall extend term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment, and mayor was not precluded from demoting chief of police. *Id.*

A member of the police force of a third class city was not entitled to a hearing before demotion from rank of captain to that of patrolman on ground that the civil service article of the Third Class City Law, section 39401 et seq. of this title, should receive the same construction as a corresponding article of the law applying to cities of the first class, section 12621 et seq. of this title, where the terms and plans employed in the two acts were radically different and every item justifying construction requiring hearing under the First Class City Law was absent from the Third Class City Law. *Petrillo v. City of Farrell*, 29 A.2d 84, 345 Pa. 518, 1943.

Where member of police force of third class city was not charged with dereliction of duty, he was not entitled to a hearing before demotion from rank of captain to that of patrolman, although another captain having less years of service as captain was retained where the same number of men were retained as police officers. *Id.*

Where member of police force of third class city was appointed to rank of captain and subsequently was demoted to patrolman, he remained a member of the force for which he had qualified. *Id.*

Section 39406 of this title implied that an examination was not necessary for promotion or demotion within a department, and under such section a third class city council retains its power to promote and demote within the police department under this section and section 37001 of this title. *Id.*

The council of a third class city may choose from the legally appointed members of the police force a chief and captains without further examination by the civil service board and may demote such appointees to a lower rank without a hearing, provided the person so demoted is continued as a member of the force. *Id.*

§ 37003. Extra policemen; compensation

The mayor, whenever, in his judgment it is necessary for the public safety or to preserve order, may appoint extra policemen to serve for such period as the council may designate, not exceeding thirty days, whose compensation shall be fixed by council. 1931, June 23, P.L. 932, art. XX, § 2003; 1951, June 28, P.L. 662, § 20.

Historical Note

The 1951 amendatory act placed the power of appointment of extra policemen in the mayor, instead of in the mayor and council jointly, and increased the period of service from ten to thirty days.

Cross References

Auxiliary police, see sections 731-736 of this title. Volunteer police, see sections 1421-1424 of Title 35, Health and Safety.

§ 37004. Hours of service; exceptions; vacations

No city shall employ or require any police officer to remain on duty for more than eight hours in any twenty-four consecutive hours, nor more than forty-four hours in any one week, unless in emergency cases for the suppression of riots or tumults or the preservation of the public peace: Provided, That for the duration of any war in which the United States is engaged, and six months thereafter, the hours of service may exceed the number hereinbefore provided as the maximum number of hours of service, and in such cases, council shall provide for the payment of extra compensation for any hours of service in excess of such maximum hours of service, at the same rate as paid for regular service. Nothing contained herein shall prevent any such city from requiring any such police officer to remain on duty or to work sixteen hours in any twenty-four consecutive hours, not more than one day each week, if required by a change in working hours or a change in shifts. Cities shall permit every member of the police department to have at least twenty-four consecutive hours of rest in every calendar week, except in emergency cases for the suppression of riots or tumults or the preservation of the public peace, in times of war, riot, conflagration, or public celebrations, and to have an annual vacation of not less than fourteen days without diminution of the salary or compensation fixed by ordinance. 1931, June 23, P.L. 932, art. XX, § 2004; 1945, May 18, P.L. 807, § 1; 1951, June 28, P.L. 662, § 20; 1953, Aug. 25, P.L. 1484, § 1.

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Historical Note

The amendatory act of 1945 added a proviso with respect to the "present" war. The 1951 amendatory act changed that to "any" war and added the final sentence to the section. The 1953 amendment reduced the maximum number of hours a week from fifty-six to forty-four.

Prior Laws:
1927, April 23, P.L. 373, No. 239.

Cross References

Firemen, hours of service, see section 37103 of this title.

§ 37005. Powers of policemen to arrest

Policemen shall be ex-officio constables of the city, and shall and may, within the city or upon property owned or controlled by the city or by a municipality authority of the city within the Commonwealth, without warrant and upon view, arrest and commit for hearing any and all persons guilty of breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or who may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any of the ordinances of said city for the violation of which a fine or penalty is imposed. 1931, June 23, P.L. 932, art. XX, § 2005; 1951, June 28, P.L. 662, § 20.

Historical Note

The amendatory act of 1951 added the specification of the places where policemen might arrest without warrant.

Prior Laws:
1912, June 27, P.L. 568, art. VII, § 7.

Cross References

First class cities, arrest, see section 13349 of this title.
Process and arrest generally, see sections 1-3 of Title 19, Criminal Procedure.

Notes of Decisions

Arrests 2
Construction and application 1

v. McWilliams, 21 Dist. 1131, 4 Berks, 370, 1912.

1. Construction and application

This section, empowering local police officers to arrest on view for disorderly conduct, refers to Commonwealth offense and does not impliedly authorize the creation of a municipal offense. Com. ex rel. City of York v. Klein, 62 York 18, 1949.

Under similar provisions of act of 1901, May 16, P.L. 224, § 21 (supplied), police officers of cities of the third class were constables ex officio, expressly authorized to arrest on view persons violating city ordinances, for the violation of which a fine was imposed as well as those committing a breach of the peace. York v. Hatterer, 24 York, 147, 1911.

2. Arrests

A policeman may arrest without warrant upon reasonable suspicion, founded either on his own knowledge, or the information of others, that a felony, or

§ 37005

THIRD CLASS CITY CODE

Pt. 5

such breach of the peace as will probably prove to be a felony, has been committed; but he cannot arrest for an ordinary misdemeanor, unless present at the commission of the offense. Rarick v. McManomon, 17 Pa.Super. 154, 1901.

A policeman has no right to arrest without a warrant for an indecent exposure of the person, when he was not present and did not see the offense committed. Id.

This section, empowering local police officers to arrest on view for disorderly conduct, refers to the Commonwealth offense and does not impliedly authorize the creation of a municipal offense. City of Johnstown v. Troutman, 60 D. & C. 1, 39 Mun. 49, 1948.

Under act of 1901, May 16, P.L. 224, § 21 (supplied), policemen had the power to arrest without warrant for a felony actually committed upon reasonable suspicion of its commission upon threat of a serious assault with probability of its execution and upon breaches of the peace of which a renewal might be expected. Com. v. McWilliams, 21 Dist. 1131, 4 Berks. 370, 1912.

A defendant will be discharged where he was arrested by the city police, outside of the city limits, without a warrant and not upon view. Commonwealth v. Renninger, 48 Lanc.Rev. 250, 57 York 49, 1942.

§ 37006. Service of process; fees; payment into treasury

Policemen shall have authority to serve and execute within the city or upon property owned or controlled by the city or by a municipality authority of the city within the Commonwealth all criminal process or processes for the violation of city ordinances which may be issued by the mayor or any alderman, and shall charge the same fees and costs as pertain by law to the constables of the city for similar services, but the said fees and costs shall be received and collected by the mayor or alderman, and by him paid into the city treasury monthly as herein provided. 1931, June 23, P.L. 932, art. XX, § 2006; 1951, June 28, P.L. 662, § 20.

Historical Note

The amendatory act of 1951 added provisions with respect to areas where policemen may serve criminal process.

Prior Laws: 1913, June 27, P.L. 568, art. VII, § 7.

Cross References

Process in general, see section 1 of Title 19, Criminal Procedure.

Notes of Decisions

1. Fees for serving process

Special policemen appointed under act of 1889, May 23, P.L. 277, art. 7, § 5 (supplied), were not entitled to the fees of constables for serving criminal process issued by the mayor or aldermen; such fees, if earned, were to be collected by

the mayor and paid monthly into the city treasury; but such policemen might charge and receive fees for the service of subpoenas put into their hands by the district attorney. Knecht v. Northampton County, 4 North. 299, 1895.

§ 37007. Supervision by mayor

Policemen shall obey the orders of the mayor and make report to him, which report shall be laid by him before council monthly.

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The mayor shall exercise a constant supervision and control over their conduct. 1931, June 23, P.L. 932, art. XX, § 2007; 1951, June 28, P.L. 662, § 20.

Historical Note

The 1951 amendatory act specified monthly reports instead of when required, as previously provided.

Prior Laws:

1913, June 27, P.L. 568, art. VII, § 7.

Notes of Decisions

Appointment and removal 2
Construction and application 1
Orders of mayor 3

1. Construction and application

The council cannot hear complaints against policeman until submitted to it by mayor, and, when mayor hears a complaint and dismisses it without submission, any action of council relative thereto is without jurisdiction and void. *Buttorff v. City of York*, 110 A. 728, 268 Pa. 143, 1920.

2. Appointment and removal

Mandamus will lie to compel mayor of city of third class under act 1913, June 27, P.L. 597 (repealed), to approve appointment of police officers by city council. *McAndrew v. Donnelly*, 14 Just. 94, 1915.

Under act of 1889, May 23, P.L. 277, art 7, § 5 (supplied), the mayor, and not

councils, had the right to hear and determine, in the first instance, charges of misconduct against policemen. The mayor was to hear and determine the complaints, and, if required, make report thereof to councils, whereupon councils might take action, and, if the statutory number in each body voted for removal, the mayor must enforce the resolution. It was never contemplated that a committee of councils should try a policeman for obeying the orders of the mayor. *Nichols v. Weiss*, 9 Kulp, 548, 1899.

3. Orders of mayor

By serving in plain clothes, police chief properly obeyed order of mayor. *Sposito v. City of Farrell*, 34 West. 221, 1953.

Council has no authority to contradict specific orders of mayor directed to a particular policeman. *Id.*

§ 37008. Extra compensation prohibited; exception; penalty

No policeman shall ask, demand or receive any compensation or reward whatsoever for his services other than that provided by ordinance, except rewards offered for the arrest of persons accused of crime committed outside of the city in which they hold office, and witness fees and mileage as provided by law for their appearance in any court of record. Any policeman violating any of the provisions of this section shall be guilty of a misdemeanor in office, and, upon conviction, shall be sentenced to pay a fine not exceeding fifty dollars, or undergo imprisonment not exceeding thirty days, or both, at the discretion of the court, to be followed by dismissal from office. 1931, June 23, P.L. 932, art. XX, § 2008; 1939, June 12, P.L. 338, § 1; 1951, June 28, P.L. 662, § 20.

Historical Note

The amendatory act of 1939 added the reference to witness fees and mileage and also a provision confirming previous payments for witness fees and mileage, which provision was deleted by the 1951 amendatory act.

Prior Laws:

1927, April 23, P.L. 374.
1913, June 27, P.L. 568, art. VII, § 6.

Cross References

Policemen to receive fixed salaries, see section 633 of this title.

§ 37009. Compensation or insurance for volunteer policemen

Each city may make necessary appropriations to provide compensation or insurance for volunteer policemen injured or killed while engaged in the performance of such duties as may be assigned to them in the city. 1931, June 23, P.L. 932, art. XX, § 2009, added 1951, June 28, P.L. 662, § 20.1.

ARTICLE XXI.—FIRE BUREAU

§ 37101. Organization of fire bureau; maintenance; apparatus

Each city may organize a fire bureau, with or without pay, make appropriations for the maintenance of the same, prescribe rules and regulations for the government of the officers and companies belonging thereto, and purchase equipment and apparatus for the extinguishment, prevention and investigation of fires and for the public safety. 1931, June 23, P.L. 932, art. XXI, § 2101; 1951, June 28, P.L. 662, § 21.

Historical Note

The 1951 amendatory act authorized purchase of equipment for prevention and investigation as well as extinguishment of fires.

Prior Laws:

1913, June 27, P.L. 568, art. V, § 2, cl. 38.

Notes of Decisions

1. Construction and application

A city of the third class need not maintain a fire department, though each city may organize a fire bureau. *Stefy v. City of Reading*, 37 Berks 91, 36 Mun. 133, 1945, affirmed 46 A.2d 182, 353 Pa. 539.

subject to act of 1913, June 27, P.L. 568 (repealed), is not a constitutional one, and the body authorized to create it may, in its discretion, abolish it, unless there is some legislative inhibition. *Eisinger v. City of New Castle*, 119 A. 479-275 Pa. 408, 1923.

The office of a member of a paid fire department of a city of the third class

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Municipal Corporations

§46201

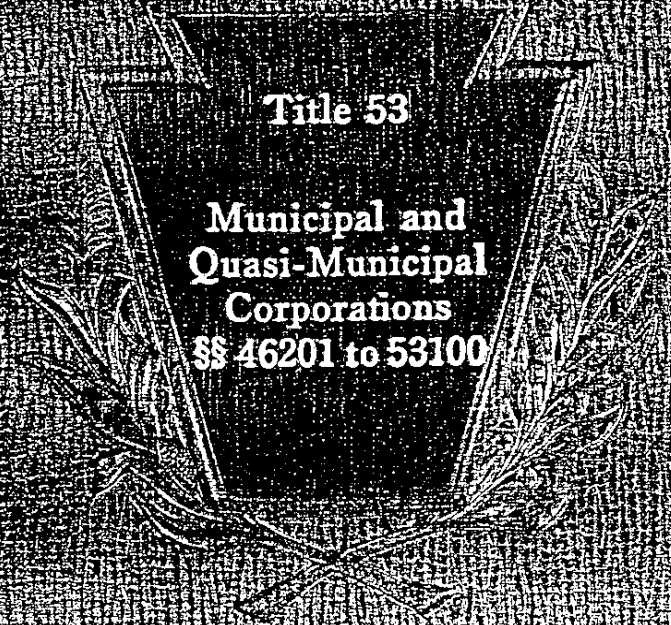
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PURDON'S
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ANNOTATED

Title 53

Municipal and
Quasi-Municipal
Corporations
§§ 46201 to 53100



53 § 46201

Note 9

Borough of Bloomsburg, 64 A. 602, 215 Pa. 452, 1906.

BOROUGH CODE

Ch. 91

10. Ferries

A municipality can regulate the use of cigarette vending machines by requiring the payment of an annual license fee of \$5 for the privilege of maintaining and operating, or permitting the operation of machines used for vending cigarettes, as part of its police power to enforce the criminal laws of the Commonwealth relating to sales of tobacco to minors. Cambridge Springs

Borough v. Kineston, 86 D. & C. 165, 45 Mun. 130, 1954.

A borough had no authority to operate a ferry constructed after a flood washed out a bridge, and its operation could not be construed as within the general police powers of the borough. The construction and maintenance of a ferry was ultra vires and no borough liability resulted therefrom when the ferry capsized and goods were lost. Charley v. Bolivar Borough, 33 D. & C. 686, 23 Mun. 202, 86 P.L.J. 217, 1938.

§ 46202. Specific powers

The powers of the borough shall be vested in the corporate authorities. Among the specific powers of the borough shall be the following, and in the exercise of any of such powers involving the enactment of any ordinance or the making of any regulation, restriction or prohibition, the borough may provide for the enforcement thereof and may prescribe penalties for the violation thereof or for the failure to conform thereto:

(1) Fees for service of officers. To prescribe reasonable fees for the services of their officers and to enforce the payment of the same.

(2) Regulation of charges in the operation of its utilities, parking meters, parking lots or its other facilities and services to the public. In the operation of its utilities, parking meters, parking lots, and other facilities and services, to make and regulate charges therefor for general borough purposes in relief of taxes on real estate.

(3) Fines and forfeitures. To impose fines and penalties, incurring partial or total forfeiture, or to remit the same.

(4) Nuisances. To prohibit and remove any obstruction or nuisance in the streets of the borough.

(5) Nuisances and dangerous structures. To prohibit and remove any nuisance, including but not limited to accumulations of garbage and rubbish and the storage of abandoned or junked automobiles and to prohibit and remove any dangerous structure on public or private grounds, or to require the removal of any such nuisance or dangerous structure by the owner or occupier of such grounds, in default of which the borough may cause the same to be done, and collect the cost thereof, together with a penalty of ten per cent of such cost, in the manner provided by law for the collection of municipal claims, or by action of assumpsit, or may seek relief by bill in equity.

Ch. 91

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Ch. 91

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CORPORATE POWERS 53 § 46202

Ch. 91

(6) Health and cleanliness regulations. To make such regula-
tions as may be necessary for the health, safety, morals, general welfare
and cleanliness and the beauty, convenience, comfort and safety of the
borough.

(7) Burial of deceased persons. To prohibit, within the borough
limits, or within any described territory within such limits, the burial or
interment of deceased persons.

(8) Regulation of vaults, cesspools and drains. To make regula-
tions respecting vaults, cesspools and drains.

(9) Manure and compost regulations. To make regulations rela-
tive to the accumulation of manure, compost and the like.

(10) Accumulations of garbage and other refuse material. To
prohibit accumulations of garbage or other refuse material upon private
property and to provide for the removal of prohibited accumulations of
garbage or other refuse material.

(11) Removal of garbage and other refuse material. To make
regulations for the care and removal of garbage and other refuse mate-
rial, including the imposition and collection of reasonable fees and
charges therefor.

(12) Hogs. To prohibit the keeping of hogs within the borough,
or within any part of the borough.

(13) Dogs, cats and other pets. To destroy dogs found at large
contrary to laws of the Commonwealth; to prohibit or regulate, by ordi-
nance, the running at large of dogs, cats and/or other pets, and, in the
enforcement of such regulations, to direct the killing of dogs, cats
and/or other pets, or their seizure and detention, prescribing reasonable
charges for their seizure and detention, and to provide for their sale for
the benefit of the borough, in default of the redemption thereof by their
owners.

(14) Livestock, fowls and certain other animals. To prohibit and
regulate the running at large of livestock and fowls and any other ani-
mals not covered in clause (13) hereof, and to authorize their seizure
and detention, prescribing reasonable charges therefor, and to provide
for their sale for the benefit of the borough, in default of the redemption
thereof by their owners.

(15) Pigeons. To authorize or provide for the destruction or
killing of unowned pigeons within the geographical limits of the borough
by any humane means.

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HARRISBURG, PENNSYLVANIA

(16) Smoke regulations. To regulate the emission of smoke from chimneys, smoke-stacks and other sources. This clause shall not apply to locomotive smoke-stacks.

(17) Street and sewer regulations; obstructions. To regulate the streets, sewers, public squares, common grounds, sidewalks, curbs, gutters, culverts and drains, and the heights, grades, widths, slopes and construction thereof; and to prohibit the erection or construction of any building or other obstruction to the convenient use of the same.

(18) Riding or driving on sidewalks. To prohibit or regulate the riding or driving of animals, or the passage of any vehicle, over, along and across sidewalks.

(19) Stands for cabs and other vehicles for hire. To establish stands for cabs and other vehicles for hire, to establish charges therefor, and to enforce the observance and use thereof.

(20) Disorderly conduct; disturbance of the peace; ordinances. To adopt ordinances defining disorderly conduct and/or disturbing the peace within the limits of the borough, and to provide for the imposition of penalties for such conduct in such amounts, without limitation except as in this act provided, as council shall establish, and notwithstanding any statutes of the Commonwealth upon disorderly conduct and/or disturbing the peace and the penalties therefor.

(21) Fire regulations; fire prevention codes by reference. To make regulations, within the borough, or within such limits thereof as may be deemed proper, relative to the cause and management of fires and the prevention thereof. To enact and enforce suitable fire prevention codes, and to provide for the enforcement thereof by a suitable fine, and by instituting appropriate actions or proceedings, at law or in equity, to effect the purposes of this provision and ordinances thereunder. Such fire prevention code shall not be advertised by publication of the full text thereof, and, in place of such complete advertisement, an informative notice of intention to consider such proposed fire prevention code, and a brief summary, setting forth the principal provisions of such proposed fire prevention code in such reasonable detail as will give adequate notice of its contents and a reference to the place or places within the borough where copies of such proposed fire prevention code may be examined or obtained shall be published in the manner and within the time limit provided by this act for publication of notice of other proposed ordinances.

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The fire prevention code may be adopted by reference to a standard fire prevention code, or to parts thereof, determined by council, or the provisions of the code may be supplied by reference to a typed or printed fire prevention code, prepared under the direction of or accepted by the council, or the provisions may consist of a standard code, or parts thereof, and also further provisions typed or printed as aforesaid. Copies of the fire prevention code thus adopted by reference shall be made available to any interested party at the cost thereof, or may be furnished or loaned without charge. Such fire prevention code need not be recorded in or attached to the ordinance book, but it shall be deemed to have been legally recorded if the ordinance by which such fire prevention code was adopted by reference shall have been recorded, with an accompanying notation stating where the full text of the fire prevention code shall have been filed.

(22) Prohibition of fire producing devices in certain retail stores. To prohibit the smoking or carrying of lighted cigarettes, cigars, pipes or matches, and the use of matches or fire-producing devices, in retail stores arranged to accommodate one hundred persons or more or which employ ten or more persons. Any ordinance enacted under this clause shall not prohibit smoking in any restaurant, rest room, beauty parlor, executive office or any room designated for smoking in such store.

(23) Dangerous and inflammable articles, substances and materials. To prohibit the manufacture, sale or storage of inflammable or otherwise dangerous articles, substances or materials; to prescribe the quantities of any such articles, substances or materials that may be kept in any location and/or building; and to prescribe such other safeguards as may be necessary.

(24) Building, housing and plumbing regulations. To enact and enforce ordinances relating to buildings and housing, their construction, alteration, extension, repair and maintenance and all facilities and services in or about such buildings or housing, to require that, before any work of construction, alteration, extension, or repair of any building is begun, approval of the plans and specifications therefor be secured; to provide for the inspection of such work of construction, alteration, extension and repair, including the appointment of one or more building inspectors and/or housing inspectors; to prescribe limits wherein none but buildings of noncombustible material and fireproof roofs shall be erected, or substantially reconstructed, or moved thereinto; to provide for enforcement of such regulations by a reasonable fine, and by instituting appropriate actions or proceedings at law, or in equity, to effect the purposes of this provision and ordinances enacted thereunder. Any

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building or housing or part thereof erected, altered, extended, reconstructed or removed, contrary to any of the provisions of any ordinance passed for any of the purposes specified in this clause is declared to be a public nuisance and abatable as such.

Any such ordinance may be adopted by reference to a standard building code or housing code, or to parts thereof, determined by council, or the provisions of the ordinance may be supplied by reference to a typed or printed building code, or housing code, prepared under the direction of or accepted by council, or the provisions may consist of a standard building code or housing code, or parts thereof, and also further provisions typed or printed as aforesaid. Such building code or housing code shall not be advertised by publication of the full text thereof, and, in place of such complete advertisement, an informative notice of intention to consider such proposed building code or housing code, and a brief summary, setting forth the principal provisions of such proposed building code or housing code in such reasonable detail as will give adequate notice of its contents and a reference to the place or places within the borough where copies of such proposed building code or housing code may be examined or obtained shall be published in the manner and within the time limit provided by this act for publication of notice of other proposed ordinances. Copies of the building code or housing code thus adopted by reference shall be made available to any interested party at the cost thereof, or may be furnished or loaned without charge. Such building code or housing code need not be recorded in or attached to the ordinance book, but it shall be deemed to have been legally recorded if the ordinance by which such building code or housing code was adopted by reference shall have been recorded, with an accompanying notation stating where the full text of such building code or housing code shall have been filed. The procedure set forth relating to the adoption of the building code or housing code, by reference, may likewise be adopted in amending, supplementing or repealing any of the provisions of the building code or housing code.

To enact suitable ordinances relating to plumbing, in the same manner and to the same effect as herein provided for building and housing codes. The building code, the housing code and the plumbing code may be combined or separately enacted.

Any housing ordinance previously enacted by a borough which provides for the purposes authorized by this clause is hereby validated.

(25) Numbering buildings. To require and regulate the numbering of buildings.

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(26) Building lines. To establish and maintain uniform building lines upon any or all streets of the borough.

(27) Party wall and fence regulations. To make regulations respecting partition fences and the foundations and party walls of buildings.

(28) Noxious and offensive businesses. To prohibit, within the borough, the carrying on of any manufacture, art, trade, or business which may be noxious or offensive to the inhabitants.

(29) Junk yards. To prohibit, regulate and license the establishment and maintenance of junk yards, salvage yards and other places used and maintained for the collection, storage and disposal of used or second-hand goods and materials.

(30) Regulating and prohibiting amusements. To regulate, license, fix the time of opening and closing, or prohibit theatrical exhibitions, amusements and dances, at which an admission or other fee is charged, and other exhibitions; to regulate, license and fix the time of opening and closing of pool-rooms, billiard-rooms, shooting galleries, skating rinks and bowling alleys.

(31) Markets, market houses, peddling and milk inspection. To regulate markets and peddling, whether for individual use or for resale, and to provide for the inspection of milk; and to purchase and own ground for and to erect, establish and maintain market houses and market places, for which latter purposes, parts of any streets or sidewalks may be temporarily used; to contract with any person or persons, or association of persons, companies, or corporations, for the erection, maintenance and regulation of market houses and market places, on such terms and conditions, and in such manner, as the council may prescribe; to provide and enforce suitable regulations respecting said market houses and market places and to provide for the payment of the cost or expense thereof, either in whole or in part, out of the funds of the borough; and to levy and collect a suitable license fee from every person who may be authorized by council to occupy any portion of said market houses or market places, or any portion of the streets or sidewalks for temporary market purposes.

(32) Creation of special funds; investments. To set aside in a separate fund any moneys received out of or from the sale, lease, or other disposition of any borough property or received from any source other than taxation, unless such money was received or acquired for a particular purpose. Such fund shall be controlled, invested and ad-

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ministered, and the income arising therefrom expended, in such manner as may be determined by action of the council pursuant to the ordinance creating the fund. Such ordinance may provide that only the income from such fund may be used or expended, and that neither principal, nor any part thereof, may be used or expended unless upon authorization of a majority vote of the qualified electors of the borough. All ordinances heretofore enacted and ordained by any borough, creating and establishing such a separate fund as is authorized by this clause, shall be deemed and taken as valid and effectual for all purposes: Provided, That all other requirements of law concerning the enactment of the same have been complied with.

(33) Creation of capital reserve fund for anticipated capital expenditures. To create and maintain a separate capital reserve fund for anticipated legal capital expenditures. The money in the fund shall be used, from time to time, for the construction, purchase or replacement of or addition to municipal buildings, equipment, machinery, motor vehicles or other capital assets of the borough and for no other purpose.

Council may appropriate moneys from the general borough funds to be paid into the capital reserve fund or place in the fund any moneys received from the sale, lease or other disposition of any borough property or from any other source, unless received or acquired for a particular purpose. The fund shall be controlled, invested, reinvested and administered and the moneys expended for any of the purposes for which the fund is created in such manner as may be determined by council. The money in the fund, when invested, shall be invested in securities designated by law as legal investments for sinking funds of municipalities.

This clause shall not be construed to limit the powers of the borough to the use of moneys in the capital reserve fund in making lawful capital expenditures.

(34) Joint municipal agreements. To enter into agreements with other political subdivisions, in accordance with existing laws, in making joint purchases of materials, supplies or equipment and in performing governmental powers, duties and functions and in carrying into effect provisions of law relating to said subjects which are common to such political subdivisions.

(35) Joint contracts for police and fire protection. To enter into contracts with the proper authorities of near or adjacent cities, boroughs, or townships, either for mutual aid or assistance in police and fire

protection, or for boroughs, or towns and to make approval with such contracts receive bonds as required any such contract police of the employees and authorities police, firemen, or township which has

(36) Insurance with any mutual or change, duly authorized Commonwealth of the borough.

(37) Other insurance necessary to secure companies duly received or injured while performing the of insurance with authorized to transact employees, or any of a policy or policies medical and surgical with any such compensation of borough to agree to pay part such contracts, and for such purposes. To obtain or exchange, a insuring any public from the borough to

(38) Contract with person or company, vated, or underground and operating the facility within the limits of duties and liabilities rights of the contract for payments by the

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protection, or for the furnishing to, or receiving from, such cities, boroughs, or townships, aid and assistance in police and fire protection, and to make appropriations therefor: Provided, That in connection with such contracts, it shall not be necessary to advertise for bids or receive bonds as required for other contracts under existing law. When any such contract has been entered into the police, firemen or fire police of the employing city, borough or township shall have all the powers and authority conferred by law on city, borough or township police, firemen, or fire police in the territory of the city, borough or township which has contracted to secure such service.

(36) Insurance on property. To make contracts of insurance, with any mutual or other fire insurance company, association or exchange, duly authorized by law to transact insurance business in the Commonwealth of Pennsylvania, on any building or property owned by the borough.

(37) Other insurance. To appropriate such amount as may be necessary to secure insurance or compensation for volunteer firemen of companies duly recognized by the borough, by motion or resolution, killed or injured while going to, returning from, or attending fires, or while performing their duties as special fire police. To make contracts of insurance with any insurance company, association or exchange, authorized to transact business in the Commonwealth, insuring borough employes, or any class, or classes thereof, or their dependents, under a policy or policies of insurance covering life, health, hospitalization, medical and surgical service and/or accident insurance, and to contract with any such company, granting annuities or pensions, for the pensioning of borough employes, or any class, or classes thereof, and to agree to pay part or all of the premiums or charges for carrying such contracts, and to appropriate moneys from the borough treasury for such purposes. To make contracts with any insurance company, association or exchange, authorized to transact business in this Commonwealth, insuring any public liability of the borough, and to appropriate moneys from the borough treasury for such purpose.

(38) Contract with railways. To enter into contract with any person or company, operating a street passenger railway, surface, elevated, or underground, or furnishing motor transportation, or leasing and operating the franchise and property of such person or company, within the limits of the borough, regulating the franchises, powers, duties and liabilities of such persons or companies, and the respective rights of the contracting parties. Such contracts may, inter alia, provide for payments by the persons or companies to the borough, in lieu of the

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and recorders of deeds of such counties shall not admit for record any deeds of any property in such township, bearing a date subsequent to the approval of an ordinance providing for the establishment of such registry, unless the same shall first have been duly stamped, as hereinbefore provided. 1931, June 24, P.L. 1206, art. XIII, § 1315; 1935, July 12, P.L. 716, § 1; 1949, May 27, P.L. 1955, § 29.

Historical Note

The act of 1935 added the last part of this section commencing with the words "and the prothonotaries and recorders of deeds of such counties."

The act of 1949 reenacted this section, as amended in 1935, without change.

ARTICLE XIV.—POLICE

§ 56401. Appointment, compensation and training of policemen

The board of township commissioners shall, subject to the civil service provisions of this act, appoint and fix the number, rank and compensation of the members of the township police force. No policeman shall at the same time hold any public office other than constable and health officer. The board of commissioners shall prescribe all necessary rules and regulations for the organization of the police force. The board may assign the chief of police or any other member of the force to undergo a course of training at any training school for policemen, established and made available by the State or Federal Government, and may provide for the payment by the township of his expenses while in attendance in such training school. 1931, June 24, P.L. 1206, art. XIV, § 1401; 1947, April 2, P.L. 46, § 1; 1949, May 27, P.L. 1955, § 30.

Repealed in Part

Repealed in part by section 778 of this title.

Cross References

Appointment, promotion, reduction in rank, suspension and removal of members, see section 53251 et seq. of this title.
Suspension, removal, furloughing and reinstatement, see section 811 et seq. of this title.

Notes of Decisions

1. Discharge

Where section 53251 of this title is not in force, policemen may be discharged, although they may have been serving as policemen during a previous

period when the Civil Service Act was in force. Appeal of Scott Tp. Civil Service Commission, 41 Mun. 257, 1950.

§ 56402. Chief of police and other officers

The board of commissioners may designate the superintendent or the chief of police and other officers, who shall serve until their successors are duly designated and qualified. 1931, June 24, P.L. 1206, art. XIV, § 1402; 1949, May 27, P.L. 1955, § 30.

Historical Note

The act of 1949 reenacted this section without change.

§ 56403. Powers of policemen

Policemen shall be ex-officio constables of the township and may, without warrant and on view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous, or disorderly conduct or drunkenness, or who may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any of the ordinances of the township for the violation of which a fine or penalty is imposed. 1931, June 24, P.L. 1206, art. XIV, § 1403; 1949, May 27, P.L. 1955, § 30.

Historical Note

The act of 1949 reenacted this section without change.

Similar provisions were contained in section 1380 of the Township Code of 1917, July 14, P.L. 840, which was derived from section 1 of act of 1901, June

10, P.L. 551 (now repealed), and which was repealed by act of 1931, June 24, P.L. 1206, art. XXXV, § 3501 (§ 58501 of this title), and act of 1933, May 1, P.L. 103, art. XXI, § 2101 (§ 67101 of this title).

Notes of Decisions**1. Construction and application**

Township police officer acted beyond his jurisdictional authority and hence township was not liable for his acts, when he participated with officer of adjoining township in shooting a horse trapped in culvert on adjoining township's side of public highway. *Boorse v. Springfield Tp.*, 103 A.2d 708, 377 Pa. 109, 1954.

Jurisdictional authority of township police officer extends only within geographical limits of his township. *Id.*

Police officers are not agents or servants of the municipality employing them so as to render it liable for their negligence or illegal acts performed in the discharge of their duties as officers. *Pronovich v. Plains Tp.*, 74 D. & C. 477, 41 Luz.L.Reg. 225, 1951.

§ 56404. Service of process; fees

Policemen shall have authority to serve and execute all criminal process for the violation of the township ordinances, which may be issued by any justice of the peace of the township, and shall charge the same fees and costs as pertain by law to constables for similar services, but such fees and costs shall be paid to the town-

ship treasurer for the use of the township. 1931, June 24, P.L. 1206, art. XIV, § 1404; 1949, May 27, P.L. 1955, § 30.

Historical Note

The act of 1949 reenacted this section without change.

§ 56405. Supervision of police

The chief of police and policemen shall obey the orders of the board of township commissioners or such other person or committee as may be designated by ordinance or resolution of the board for such purposes. 1931, June 24, P.L. 1206, art. XIV, § 1405; 1949, May 27, P.L. 1955, § 30.

Historical Note

The act of 1949 reenacted this section without change.

§ 56406. Keepers to receive prisoners

The keepers of jails, lockups, and station-houses shall receive all persons arrested by policemen for the commission of any offense against the laws of the Commonwealth or the ordinances of the township. 1931, June 24, P.L. 1206, art. XIV, § 1406; 1949, May 27, P.L. 1955, § 30.

Historical Note

The act of 1949 reenacted this section without change.

§ 56407. Badge

The police, when on duty, shall wear a badge or shield with the words "Township Police" and the name of the township inscribed thereon. 1931, June 24, P.L. 1206, art. XIV, § 1407; 1949, May 27, P.L. 1955, § 30.

Historical Note

The act of 1949 reenacted this section without change.

§ 56408. Not to receive fees

Townships employing policemen shall pay to all such policemen a fixed or stipulated salary. It shall not be lawful for any such policemen¹ to charge or accept any fee or other compensation, in addition to his salary, for any service rendered or performed by him of any kind or nature whatsoever pertaining to his office or duties as a policeman, except public rewards and the expenses in-

curred in the discharge of his duties. 1931, June 24, P.L. 1206, art. XIV, § 1408; 1949, May 27, P.L. 1955, § 30.

¹ Should probably be "policeman".

Historical Note

The act of 1949 reenacted this section without change.

Prior Laws:
July 14, P.L. 266, § 1.

Notes of Decisions

1. Construction and application

A reward initiated by the county commissioners, for information leading to the arrest of persons connected with certain fires, is a "public reward"

and fact reward was augmented by a bank and by a group of public spirited citizens does not cause it to lose such status. Williamson v. Reward Fund, 1 D. & C.2d 631, 41 Del.Co. 311, 1954.

§ 56409. Establishment of Police Pension Fund; Management

Townships shall, unless there is a private organization or association constituting and managing an existing pension fund for the members of the police force in any such township, by ordinance, establish a police pension fund to be maintained by an equal percentage charge against each member of the police force, not exceeding annually four per centum of the pay of such member. All pension funds established under the provisions of this section shall be under the direction of the township commissioners or such committee as they may designate, and shall be applied, under such regulations as the commissioners may by ordinance prescribe, for the benefit of such members of the police force as shall receive honorable discharge therefrom by reason of age or disability and the families of such as may be injured or killed in the service. Any allowances made to those who are retired by reason of disability or age shall be in conformity with a uniform scale. 1931, June 24, P.L. 1206, art. XIV, § 1409; 1949, May 27, P.L. 1955, § 30; 1949, May 14, P.L. 1341, § 1.

Repealed in Part

Repealed in so far as applying to boroughs, towns and townships maintaining a police force of four or more members, except that accrued benefits shall continue notwithstanding such repeal, by act 1956, May 29, P.L. (1955) 1804, § 12, (section 778 of this title). See, also, section 772 of this title.

Historical Note

Act 1949, May 27, P.L. 1955, § 30, made no change in this section.

Act 1949, May 14, P.L. 1341, § 1, amended this section by striking out

"may" after "Townships" in the first sentence and by adding words "shall, unless * * * such township", and by striking out at beginning of the

PURDON
PENNA

53

Municipal Corporations

§53101

to

§65100

PURDON'S
PENNA. STATUTES
ANNOTATED

PERMANENT EDITION

Title 53

Municipal and
Quasi-Municipal
Corporations

§§ 53101 to 65100

§ 56554. Joint contracts for police and fire protection

To enter into contracts with the proper authorities of near or adjacent cities, boroughs and townships either for mutual aid or assistance in police and fire protection, or for the furnishing to or receiving from such cities, boroughs or townships aid and assistance in police and fire protection, and to make appropriations therefor: Provided, That in connection with such contracts it shall not be necessary to receive bids or require bonds as required for other contracts under existing law. 1931, June 24, P.L. 1206, art. XV, § 1502, cl. LIV, added 1949, May 27, P.L. 1955, § 32.

§ 56555. Widening and deepening water-courses

After a permit has been secured from the Water and Power Resources Board, to widen and deepen water-courses running through the township and to erect such dykes, retaining walls and embankments along the same as shall be necessary to prevent water from overflowing the banks thereof. For such purposes, townships may enter upon and condemn such property as may be necessary. Townships may enter upon land lying near such water-courses and secure such material as may be necessary in connection with such work. Damages for property taken, injured or destroyed as the result of such work shall be fixed and determined in the manner provided in article nineteen of this act.¹ Townships may appropriate moneys for the purposes of carrying into effect the provisions of this clause. 1931, June 24, P.L. 1206, art. XV, § 1502, cl. LV, added 1949, May 27, P.L. 1955, § 32.

¹ Sections 56901 to 56953 of this title.

§ 56556. Regulation of charges

To make and regulate charges for the use of facilities of the township. 1931, June 24, P.L. 1206, art. XV, § 1502, cl. LVI, added 1949, May 27, P.L. 1955, § 32.

§ 56557. Street, sewer, sidewalk, etc., regulations

To regulate the streets, sewers, public squares, common grounds, sidewalks, curbs, gutters, culverts and drains, and the heights, grades, widths, slopes and construction thereof, and to grant rights therein for the installation of public utilities in said streets. 1931, June 24, P.L. 1206, art. XV, § 1502, cl. LVII, added 1953, May 27, P.L. 220, § 2.

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ENCLOSURE (12)

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PENNA. STATUTES
ANNOTATED**

Title 53

**Municipal and
Quasi-Municipal
Corporations
§§ 45001 to 46200**

§ 46118. Assistant solicitor

Every borough council may, by resolution, appoint an assistant solicitor who shall, in the absence or disability of the solicitor, perform the duties and exercise the powers of the solicitor. 1966, Feb. 1, P.L. (1965) —, No. 581, § 1118.

Historical Note

Borough Code 1966:
This is new material.

Cross References

Appointment, method of making, see section 46104 of this title.
Compensation of officers and employees,
Deduction for delinquent taxes, see section 5685 of Title 72, Taxation and Fiscal Affairs.
Duty of council to fix, see sections 46006, 46101 of this title.
Council, powers and duties, see sections 46005, 46006 of this title.
Resolutions, passage, approval and veto, see section 46007 of this title.

Library References

Municipal Corporations ¶148. P.L.E. Municipal Corporations § 113.
C.J.S. Municipal Corporations § 494.

(e) POLICE**Cross References**

Appointment of solicitor, see section 46006 of this title.
Chief of police, compatible offices, see section 46143 of this title.
Suspension, removal, furloughing and reinstatement, see section S11 et seq. of this title.

Library References

Municipal Corporations ¶180 et seq. P.L.E. Municipal Corporations § 187
C.J.S. Municipal Corporations § 563 et seq.
et seq.

§ 46121. Appointment, suspension, reduction, discharge, powers; mayor to have control

Borough council may, subject to the civil service provisions of this act, if they be in effect at the time, appoint and remove, or suspend, or reduce in rank, one or more suitable persons, citizens of the United States of America, as borough policemen, who shall be ex officio constables of the borough, and shall and may, within the borough or upon property owned or controlled by the borough or by a municipal authority of the borough whether such property is within or outside the limits of the

borough, without warrant and upon view, arrest, and commit for hearing any and all persons guilty of breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or who may be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or for violating any ordinance of the borough for the violation of which a fine or penalty is imposed, and notwithstanding any statute pertaining to the same or similar offenses. Any person so arrested shall be received for confinement by the keepers of the jails, lockups, or station houses within the county.

The borough council may designate one of said policemen as chief of police. The mayor of the borough shall have full charge and control of the chief of police and the police force, and he shall direct the time during which, the place where and the manner in which, the chief of police and the police force shall perform their duties, except that council shall fix and determine the total weekly hours of employment that shall apply to the policemen.

Policemen shall have authority to serve and execute all criminal process for the violation of borough ordinances which may be issued by the mayor, and shall charge the same fees and costs as constables of the borough, but such fees and costs shall be collected by the mayor and by him paid into the borough treasury.

The borough may, by ordinance, establish a police department consisting of chief, captain, lieutenant, sergeants, or any other classification desired by the council, and council may, subject to the civil service provisions of this act, if they be in effect at the time, designate the individuals assigned to each office, but the mayor shall continue to direct the manner in which the persons assigned to the office shall perform their duties. The mayor may, however, delegate to the chief of police or other officers supervision over and instruction to subordinate officers in the manner of performing their duties. The mayor may appoint special policemen during an emergency in which the safety and welfare of the borough and the public is endangered and auxiliary policemen may be appointed as provided by general law.

The borough council may assign the chief of police or any member of the police force to undergo a course of training at any training school for policemen established and made available by the State or Federal government, and may provide for the payment by the borough of his expenses while in attendance in such school.

In any case in which a borough has heretofore appointed policemen or established a police department by action of council but not by or pursuant to an ordinance regularly enacted, such action shall be deemed to

have been a valid exercise of the legislative power of the borough for all purposes the same as though an ordinance had been enacted, and all policemen appointed thereunder shall occupy the same status and shall have the same rights and privileges as in the case of policemen appointed under authority of an ordinance. 1966, Feb. 1, P.L. (1965) —, No. 581, § 1121

Historical Note

Borough Code 1966:

Derived from 1927, May 4, P.L. 519, art. XI, § 1125, as amended 1939, June 24, P.L. 689, § 3; 1947, July 10, P.L. 1621, § 36; 1959, Sept. 2, P.L. 800, § 1; 1961, April 28, P.L. 121, § 1.

"Mayor" substituted for "burgess."

Council is given authority to fix and determine the total weekly hours of employment applicable to policemen.

Policemen need not, at the time of appointment, be citizens of the Commonwealth, as previously required, but must be citizens of the United States.

Added at the end of paragraph 4 "and auxiliary policemen may be appointed as provided by general law."

In the last paragraph, the following changes were made:

(a) The word "lawful" occurring between "by" and "action of council"

was deleted, because such action was not lawful, and is here being validated.

(b) After the word "status" in the last sentence, the words "and shall have the same rights and privileges" were added for clarification.

Prior laws:

The corresponding section of the act of 1915 (May 14, P.L. 312, ch. VII, art. VI, § 14), was derived from section 1 of act of 1893, June 6, P.L. 327.

Said section of the act of 1915 was amended by the act of 1923, May 8, P.L. 168, § 1.

The last sentence of this section of the act of 1927 is also similar to part of the act of 1915, May 14, P.L. 312, ch. VII, art. VI, § 16, as amended by act 1923, May 8, P.L. 168, § 2.

Cross References

Appointed officers, mayor to exact performance of duties, see section 46029 of this title.

Appointment,

Method of making, see section 46104 of this title.

Promotion, reduction in rank, suspension and removal of members of police force, see section 53251 et seq. of this title.

Arrest, generally, see section 1 et seq. of Title 19, Criminal Procedure; Pa.R. Crim.P. Nos. 107, 108, 115, Title 19, Appendix.

Arrest of vagrant, see section 2033 of Title 18, Crimes and Offenses.

Authority of borough constables to arrest, see section 45 of Title 13, Constables.

Civil service, see section 46171 et seq. of this title.

Compatible offices,

Manager, street commissioner, secretary, treasurer, and chief of police, see section 46143 of this title.

Officers serving on boards, commissions, bureaus or agencies, see section 46104 of this title.

Constables,

Generally, see section 1 et seq. of Title 13, Constables.

Exclusion from provisions of code, see section 45102 of this title.

Note 1

- Council, powers and duties, see sections 46005, 46006 of this title.
- Criminal process, see Pa.R.Crim.P. No. 106 et seq., Title 19, Appendix.
- Disorderly conduct,
 Generally, see section 4406 et seq. of Title 18, Crimes and Offenses.
 Suppression, powers of mayor, see section 4602S of this title.
- Drunkness, see section 1523 of Title 18, Crimes and Offenses.
- Emergency assignment, other municipalities, see section 736 of this title.
- Examination and appointment, see sections 46181-46189 of this title.
- Expenses of officers, power of council to pay, see section 46005 of this title.
- Incompatible offices, civil service commission with other public office or employment, exceptions, see section 46173 of this title.
- Mayor, powers and duties, see sections 45223, 4602S, 46029 of this title.
- Ordinances, see section 46006 et seq. of this title.
- Police,
 Appointment under cooperative agreement, see section 46122 of this title.
 Removal under civil service, see section 46190 of this title.
- Police force, see section 731 et seq. of this title.
- Policeman holding office of constable, see section 46126 of this title; section 10 of Title 13, Constables.
- Removal, see section S11 et seq. of this title.
- Riots, see sections 4401, 4402 of Title 18, Crimes and Offenses.
- Vagrants, see section 2082 et seq. of Title 18, Crimes and Offenses.

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Library references

Municipal Corporations § 179 et seq.
 C.J.S. Municipal Corporations § 533.
 P.L.E. Municipal Corporations § 187 et seq.

1. Validity

The 1961 amendment of this section was not unconstitutional. *Resseguie v. Lewisburg Borough*, 29 D. & C.2d 83, 54 Mun. 269, 1964.

2. Construction and application

The 1961 amendment of this section was retroactive in effect and applied to one appointed prior to the date of its enactment. *Resseguie v. Lewisburg Borough*, 29 D. & C.2d 83, 54 Mun. 269, 1964.

The Civil Service Act does not deprive the borough council of the power to appoint and remove, nor the Burgess of the power to suspend, but merely prescribes the limits and conditions under which these powers may be exercised. *Suspensions of Laux*, 77 D. & C. 211, 23 Northumb.L.J. 137, 1952.

Borough Council has right, acting in good faith, to discontinue office of Chief of Police, Captain or Sergeant. *Mamalis v. Civil Service Commission of Mill-*

bourne Borough, 47 Del. 180, 1960, affirmed 164 A.2d 209, 401 Pa. 375.

Existing conditions of a general and continuing nature are not considered emergencies. *Scaccia v. Borough of Old Forge*, 53 Lack.Jur. 85, 43 Mun. 277, 1952, affirmed 94 A.2d 563, 373 Pa. 161.

Emergencies are founded in fact, they are not the creatures of opinion. *Id.*

An emergency, as commonly understood, is an event or occasional combination of circumstances which calls for immediate action or remedy, and arises from a sudden, unexpected and unforeseen occurrence or from a series of occurrences requiring prompt action in the taking of measures to abate or minimize harmful consequences flowing from the event. *Id.*

Since the word "emergency" as used in this section has not been defined by the legislature, resort must be had to the applicable canon of statutory construction, which by section 533 of Title 46, requires that words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. *Id.*

A policeman is an employee of a borough and not a public officer. *Appeal of Gaffney*, 38 Mun. 105, 1947.

3. Establishment of department

The power to create a police force and to appoint persons to act as policemen in a borough is vested exclusively in the borough council. *Scaccia v. Borough of Old Forge*, 53 Lack.Jur. 85, 43 Mun. 277, 1952, affirmed 94 A.2d 563, 373 Pa. 161.

4. Police in general

A policeman is a subordinate ministerial agent, such as a watchman, custodian of public parks, chief clerk, superintendent of building, fireman, or similar public employees. *Com. ex rel. O'Malley v. Borough Council of Borough of Archbald*, 63 Lack.Jur. 213, 1964.

A police officer is not a public officer and his engagement by a municipality to perform police duties creates no public office. *Id.*

Under this section, a borough policeman has authority to arrest without warrant a person for violating section 4675.1, of Title 18, Crimes and Offenses, making it unlawful for a minor to consume alcoholic liquor or malt or brewed

beverages, a summary offense. *Com. v. Fincavitch*, 57 Mun. 84, 1966.

Under this section, a borough policeman had authority to arrest without warrant a person for violating section 4675.1 of Title 18, Crimes and Offenses, making it unlawful for a minor to consume alcoholic liquor or malt or brewed beverages, a summary offense, and the removal of contents of the defendant's pockets at police station following that arrest, as well as the subsequent taking of some items of his apparel from him for laboratory analysis was a valid search and seizure, and admission of the money and weapon taken from his pockets, as well as the articles of clothing, as evidence in his trial for burglary, was proper and correct. *Id.*

Merely because Borough Code does not restrict work week of policemen to five days there is no valid reason why a borough should overwork its policemen and force them to work seven days a week. *Ducsa v. Lesniakowski*, 55 Mun. 274, 44 Wash.Co. 101, 1964.

5. Qualifications

Where the Borough of Parkside by resolution fixed minimum and maximum age limits for police officers and thereafter terminated plaintiff's services as Chief of Police because he exceeded the maximum age limits and plaintiff brought an action in mandamus, it was held that the retirement of plaintiff was proper since his removal as a police officer is a ministerial not a legislative action and therefore the borough can act by resolution not by an ordinance. *Price v. Parkside*, 51 Del.Co. 182, 1964.

6. Chief of police

Borough council had the right, acting in good faith, to discontinue the office of chief of police. *Manning v. Civil Service Commission of Borough of Millbourne*, 127 A.2d 599, 387 Pa. 176, 1957.

Borough council had right, acting in good faith, to discontinue office of chief of police to reduce expenses. *McGuckin v. Borough of West Homestead*, 62 A. 2d 23, 360 Pa. 211, 1949.

Under section 53270 of this title permitting municipality to reduce number of employees of police department and, if necessary, to remove them by furloughing in numerical order, commencing with last appointed until reduction shall have been accomplished, borough

Note 6

council, compelled to reduce number of police employees by abolishing office of chief, was bound to remove from force that person last appointed thereto and not person with rights of seniority merely because such person was no longer to hold position of chief. *Id.*

Borough chief of police is not an "officer of commonwealth" and therefore he may be convicted of common law bribery. *Com. v. Bauserwine*, 40 A.2d 919, 156 Pa.Super. 535, 1945, reversed on other grounds 46 A.2d 491, 354 Pa. 35.

Act 1915, May 14, P.L. 312 (repealed), did not require chief of police of borough to be elected by council at organization meeting, and therefore such election, where vote was tie, by casting vote of burgess, was illegal and invalid. *Com. v. Caldwell*, 2 D. & C. 195, 14 Mun. 97, 1922.

A chief of police is not a public officer because he exercises no public function, and because his duties are purely ministerial, whether those duties are fixed by law or determined by his immediate superior. *Com. ex rel. O'Malley v. Borough Council of Borough of Archbald*, 63 Lack.Jur. 212, 1964.

The legislature has lodged in the borough council the power of appointing borough policemen and the further power of designating one of these policemen as chief of police, but the burgess has full charge and control of the chief of police and the police force and has the right to direct the time during which, the place where, and the manner in which the chief of police and the police force shall perform its duties. *Stitt v. Madigan*, 29 Mun. 97, 86 P.L.J. 59, 32 York 25, 1938.

The legislature has not defined the duties of the chief of police, but the term indicates that he is to be head of his department and exercise jurisdiction over it. The council appoints policemen and designates one as chief, but the burgess has charge and control over both the chief of police and the police force. The burgess may be required by mandamus to assign the chief to his elected position. *Id.*

The legislature has not defined the duties of a chief of police in a borough, but evidently intended to make a distinction between a chief of police and an ordinary police officer. The term itself indicates that he is to be the head

of his department and exercises supervision over it. *Id.*

Under act 1915, May 14, P.L. 312 (repealed), burgess was given sole power to direct police "as to time during which, the place where, and the manner in which they shall perform their duties," which included appointment, if he deemed it advisable, of chief of police, and borough council had no power to elect chief or prescribe his duties. *Hamilton v. Beech*, 13 Mun. 65, 69 Pitts. 540, 1920.

7. Personnel administration

Borough councils may appoint and remove borough policemen, but burgess has full charge and control of police force, and shall direct time during which, and place where, and manner in which chief and force shall perform their duties. Appeal from Ordinance, 28 Luz. 163, 1932.

Although the burgess has authority to direct the manner in which the chief of police and the police force perform their duties, he may not disregard a borough ordinance establishing the position of lieutenant of police and the duties of that position, by assigning the lieutenant to different duties. Nor may the burgess deny the lieutenant authority to perform any of duties of that position. The burgess may only direct the manner in which the prescribed duties of the lieutenant of police are to be performed. *Patrick v. Bradley*, 50 Mun. 228, 31 Northumb.L.J. 5, 1959.

Burgess could reduce work week of police force from 48 hours to 40 hours. *Bosler v. Rahn*, 50 Mun. 129, 1958, affirmed 151 A.2d 627, 295 Pa. 600.

Council may appoint policemen, but burgess has full control over police force. *Duryea Ordinance Appeal*, 25 Mun. 175, 1922.

Ordinance attempting to regulate conditions of employment of borough police is ultra vires. *Id.*

Administration of personnel of Police Department in Borough is an administrative function of Council and section 45001 et seq. are mandatory statutory provisions governing the selection and tenure of police personnel. *Chonskie v. Maximonis*, 45 Sch.L.R. 192, 46 Sch.L.R. 66, 1950.

8. Civil service—In general

A borough police civil service commission has exclusive jurisdiction in de-

termining the qualifications and fitness of a police officer. *Patrick v. Bradley*, 50 Mun. 228, 31 Northumb.L.J. 5, 1959.

9. — Purpose

The purpose of the civil service laws is to insure the continuance in office of those faithful and conscientious individuals in discharge of their duties and to free public officers from the fear of political and personal prejudicial reprisal, and it was not intended to restrict a municipality from prescribing reasonable residential qualifications for those favored by appointment such as policemen. *Appeal of Gagliardi*, 163 A. 2d 418, 401 Pa. 141, 1960.

10. — Appointment of officers

Under section 53251 of this title establishing civil service system for borough police, power of borough council to appoint police officers was limited by provision that appointment could be made only from list furnished by civil service commission. *Bobick v. Fitzgerald*, 207 A.2d 578, 416 Pa. 588, 1965.

11. — Tenure

Permanency of tenure given by Police Tenure Act applies only to those appointments made in compliance with law. In re *Templeton*, 159 A.2d 725, 399 Pa. 10, 1960.

If individual on the date of his dismissal as police chief of borough enjoyed a legal right to office of policeman or office of chief of police of borough, he was entitled to the full protection and security of tenure, established by the Police Tenure Act. *Id.*

Under this section if a policeman is designated by borough council as chief he still remains a police officer and merely holds thereafter a higher rank or position of the force, and if at any time, therefore, higher office should be abolished, it would not operate to deprive him of his original status as a policeman, under appointment gained by passing tests required by Civil Service Act. *McGuckin v. Borough of West Homestead*, 62 A.2d 23, 360 Pa. 311, 1949.

12. — Dismissal or removal

Where official records of borough failed to show existence of any ordinance establishing a police department for borough and there was no proof that individual's own personal appointment as police chief had been effected by any

borough legislation, individual failed to prove legality of his appointment as police chief and had no standing to challenge his dismissal by borough council. In re *Templeton*, 159 A.2d 725, 399 Pa. 10, 1960.

Where borough council adopted resolution providing for dismissal of employee of police department effective June 30, 1941, but that amount equal to vacation allowance of two weeks should be paid to employee July 15, 1941, under section 53251 et seq. of this title, which became effective July 1, 1941, creating civil service system for police officers in boroughs, civil service commission's refusal of hearing invalidated the removal and entitled employee to reinstatement. In re *Dauber*, 30 A. 2d 214, 151 Pa.Super. 293, 1943.

Where borough council adopted resolution providing for dismissal of employee of police department effective June 30, 1941, but that amount equal to a "vacation" allowance of two weeks should be paid to him July 15, 1941, the employee was entitled to benefit of section 53251 et seq. of this title, which became effective July 1, 1941, establishing a civil service system for police officers in boroughs. *Id.*

Section 53251 et seq. of this title, establishing a civil service system in boroughs, in conjunction with former section 45001 et seq. [now see section 45101 et seq.] of this title, relating to dismissal of police officers, prescribes the procedure which must be followed in dismissing police officers from service in a borough. *Id.*

Section 53251 et seq. of this title, establishing a civil service system for police officers in boroughs controls dismissal of any of members of borough police force after its effective date where there were more than three members of the police force. *Id.*

Under section 53251 et seq. of this title, the power of the burgess and council under the General Borough Act to appoint and remove policemen remains with the prescribed limitation that appointment can be made only from the list furnished by the Civil Service Commission, and that discharge can result if the employee asks for a hearing only if the charges are sustained by the Commission. *Bragdon v. Ries*, 29 A.2d 40, 346 Pa. 10, 1943.

Section 53251 et seq. of this title, establishing a Civil Service System for

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police forces in boroughs, etc., and providing that the act is to be in effect while this section and sections 46127, 46128 of this title are in force, "subject to the method of appointment hereinafter provided", did not conflict with the specified sections of the latter act authorizing Borough council to appoint and remove policemen and burgess to control the police force, so that the Act of 1941 does not deprive a borough council of power to appoint, remove or suspend members of its police force, but merely prescribes and limits the conditions under which such powers may be exercised. *Id.*

Where borough had not created its police department by ordinance, dismissed police officer was nevertheless entitled to the procedures of the civil service law. *Ressegule v. Lewisburg Borough*, 29 D. & C. 2d 83, 54 Mun. 269, 1964.

Section 53251 et seq. of this title in conjunction with the General Borough Act, section 45001 et seq. of this title, prescribes the procedure which must be followed in dismissing police officers from service in a borough. *Suspensions of Laux*, 77 D. & C. 211, 23 Northumb. L.J. 137, 1952.

The Civil Service Act does not deprive the borough council of the power to appoint and remove, nor the burgess of the power to suspend, but merely prescribes the limits and conditions under which these powers may be exercised. *Id.*

13. New positions

A borough council cannot create a position in the police force simply by appointing one to the position and fixing his salary, but it must, before it can make an appointment, create the office, fix the salary, prescribe the duties and define the powers. *Shady v. Wyoming Borough*, 78 D. & C. 584, 1953.

14. Appointment

Borough council has discretion to determine if and when police officers are to be appointed and, if such police are to be appointed, which person or persons is or are to be appointed subject to statutorily imposed limitations on such power. *Bobick v. Fitzgerald*, 207 A.2d 878, 416 Pa. 588, 1965.

This section providing that borough council "may, subject to civil service provisions of this act", appoint, remove

or suspend citizen as borough policeman, does not mean that policeman may be legally appointed in some other manner. *In re Templeton*, 159 A.2d 725, 399 Pa. 19, 1960.

Where borough council passed resolution fixing requirements for eligibility of applicants for police force but did not advertise or publish resolution as ordinance resolution being nullity, appointments contrary to it will be upheld if valid under this act. *Roat v. Brussock*, 16 D. & C. 814, 26 Luz. 253, 1930.

Borough council has authority under Borough Code to appoint police officers. *Id.*

Where office of borough policeman was not created by ordinance, plaintiff's appointment was illegal and void, and when summarily dismissed, was not entitled to reinstatement by mandamus. *Miles v. Houston Borough*, 3 D. & C. 2d 793, 35 Wash. 176, 69 York 12, 1956.

The employment or retirement of a police officer by a municipality is a ministerial not a legislative act. *Price v. Parkside*, 51 Del.Co. 132, 1964.

Power to appoint policemen or peace officers in boroughs is vested in council and not in burgess. *Com. v. Crone*, 25 Dist. 882, 29 York, 147, 1915.

The hiring of a policeman creates only a contractual relationship between the policeman and the governmental unit by which he is employed. *Com. ex rel. O'Malley v. Borough Council of Borough of Archbald*, 63 Lack.Jur. 213, 1964.

Power to appoint policemen or police officers in borough is vested in council and not in burgess, and where there is tie vote on question of removal or appointment, burgess cannot cast deciding vote. *Com. v. Feglitta*, 29 Luz. 461, 1934.

Section 53251 et seq. of this title provides for reduction of number of police under certain conditions. Where reduction has been made, appointments were under Borough Code of 1927, section 45001 et seq. of this title [now Borough Code of 1960, section 45105 of this title]. *Simasek v. Borough of McAdoo*, 36 Mun. 65, 19 Sch.Reg. 125, 1945.

15. Suspension and reduction in rank

See Notes of Decisions under section 46124 of this title.

Refusal of chief of police to perform mayor's direction to perform patrol-

man's duties did not justify mayor's action in suspending chief of police. *Salopek v. Alberts*, 209 A.2d 295, 417 Pa. 592, 1965.

Suspension of a police officer by a burgess or council must be for a definite period of time. *Wargo v. Franklin Borough Council*, 22 Cambria 175, 1962.

In determining the penalty imposed for unbecoming conduct, consideration should be given to officer's seventeen and one-half years of satisfactory service. *Carlisle Borough v. Adams*, 12 Cumb. 53, 1962.

16. Removal of officers not under civil service

If individual on date of dismissal as police chief enjoyed legal right to office of policeman or office of chief of police of borough concerned and he requested a public hearing on charges, borough, in order to impose upon him penalty of suspension or dismissal, would have to prove charges by clear and convincing evidence. In *re Templeton*, 159 A.2d 725, 399 Pa. 10, 1960.

Where office of borough policeman was not created by ordinance, plaintiff's appointment was illegal and void, and when summarily dismissed, was not entitled to reinstatement by mandamus. *Miles v. Houston Borough*, 3 D. & C.2d 793, 35 Wash. 176, 69 York 13, 1956.

The power to remove and discharge policemen was a corporate power exercisable under act 1851, April 3, P.L. 320, § 2, cl. 22, requiring the action of the corporate authorities and unless otherwise provided for, must be exercised by resolution, approved by the burgess or passed over his veto. *Williams v. Burgess of Uniontown*, 42 C.C. 315, 24 Dist. 658, 13 Just. 57, 6 Mun. 110, 1914.

The employment or retirement of a police officer by a municipality is a ministerial not a legislative act. *Price v. Parkside*, 51 Del.Co. 182, 1964.

Borough council had exclusive authority under act 1915, May 14, P.L. 312 (repealed), to remove policeman from office for proper cause, and might, by ordinance, delegate to chief of police right to exercise that authority subject to supervisory control of council. *Pfahler v. Borough*, 14 Del. 351, 18 Lack. 84, 35 Lanc. 19, 8 Mun. 255, 31 York 87, 1917.

That authority was not abridged by clause in act of 1915 giving burgess cer-

tain control of police with power to suspend policeman pending action by council. *Id.*

17. Reduction in number

Borough Council, and not the Burgess, is vested with right to appoint, remove, suspend or reduce number of Borough policemen, and council, acting in good faith, has power to reduce number of police officers by abolishing whatever police offices it decides are no longer needed, even though the officer may have been under civil service. *Scaccia v. Borough of Old Forge*, 94 A.2d 563, 373 Pa. 161, 1953.

The council of a borough, acting in good faith, has power to reduce number of police officers in borough by abolishing offices of policemen it determines are not longer needed. *Scaccia v. Borough of Old Forge*, 53 Lack.Jur. 85, 43 Mun. 277, 1952, affirmed 94 A.2d 563, 373 Pa. 161.

18. Special police

Testimony of Burgess that he appointed special policemen because, in his opinion, when ordinance reduced police force in number it created an emergency, was insufficient to show an emergency authorizing appointment. *Scaccia v. Borough of Old Forge*, 94 A.2d 563, 373 Pa. 161, 1953.

Appointment of a special policeman by burgess when no emergency exists imposes no obligation on borough to compensate appointee. *Scaccia v. Borough of Old Forge*, 53 Lack.Jur. 85, 43 Mun. 277, 1952, affirmed 94 A.2d 563, 373 Pa. 161.

Where a borough council reduced number of policemen to effect required economies, appointment of a special policeman by burgess because in his opinion reduction of police force created an emergency was invalid, since his opinion as to the effectiveness of the reduced police force to maintain the peace of the borough did not create an emergency. *Id.*

19. Judicial supervision

Court had no power to determine whether vacancy in police force must be filled, nor to command that plaintiff be appointed to fill vacancy, as such determination was a councilmanic function statutorily imposed. *Bobick v. Fitzgerald*, 207 A.2d 878, 416 Pa. 588, 1965.

Note 20

20. Liability of borough for acts of policemen

Police officers, when acting for the preservation of the peace, are not agents or servants of the borough; and the borough is not liable for their commissions or omissions, malfeasance or nonfeasance in the performance of their duties as peace officers; and the borough authorities have no power to expend public money in defence of borough police officers indicted under the law, when the borough itself is not involved; and cannot bind the borough by a resolution to pay for such defence, or to reimburse the defendants. *Miller v. Hastings Borough*, 25 Pa.Super. 569, 1904.

21. Liability for costs of prosecution

Grand jury having imposed costs on prosecutor, justice of peace, he asked to have them remitted on ground that he had been appointed by chief burgess to assist in keeping order in town that day, but petition was refused. *Com. v. Crone*, 25 Dist. 882, 29 York 147, 1915.

Not having worn badge or otherwise displayed any insignia of official position, and fight having been of his own and not one between other parties in which he interposed as public officer, he was not so clearly acting as peace officer in discharge of official duties as to give him immunity from costs. *Id.*

22. Charge and control

Duties to be performed by several ranks of police officers are within prerogative of borough council to designate and manner in which designated duties are to be performed is prerogative of mayor. *Salopek v. Alberts*, 209 A.2d 295, 417 Pa. 592, 1965.

Mayor's direction of police chief to perform council prescribed duties of a patrolman and not those of chief of police for which he had been appointed by council was arbitrary and unreasonable and exceeded mayor's authority. *Id.*

Under former section 46025 of this title which provided that it was the Burgess who was required to preserve order in the borough, and to exact a faithful performance of the duties of the officers appointed, and under former section 46125 [now this section] of the borough code which declared that the Burgess should have full charge and control of the police force, and

should direct the time during which and the manner in which the police force should perform their duties, Burgess of the Borough of Norristown had authority to reduce each policeman's work week from 45 hours to 40 hours, and borough council, even though it had the responsibility of providing for compensation of the policemen did not have exclusive authority to decide hours of their employment. *Bosier v. Rahn*, 151 A.2d 627, 395 Pa. 600, 1959.

A borough ordinance fixing specified holidays for all salaried employes of borough will not be construed so as to prevent burgess from assigning policemen to work on designated holidays and is therefore not violative of this section which confers on burgess charge and control of police force and of times during which members shall perform their duties. *Appeal of Bosier*, 22 D. & C.2d 47, 76 Montg. 336, 52 Mun. 16, 1962.

An ordinance specifying twelve holidays for salaried employes of the borough was valid, but it did not prevent burgess from assigning policemen to work on the designated holidays. *Appeal of Bosier*, 22 D. & C.2d 47, 76 Montg. 336, 52 Mun. 16, 1961.

23. Residence

An ordinance requiring employees of a borough, including policemen, to reside within the borough and to be citizens thereof, and authorizing the council to suspend employees until they comply or dismiss them, was not invalid on the ground that it had been pre-empted by the civil service statutes which set forth the reasons for which borough policemen may be suspended or removed from their positions. *Appeal of Gagliardi*, 163 A.2d 418, 401 Pa. 141, 1960.

Section 46125 of this title manifests the legislative intent that an individual to qualify for appointment as a borough policeman must be a resident of the particular municipality not only upon the date of filing of his application but on the date of his appointment, so that while residence may change after application and examination or even after appointment, where the residential status is lost the right to appointment or to hold the office terminates upon expiration of a reasonable time prescribed in an ordinance for compliance therewith. *Id.*

§ 46122. Police serving under cooperative agreement or contract

Whenever any borough shall have entered into a cooperative agreement or contract with any near or adjacent city, borough, or township for the furnishing or receiving of police protection, as authorized by clause (35) of section 1202 of this act,¹ such policemen, individually, shall be appointed and accepted as policemen of the borough receiving such police service by resolution of the council of the said borough. Policemen so appointed shall, however, in so far as civil service and pensions are concerned, be deemed to be appointees and employes only of the municipality or township furnishing their service and making the original appointment thereof. 1966, Feb. 1, P.L. (1965) —, No. 581, § 1122.

¹ Section 46202(35) of this title.

Historical Note

Borough Code 1966:

This is new material.

Cross References

Civil service, see section 46171 et seq. of this title.

Council, powers and duties, see sections 46005, 46006 of this title.

Police, appointment, removal and suspension, see section 46121 of this title.

Police pension fund, see sections 761 et seq., 46131 et seq. of this title.

§ 46123. Police badge

The borough policemen shall, when on duty, wear a shield or badge with the word "Police." 1966, Feb. 1, P.L. (1965) —, No. 581, § 1123.

Historical Note

Borough Code 1966:

Derived from 1927, May 4, P.L. 519, art. XI, § 1126, as amended 1947, July 10, P.L. 1621, § 36, without change.

Prior laws:

The corresponding section of the act of 1915 (May 14, P.L. 312, ch. VII, art. VI, § 15), was derived from section 2 of act of 1893, June 6, P.L. 327.

Cross References

Police badge, school police, see section 46127 of this title.

§ 46124. Suspension by mayor

In addition to the powers of council to suspend policemen, the mayor may, for cause and without pay, suspend any policemen until the succeeding regular meeting of the council, at which time or thereafter the

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COMMENCEMENT

§ 8951

At common law, nolle prosequi did not bar subsequent prosecution on another indictment. Id.

Nolle prosequi does not bar subsequent indictment for same offense. Id.

Nolle prosequi does not operate as acquittal nor prevent another indictment being found for same offense. Com. v. Eisenbise, 11 Berks 124, 15 Del. 117, 28 Dist. 732, 67 Pitts. 488, 33 York 27, 1919.

6. Cancellation or withdrawal

An agreement to enter a nolle prosequi on certain conditions may be properly repudiated on a failure of defendant to carry out the agreement. Com. v. Lord, 326 A.2d 455, 230 Pa.Super. 96, 1974; Com. v. Shields, 89 Pa.Super. 266, 1926.

Where relator was indicted on the charge of burglary and on motion of district attorney a nolle prosequi was entered on the indictment, it was permissible to cancel the nolle prosequi entered on the indictment and revive the

proceedings on that bill. Com. ex rel. Cuniff v. Cavell, 137 A.2d 846, 185 Pa. Super. 128, 1958.

A nolle prosequi which has been entered by district attorney with assent of court in writing cannot be retracted, set aside, canceled, or struck off, and bill of indictment revived for further process, unless permission of court is first obtained, and such cancellation or retraction is duly entered. Com. ex rel. Thor v. Ashe, 11 A.2d 173, 138 Pa.Super. 222, 1940.

The sentence of defendant who pleaded guilty to charge of automobile theft was invalid, where nolle prosequi had theretofore been entered with leave to strike it off, and no steps had been taken to strike off the nolle prosequi and reinstate the indictment. Id.

At common law nolle prosequi might be retracted at any time. Com. v. McLaughlin, 142 A. 213, 293 Pa. 218, 1928.

Nolle prosequi may be canceled so as to permit revival of proceedings on original bill. Id.

SUBCHAPTER D

MUNICIPAL POLICE JURISDICTION

Sec.

8951. Definitions.

8952. Primary municipal police jurisdiction.

8953. Statewide municipal police jurisdiction.

8954. Noncompliance with mandatory certification requirements.

Subchapter D was added by Act 1982, June 15, P.L. 512, No. 141, § 4, effective in 60 days.

Section 6 of said act was a general repealer.

§ 8951. Definitions

The following words and phrases when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Chief law enforcement officer." The head of a duly constituted municipal law enforcement agency which regularly provides primary police services to a political subdivision or, in the absence of any such municipal law enforcement agency, the commanding officer of the

Pennsylvania State Police installation which regularly provides primary police services to the political subdivision.

"Municipal police officer." Any natural person who is properly employed by a municipality, including a home rule municipality, as a regular full-time or part-time police officer.

"Primary jurisdiction." The geographical area within the territorial limits of a municipality or any lawful combination of municipalities which employs a municipal police officer.

"Training law." The act of June 18, 1974 (P.L. 359, No. 120), referred to as the Municipal Police Education and Training Law.¹

1982, June 15, P.L. 512, No. 141, § 4, effective in 60 days.

¹ 53 P.S. § 740 et seq.

§ 8952. Primary municipal police jurisdiction

Any duly employed municipal police officer shall have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office anywhere within his primary jurisdiction as to:

(1) Any offense which the officer views or otherwise has probable cause to believe was committed within his jurisdiction.

(2) Any other event that occurs within his primary jurisdiction and which reasonably requires action on the part of the police in order to preserve, protect or defend persons or property or to otherwise maintain the peace and dignity of this Commonwealth.

1982, June 15, P.L. 512, No. 141, § 4, effective in 60 days.

§ 8953. Statewide municipal police jurisdiction

(a) General rule.—Any duly employed municipal police officer who is within this Commonwealth, but beyond the territorial limits of his primary jurisdiction, shall have the power and authority to enforce the laws of this Commonwealth or otherwise perform the functions of that office as if enforcing those laws or performing those functions within the territorial limits of his primary jurisdiction in the following cases:

(1) Where the officer is acting pursuant to an order issued by a court of record or an order issued by a district magistrate whose magisterial district is located within the judicial district wherein the officer's primary jurisdiction is situated, or where the officer is otherwise acting pursuant to the requirements of

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the Pennsylvania Rules of Criminal Procedure, except that the service of an arrest or search warrant shall require the consent of the chief law enforcement officer, or a person authorized by him to give consent, of the organized law enforcement agency which regularly provides primary police services in the municipality wherein the warrant is to be served.

(2) Where the officer is in hot pursuit of any person for any offense which was committed, or which he has probable cause to believe was committed, within his primary jurisdiction and for which offense the officer continues in fresh pursuit of the person after the commission of the offense.

(3) Where the officer has been requested to aid or assist any local, State or Federal law enforcement officer or otherwise has probable cause to believe that the other officer is in need of aid or assistance.

(4) Where the officer has obtained the prior consent of the chief law enforcement officer, or a person authorized by him to give consent, of the organized law enforcement agency which provides primary police services to a political subdivision which is beyond that officer's primary jurisdiction to enter the other jurisdiction for the purpose of conducting official duties which arise from official matters within his primary jurisdiction.

(5) Where the officer is on official business and views an offense, or has probable cause to believe that an offense has been committed, and makes a reasonable effort to identify himself as a police officer and which offense is a felony, misdemeanor, breach of the peace or other act which presents an immediate clear and present danger to persons or property.

(6) Where the officer views an offense which is a felony, or has probable cause to believe that an offense which is a felony has been committed, and makes a reasonable effort to identify himself as a police officer.

(b) Limitation.—Nothing contained in subsection (a) shall be deemed to extend or otherwise enlarge a municipal police officer's power and authority to arrest any person for an offense unless specifically authorized by law.

(c) Relinquishing authority.—Whenever a municipal police officer exercises any power or authority over any person or event pursuant to the provisions of subsection (a)(3), (4), (5) or (6), the officer shall relinquish authority and control over any such person or

*See
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§ 8953

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Note 1

event upon the request of the chief law enforcement officer, or a person authorized by him to make the request, of the organized law enforcement agency which regularly provides primary police services in the municipality.

(d) Immunities and benefits preserved.—Any municipal police officer who exercises any power or authority granted under this section, and the employing municipality of the police officer, shall have the same immunities from liability as would be applicable if the actions were performed within the territorial boundaries of the officer's primary jurisdiction and the police officer shall be entitled to the same benefits of employment as the officer would possess if acting solely within his primary jurisdiction. Nothing in this section shall be construed to restrict the authority of any municipality to limit the exercise of any power or authority conferred on its police by this section.

(e) Existing and future municipal police service agreements preserved.—Nothing in this section shall be construed to restrict the authority of any municipality to maintain current or to enter into new cooperative police service agreements with another municipality or municipalities for purposes including, but not limited to, describing conditions of mutual aid, assigning liability and determining appropriate costs of these cooperative efforts.

1982, June 15, P.L. 512, No. 141, § 4, effective in 60 days.

Historical Note

Prior Laws:

1976, July 9, P.L. 586, No. 142, § 2 (42 Pa.C.S.A. § 8901).

1973, Nov. 2, P.L. 330, No. 109, § 1.
1963, Aug. 6, P.L. 511, No. 267, § 1 (19 P.S. § 11).

Notes of Decisions

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effect their objects and to promote justice. *Com. v. Holderman*, 425 A.2d 752, 284 Pa.Super. 161, 1981.

Members of the Capitol Police Department had the authority under The Administrative Code to stop (away from Commonwealth property) an individual they had observed conducting himself suspiciously on such property where ample evidence existed for them to conclude that criminal activity may have been afoot; they also had the power to arrest the individual under § 8901 of this title (repealed; now, this section) after the investigatory stop led to evidence of crime in plain view. *Com. v. Harrison*, 16 D. & C.3d 404, 1980.

1. Construction and application

71 P.S. § 646, governing powers of campus police officers, and § 8901 of this title (repealed; now, this section) governing power to make extraterritorial arrests, are not penal statutes and therefor must be liberally construed to

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2. Hot or fresh pursuit—In general

19 P.S. § 11 (repealed; now, this section) did not require that officer be in "hot" pursuit but contemplated "fresh pursuit." U. S. v. Getz, 381 F.Supp. 43, D.C.1974, affirmed 510 F.2d 971, certiorari denied 95 S.Ct. 1684.

Where police officers were in continuous pursuit of bank robbers for 35 minutes, arrest made beyond territorial limits of officers' jurisdiction was made "in pursuit" of the felons. Id.

Arrest made by police officers outside their political subdivision was legal where their pursuit of felons who committed robbery within political subdivision was fresh in that search began immediately upon hearing broadcast of robbery, continuous in that entire 30-minute period between notice of crime and arrest was spent in investigating robbery and searching for robbers; and uninterrupted in that no other crimes were reported or calls were received to take officers away from investigation and pursuit of robbers. Com. v. Brown, 444 A.2d 149, Super.1982.

Applicability of § 8901 of this title (repealed; now, this section) permitting police officer of political subdivision to arrest any person beyond territorial limits of such political subdivision for offense committed within such political subdivision if officer continued in pursuit of such person after commission of offense was not controlled by necessity and was not defeated by availability of other assistance, or by police knowledge of destination. Id.

19 P.S. § 11 (repealed; now, this section) permitting arrest outside of jurisdiction of arresting officers requires that police be in "pursuit" of persons who have committed crimes in their jurisdiction in order to make a valid arrest, and pursuit must begin both in the jurisdiction where the police are authorized to act and in that jurisdiction where the crime is committed. (Per Brosky, J., with one Justice concurring and three Justices concurring in the result.) Com. v. Fiume, 436 A.2d 1001, 292 Pa.Super. 54, 1981.

Where there was continuous pursuit by arresting officers from scene of crime to point of arrest, arrest was proper, even though made outside municipality. Com. v. Silvers, 428 A.2d 622, 286 Pa.Super. 161, 1981.

Police officer has authority to make arrest outside his jurisdiction only when in pursuit of felon or misdemeanor who has committed crime in his jurisdiction. Com. v. Anzalone, 410 A.2d 838, 269 Pa.Super. 549, 1979.

Where township police officer observed defendant's car drift through red traffic signal and followed the defendant for one to one and one-half miles, during which time defendant's driving was erratic, and officer then ordered defendant to pull into nearby gasoline station, which was beyond border of police officer's county, and officer at that time administered field test and arrested defendant for driving while under influence of intoxicating liquor, officer was authorized to make such arrest and evidence seized pursuant to such arrest was admissible, notwithstanding fact that officer pursued defendant for commission of summary offense and arrested defendant for commission of misdemeanor. Com. v. Robb, 352 A.2d 515, 238 Pa.Super. 62, 1975.

Where defendant was involved in a traffic accident within a city, near its boundary with a township, and the township police chief upon arrival at the scene of the accident ordered the cars and drivers out of the traffic lanes to a nearby location within the township, a city patrolman dispatched to the scene could arrest defendant in the township for driving under the influence, since the patrolman was in pursuit of defendant after commission of his offense. Com. v. Davis, 4 D. & C.3d 341, 1977.

19 P.S. § 11 (repealed; now, this section) did not require that the defendant had committed the precise offense for which he was arrested but only that he had committed some offense authorizing pursuit. Com. v. Fee, 97 Dauph. 157, 1975.

3. — University police, hot or fresh pursuit

Where state university campus police officers observed defendant making improper left turn from road situated within university campus onto road located outside the campus, arrest of defendant which occurred after officers pursued defendant through the intersection and stopped his vehicle outside the campus was lawful. Com. v. Holderman, 425 A.2d 752, 234 Pa.Super. 161, 1981.

Note 3

State university campus police officer may make a warrantless arrest outside the boundaries of the campus while in fresh pursuit of a summary offender. Id.

4. Unlawful arrests

Where defendant did not allege or prove that his presence before trial court resulted from some outrageous police conduct, defendant would not be discharged even though his extraterritorial arrest was illegal. (Per Brosky, J., with one Justice concurring and three Justices concurring in the result.) Com. v. Fiume, 436 A.2d 1001, 292 Pa. Super. 54, 1981.

Extraterritorial arrest of defendant in hospital to which defendant and passengers in defendant's automobile had been sent following accident was illegal in view of fact that arrest resulted from an investigation which occurred outside jurisdiction in which arresting officer was statutorily authorized to make arrests. (Per Brosky, J., with one Justice concurring and three Justices concurring in the result.) Id.

City police and county police officers could not empower police officer from another county to perform an arrest he was otherwise without authority to make. Com. v. Anzalone, 410 A.2d 838, 269 Pa. Super. 549, 1979.

Mercer County police officer, who arrested defendant in Lawrence County and who did not have any assistance from Lawrence County authorities in arresting defendant, lacked authority to arrest defendant, who had not committed a crime in Mercer County; accordingly, evidence seized as result of arrest should have been suppressed. Id.

Trial court should have awarded defendant a new trial after he raised issue of unlawful arrest due to officer's lack of authority to make arrest outside his own municipality in his posttrial motions, despite fact that issue had not been previously raised at suppression hearing, which was held prior to publication in advance sheets of Superior Court decision in Commonwealth v. Troutman, 223 Pa. Super. 509, 302 A.2d 430 (1973) holding such arrests unlawful

unless made of a suspected felon and after hot pursuit. Com. v. Babie, 385 A.2d 530, 254 Pa. Super. 72, 1978.

Tacit agreement between police departments of adjoining municipalities permitting police officers of one municipality to arrest in the other did not confer authority to make such arrests because only municipalities could enter into such agreements. Id.

Arrest of defendant and his codefendant by officer of adjoining municipality, after hot pursuit originating outside officer's municipality, was unlawful because officer had no authority to arrest anyone outside his own municipality. Id.

5. Arrest warrants

Arrest of defendant in borough of Parkside by city policemen, pursuant to arrest warrant issued by Chester City magistrate, was not illegal because effectuated beyond territorial jurisdiction of arresting officer. Com. v. England, 375 A.2d 1292, 474 Pa. 1, 1977.

Provision of 53 P.S. § 37005 which specifically concerns itself with warrantless arrests for certain misdemeanors made within territorial limits of officer's jurisdiction, and which does not exclude alternative authorizations for arrest, was not applicable to defendant's arrest for murder pursuant to arrest warrant issued by city magistrate outside territorial jurisdiction of arresting officer. Id.

City police who executed arrest warrant on defendant outside city were acting within their authority when they arrested defendant. Com. v. Davis, 351 A.2d 642, 466 Pa. 102, 1976.

6. Search warrants

Although township police officers had no power to act as such in another township and could not serve warrant for search of premises in such other township, warrant could be issued to such officers for service by other township's police and such officers could be affiants for such warrant. Com. v. Kunkel, 408 A.2d 475, 268 Pa. Super. 299, 1979.

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§ 8954. Noncompliance with mandatory certification re-
quirements

Any person employed as a municipal police officer who is subject
to the mandatory certification requirements of the training law and
fails to obtain the required certification from the Commissioner of the
Pennsylvania State Police within the time limits provided by law shall
cease to be empowered or authorized to function as a municipal police
officer for any purpose whatsoever.

1982, June 15, P.L. 512, No. 141, § 4, effective in 60 days.

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§ 9135. Arrest without a warrant

The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge or issuing authority with all practicable speed, and complaint must be made against him under oath setting forth the ground for the arrest as in section 9134 (relating to arrest prior to requisition), and thereafter his answer shall be heard as if he had been arrested on a warrant.

1976, July 9, P.L. 586, No. 142, § 2, effective June 27, 1978.

Historical Note

Uniform Law:

This section is similar to § 14 of the Uniform Criminal Extradition Act. See 11 Uniform Laws Annotated, Master Edition.

Official Source Note:

Reenactment of act of July 8, 1941 (P.L. 288), § 14 (19 P.S. § 191.14).

Prior Laws:

1941, July 8, P.L. 288, No. 133, § 14 (19 P.S. § 191.14).

Library References

Extradition ⇐ 37.

C.J.S. Extradition §§ 12, 18, 19.

Notes of Decisions

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For Notes of Decisions in other states to similar sections of the Uniform Criminal Extradition Act, see 11 Uniform Laws Annotated, Master Edition.

1. Construction and application

Where earlier request for extradition on same charge of prison breach had resulted in petitioner's discharge because of procedural irregularities, principles of double jeopardy and res judicata did not prevent filing of second extradition proceeding on same charge. *Com. ex rel. McCaine v. Gedney*, 352 A.2d 72, 237 Pa.Super. 499, 1975.

2. Purpose

The purpose of provision of Uniform Extradition Act, prohibiting delivery of person arrested upon extradition warrant to agent of demanding state, unless he is first taken forthwith before judge of a court of record and informed of his rights and afforded an opportunity to apply for writ of habeas corpus, is to assure a judicial hearing to accused before his return to demanding state, and the same purpose is accomplished under section of act providing for arrest of fugitive from justice without a warrant, which requires that he be taken before a judge or magistrate where his answer shall be heard as if he had been arrested on a warrant. *Com. ex rel. Huey v. Dye*, 96 A.2d 129, 373 Pa. 508, 1953.

3. Arrest, generally

Arrest of a fugitive from justice not charged with a crime for which he

PENNSYLVANIA
CONSOLIDATED
STATUTES



TITLE 53

MUNICIPALITIES GENERALLY

(General Local Government Code)

1996 EDITION

Containing all provisions enacted through Act 1996-202
of the 1996 Legislative Session

Prepared and published under authority of Title 1,
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SUBPART C
EXECUTIVE DEPARTMENTS, OFFICERS AND EMPLOYEES

Chapter

21. Employees

CHAPTER 21
EMPLOYEES

Subchapter

A. through C. (Reserved)

D. Municipal Police Education and Training

Enactment. Chapter 21 was added December 19, 1996, P.L.1158, No.177, effective in 60 days.

SUBCHAPTERS A through C
(Reserved)

SUBCHAPTER D
MUNICIPAL POLICE EDUCATION AND TRAINING

Sec.

- 2161. Establishment of program and scope of subchapter.
- 2162. Definitions.
- 2163. Commission members.
- 2164. Powers and duties of commission.
- 2165. Meetings and quorum of commission.
- 2166. Applicability to civil service laws.
- 2167. Police training.
- 2168. Automatic certification.
- 2169. In-service training by existing personnel.
- 2170. Reimbursement of expenses.
- 2171. Payment of certain county costs.

§ 2161. Establishment of program and scope of subchapter.

(a) **Municipal police officers' education and training program.**—The commission shall establish a municipal police officers' education and training program in accordance with the provisions of this subchapter. The administration of this program shall be the responsibility of the Pennsylvania State Police.

(b) **Scope of subchapter.**—This subchapter applies to all municipalities.

§ 2162. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“**Certification.**” The assignment of a certification number to a police officer after successful completion of a mandatory basic training course or receipt of a waiver of basic training from the commission and successful

completion of mandatory in-service training. Certification is for a period of two years.

"College." A college which has a campus police department, as used in section 2416 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, certified by the Office of Attorney General as a criminal justice agency under the definition of "criminal justice agency" in 18 Pa.C.S. § 9102 (relating to definitions). The term does not include the State System of Higher Education and its member institutions.

"Commission." The Municipal Police Officers' Education and Training Commission.

"Commissioner." The Commissioner of the Pennsylvania State Police.

"Police department." Any of the following:

(1) A public agency of a political subdivision having general police powers and charged with making arrests in connection with the enforcement of the criminal or traffic laws. This paragraph includes the sheriff's office in a county of the second class.

(2) A campus police or university police department, as used in section 2416 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, certified by the Office of Attorney General as a criminal justice agency under the definition of "criminal justice agency" in 18 Pa.C.S. § 9102 (relating to definitions). This paragraph does not include a campus police or university police department of the State System of Higher Education and its member institutions.

"Police officer." Any full-time or part-time employee of a city, borough, town, township, campus police or university police or county police department assigned to criminal or traffic law enforcement duties; any deputy sheriff of a county of the second class; and, for the purpose of training only, security officers of a first class city housing authority. The term excludes persons employed to check parking meters or to perform only administrative duties and auxiliary and fire police.

"School." A training school or academy which provides a basic police training course within the functional organization of a police department or departments or any educational facility in this Commonwealth.

"University." A university which has a campus police department, as used in section 2416 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, certified by the Office of Attorney General as a criminal justice agency under the definition of "criminal justice agency" in 18 Pa.C.S. § 9102 (relating to definitions). The term does not include the State System of Higher Education and its member institutions.

§ 2163. Commission members.

(a) **Selection.**—The commission shall be composed of 20 members as follows:

(1) The following members shall serve by virtue of their office:

(i) The Commissioner of the Pennsylvania State Police who shall serve as chairman of the commission.

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(ii) The Secretary of Community Affairs.

(iii) The Attorney General.

(iv) The police commissioner of a city of the first class or his designee.

(2) The following members shall be appointed by the President pro tempore of the Senate and the Speaker of the House of Representatives:

(i) A member of the Senate.

(ii) A member of the House of Representatives.

(3) The following members shall be appointed by the Governor.

(i) A borough official, a first class township official, a second class township official and a city official.

(ii) Four incumbent chiefs of police from the various municipalities of this Commonwealth, at least one to be a chief of a borough police department, at least one to be a chief of a township police department and at least one to be a chief of a city police department.

(iii) One Federal Bureau of Investigation special agent-in-charge.

(iv) One educator qualified in the field of law enforcement.

(v) One member representing the public at large.

(vi) Two noncommissioned police officers.

(vii) A director of one of the certified training schools.

(b) **Terms of office.**—All members of the commission appointed by the Governor shall serve for a period of three years. Any member of the commission, immediately upon termination of holding the position by virtue of which the member was eligible for membership or appointed as a member of the commission, shall cease to be a member of the commission.

(c) **Vacancies.**—A member appointed to fill a vacancy not created by the expiration of a term shall be appointed for the unexpired term of the member whom he is to succeed in the same manner as the original appointment.

(d) **Compensation and expenses.**—The members of the commission shall serve without compensation but shall be reimbursed the necessary and actual expenses incurred in attending the meetings of the commission and in the performance of their duties under this subchapter.

(e) **Removal from office.**—Members of the commission may be removed by the Governor for cause after written notice from the Governor.

(f) **Affiliation.**—The designated public member may not at any time have been a police officer or have been affiliated with a police department or training school.

References in Text. The Secretary of Community Affairs, referred to in subsec.

(a), was abolished by Act 58 of 1996 and the functions were transferred to the Secretary of Community and Economic Development.

§ 2164. Powers and duties of commission.

The powers and duties of the commission shall be as follows:

(1) To establish and administer the minimum courses of study for basic and in-service training for police officers and to revoke an officer's certification when an officer fails to comply with the basic and in-service

training requirements or is convicted of a criminal offense or the commission determines that the officer is physically or mentally unfit to perform the duties of his office.

(2) To approve or revoke the approval of any school which may be utilized to comply with the educational and training requirements as established by the commission.

(3) To establish the minimum qualifications for instructors, to approve or revoke the approval of any instructor and to develop the requirements for continued certification.

(4) To promote the most efficient and economical program for police training by utilizing existing facilities, programs and qualified Federal, State and local police personnel.

(5) To make an annual report to the Governor and to the General Assembly concerning the administration of the Municipal Police Officers' Education and Training Program and the activities of the commission, together with recommendations for executive or legislative action necessary for the improvement of law enforcement and the administration of justice.

(6) To require every police officer to attend a minimum number of hours of in-service training as provided for by regulation, unless the officer's employer files a show cause document with the commission requesting additional time for the officer to comply with the in-service training requirements. Approval of this request shall be made by the commission on a case-by-case basis.

(7) To require all police officers to undergo a background investigation to determine the individual's suitability for employment as a police officer. This investigation shall be completed prior to the employment of the officer and shall include a criminal history check, a credit check, personal interviews and any other applicable means of determining eligibility. An applicant who has been convicted of a felony or serious misdemeanor shall not be eligible for employment as a police officer.

(8) To require minimum standards for physical fitness, psychological evaluation and education as prerequisites to employment as a police officer.

(9) To appoint an executive director to administer the training program established by this subchapter. The position of executive director shall be filled by the commission which shall select the best qualified person from a list of three persons nominated by the chairman. The person who receives a simple majority of those members present and voting shall become the executive director. If the commission rejects all nominees, then the process shall be repeated until a person is selected. The executive director shall be directly responsible to the commission and may be dismissed only by two-thirds vote of the commission. The executive director shall employ a sufficient staff, including professional,

administrative and clerical personnel, to perform the tasks of the office, including the preparation of an annual budget.

(10) To consult and cooperate with universities, colleges, community colleges and institutes for the development of specialized courses for police officers.

(11) To consult and cooperate with departments and agencies of this Commonwealth and other states and the Federal Government concerned with police training.

(12) To certify police officers who have satisfactorily completed basic educational and training requirements as established by the commission and to issue appropriate certificates to those police officers.

(13) To visit and inspect approved schools at least once a year.

(14) To make such rules and regulations and to perform such other duties as may be reasonably necessary or appropriate to implement the education and training program for police officers.

(15) To grant waivers of mandatory basic training to police officers who have successfully completed previous equivalent training or who have acceptable full-time police experience, or both.

Cross References. Section 2164 is referred to in sections 2168, 2169 of this title.

§ 2165. Meetings and quorum of commission.

The commission shall meet at least four times each year. Special meetings may be called by the chairman of the commission or upon written request of five members. A quorum shall consist of 11 members.

§ 2166. Applicability to civil service laws.

This subchapter shall not be construed to exempt any police officer or other officer or employee from the provisions of the existing civil service or tenure laws.

§ 2167. Police training.

(a) **General rule.**—All municipalities of this Commonwealth or groups of municipalities acting in concert and all colleges and universities shall be required to train all members of their police departments pursuant to this subchapter prior to their enforcing criminal laws, enforcing moving traffic violations under Title 75 (relating to vehicles) or being authorized to carry a firearm.

(b) **Ineligibility for compensation.**—Any person hired as a police officer by any municipality or group of municipalities acting in concert or by any college or university shall be ineligible to receive any salary, compensation or other consideration for the performance of duties as a police officer unless the person has met all of the requirements as established by the commission and has been duly certified as having met those requirements by the commission.

(c) **Penalty.**—Any official of any municipality or of any college or university who orders, authorizes or pays as salary to a person in violation

of the provisions of this subchapter commits a summary offense and shall, upon conviction, be sentenced to pay a fine of \$100 or be imprisoned for a term not to exceed a period of 30 days. The commission may stop payment of all funds paid or payable to municipalities under this subchapter for any violation of this subchapter. It shall notify the State Treasurer to discontinue disbursement of any State funds until a municipality is in compliance with this subchapter.

§ 2168. Automatic certification.

(a) **General rule.**—All police officers, including deputy sheriffs in counties of the second class, hired prior to June 18, 1974, shall be automatically certified for basic training but shall be required to complete the in-service training as set forth in section 2164(7) (relating to powers and duties of commission).

(b) **Campus or university police.**—Any campus or university police officer who, as of the effective date of this subsection, has successfully completed a basic training course similar to that required under this subchapter shall, after review by the commission, be certified as having met the basic training requirements of this subchapter. Any campus or university police officer who, as of the effective date of this subsection, has not successfully completed a basic training course similar to that required under this subchapter which qualifies the police officer for certification under this subsection shall be able to perform the duties of a campus or university police officer until certified by the commission, but no longer than one year from the effective date of this subsection.

(c) **Deputy sheriffs in counties of the second class.**—Deputy sheriffs in counties of the second class who have successfully completed the basic training course under this subchapter prior to the effective date of this subsection shall be assigned a certification number under this subchapter.

§ 2169. In-service training by existing personnel.

The requirements of section 2164(7) (relating to powers and duties of commission) shall apply to every police officer.

§ 2170. Reimbursement of expenses.

(a) **General rule.**—The commission shall provide for reimbursement to each municipality of the entire amount of the allowable tuition and the ordinary and necessary living and travel expenses incurred by their police officers while attending certified municipal police basic training schools if the municipality adheres to the training standards established by the commission. The regular salary of police officers while attending approved schools shall be paid by the employing municipality. The commission shall reimburse the employing municipality for 60% of the regular salaries of police officers while attending schools approved under this subchapter. The commission shall require written documentation of all expenses incurred by municipalities relating to the training of municipal police officers for the purposes of reimbursement by the commission. All municipalities shall annually audit

these funds as part of their annual audit and submit a copy of the audit to the commission. Failure to perform the audit and submit a copy of it to the commission shall render the municipality in violation of this subchapter.

(b) **Grants for training other police.**—The commission may approve in-service training grants for actual expenses incurred by municipalities for the providing for nonmandatory training programs to police officers in accordance with this subchapter.

(c) **Application for funding.**—All municipalities of this Commonwealth or groups of municipalities acting in concert may make application to the commission for funding pursuant to the provisions of this subchapter. The application shall be accompanied by a certified copy of a resolution adopted by its governing body. The resolution shall provide that, while receiving any State funds pursuant to this subchapter, the municipality agrees to adhere to the standards for training established by the commission. The application shall contain any information that the commission requests.

(d) **Subsequent employment with another municipality.**—If a police officer, within two years following certification, terminates his employment with the municipality by which the officer was employed at the time he was certified as having met the commission's requirement and subsequently obtains employment as a police officer with another municipality, the municipality which employs the previously certified police officer shall reimburse the municipality which formerly employed the police officer for the nonreimbursable portion of the salary paid to the police officer while complying with the provisions of this subchapter.

(e) **Payment of mandatory in-service training.**—The commission may pay for the cost of mandatory in-service training for all police officers to the extent determined by the commission. However, a college or university shall not be eligible for reimbursement of any expense under this section incurred during campus or university police officer training.

§ 2171. Payment of certain county costs.

Counties of the second class shall be liable for costs incurred for the certification of deputy sheriffs. The costs shall not exceed the sum per police officer assessed against municipalities.

References in Text. The Department of Community Affairs, referred to in this section, was abolished by Act 58 of 1996 and its functions were transferred to the Department of Community and Economic Development.

§ 2952. Notice of election.

At least 30 days' notice of each election provided for under this subpart shall be given by the clerk or secretary of the municipality. A copy of the notice shall be posted at each polling place on the day of the election and shall be published in at least one newspaper of general circulation in the municipality once a week for three consecutive weeks during the period of 30 days prior to the election.

SUBCHAPTER E
GENERAL POWERS AND LIMITATIONS OF
HOME RULE CHARTER MUNICIPALITIES

Sec.

- 2961. Scope of powers of home rule.
- 2962. Limitation on municipal powers.
- 2963. Exercise of municipal powers by home rule county.
- 2964. General powers of municipalities.
- 2965. Recording and filing of charter.
- 2966. Continuation of office of existing elective officials.
- 2967. Repeal of home rule charter.

§ 2961. Scope of powers of home rule.

A municipality which has adopted a home rule charter may exercise any powers and perform any function not denied by the Constitution of Pennsylvania, by statute or by its home rule charter. All grants of municipal power to municipalities governed by a home rule charter under this subchapter, whether in the form of specific enumeration or general terms, shall be liberally construed in favor of the municipality.

§ 2962. Limitation on municipal powers.

(a) Powers granted by statute.—With respect to the following subjects, the home rule charter shall not give any power or authority to the municipality contrary to or in limitation or enlargement of powers granted by statutes which are applicable to a class or classes of municipalities:

- (1) The filing and collection of municipal tax claims or liens and the sale of real or personal property in satisfaction of them.
- (2) The procedures in the exercise of the powers of eminent domain and the assessment of damages and benefits for property taken, injured or destroyed.
- (3) Boundary changes.
- (4) Regulation of public schools.
- (5) The registration of electors and the conduct of elections.
- (6) The fixing of subjects of taxation.
- (7) The fixing of the rates of nonproperty or personal taxes levied upon nonresidents.

(8) The assessment of real or personal property and persons for taxation purposes.

(9) Defining or providing for the punishment of any felony or misdemeanor.

(10) Municipal planning under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code.

(b) **Taxing power.**—Unless prohibited by the Constitution of Pennsylvania, the provisions of this subpart or any other statute or its home rule charter, a municipality which has adopted a home rule charter shall have the power and authority to enact and enforce local tax ordinances upon any subject of taxation granted by statute to the class of municipality of which it would be a member but for the adoption of a home rule charter at any rate of taxation determined by the governing body. No home rule municipality shall establish or levy a rate of taxation upon nonresidents which is greater than the rate which a municipality would have been authorized to levy on nonresidents but for the adoption of a home rule charter. The governing body shall not be subject to any limitation on the rates of taxation imposed upon residents.

(c) **Prohibited powers.**—A municipality shall not:

(1) Engage in any proprietary or private business except as authorized by statute.

(2) Exercise powers contrary to or in limitation or enlargement of powers granted by statutes which are applicable in every part of this Commonwealth.

(3) Be authorized to diminish the rights or privileges of any former municipal employee entitled to benefits or any present municipal employee in his pension or retirement system.

(4) Enact or promulgate any ordinance or regulation with respect to definitions, sanitation, safety, health, standards of identity or labeling pertaining to the manufacture, processing, storage, distribution and sale of any foods, goods or services subject to any Commonwealth statutes and regulations unless the municipal ordinance or regulation is uniform in all respects with the Commonwealth statutes and regulations thereunder. This paragraph does not affect the power of any municipality to enact and enforce ordinances relating to building codes or any other safety, sanitation or health regulation pertaining thereto.

(5) Enact any provision inconsistent with any statute heretofore enacted prior to April 13, 1972, affecting the rights, benefits or working conditions of any employee of a political subdivision of this Commonwealth.

(d) **Reduction of police force.**—Notwithstanding any provision of this subpart or any other statute to the contrary, any municipality that is or was a city of the second class A may reduce its police force or its firefighting force for economic reasons, as determined by ordinance.

(e) **Statutes of general application.**—Statutes that are uniform and applicable in every part of this Commonwealth shall remain in effect and

shall not be changed or modified by this subpart. Statutes shall supersede any municipal ordinance or resolution on the same subject.

(f) **Regulation of business and employment.**—A municipality which adopts a home rule charter shall not determine duties, responsibilities or requirements placed upon businesses, occupations and employers, including the duty to withhold, remit or report taxes or penalties levied or imposed upon them or upon persons in their employment, except as expressly provided by statutes which are applicable in every part of this Commonwealth or which are applicable to all municipalities or to a class or classes of municipalities. This subsection shall not be construed as a limitation in fixing rates of taxation on permissible subjects of taxation.

(g) **Regulation of firearms.**—A municipality shall not enact any ordinance or take any other action dealing with the regulation of the transfer, ownership, transportation or possession of firearms.

(h) **Levying taxes.**—This section does not limit or take away any right of a municipality which adopts a home rule charter from levying any tax which it had the power to levy had it not adopted a home rule charter.

(i) **Establishment of rates of taxation.**—No provision of this subpart or any other statute shall limit a municipality which adopts a home rule charter from establishing its own rates of taxation upon all authorized subjects of taxation except those specified in subsection (a)(7).

(j) **Retroactive fee increase prohibited.**—A municipality which adopts a home rule charter may not retroactively increase any fee or charge for any municipal service which has been provided.

§ 2963. Exercise of municipal powers by home rule county.

A county which has adopted a home rule charter shall not at any time thereafter exercise within any municipality in the county a power or function being exercised by that municipality, except under all of the following conditions:

(1) The exercise of such power or function by the county shall be authorized by ordinance of the governing body of the county, which ordinance, in addition to such other filings as may be required by law, shall be filed with the clerk or secretary of each local municipality within the county within 30 days of its enactment.

(2) The transfer of a power or function to the county from any local municipality within the county, as authorized by the ordinance, shall not become effective for at least 15 months from the date of adoption of the ordinance.

(3) Within 120 days from the adoption of the ordinance, the governing body of any local municipality, exercising on the date of the adoption of the ordinance any power or function authorized by ordinance of the county to be exercised by the county, may elect by ordinance to be excluded from the county's exercise of the power or function. Within 60 days after the date of adoption by the governing body of a local municipality of an ordinance excluding the local municipality from the exercise by the county

of a power or function or in the absence of any action of the governing body, the qualified electors of the local municipality may initiate a petition requiring that the question of inclusion or exclusion from the exercise of the power or function by the county be submitted to a referendum of the electorate at the election held on the date of the next ensuing primary, municipal or general election not less than 60 days after the filing of the initiative petition with the county board of elections. The initiative and referendum procedures set forth in this subchapter or Subchapter F (relating to general provisions and limitations for optional plan municipalities) shall be followed, except where the same may be inconsistent with any of the provisions of this section. In the event the county determines there is insufficient interest or that it is not feasible to establish the proposed municipal function or power as provided for in the ordinance passed by the county, the county may repeal the county ordinance prior to the effective date of the ordinance.

(4) The governing body of any local municipality may by ordinance, subsequent to the time limit for action as set forth in paragraph (3), request the county to be included in a municipal power or function being exercised by the county. However, the county may specify the terms and conditions for acceptance or denial of the power or function requested by the local municipality to be exercised by the county, which shall be subject to court review if the local municipality determines that the terms and conditions as set forth by the county are unreasonable.

(5) No assessment, tax, fee or levy in the nature thereof made by the governing body of a county in support of the exercise of a power or function as authorized by ordinance of the county shall be applicable in any local municipality within the county which is providing the same municipal power or function.

(6) If the electors of a local municipality by referendum vote to exclude the local municipality from the exercise of a power or function by the county, a petition may not be initiated nor may a referendum be held on the same question more often than every five years thereafter.

(7) A local municipality may, by action of the governing body or by initiative and referendum, withdraw from a power or function which it was exercising at the date of the adoption of the county home rule charter which it transferred to a county, provided it again assumes and exercises the power or function, but may not vote on the question of withdrawing sooner than four years from the time the county assumed the power or function of the local municipality.

§ 2964. General powers of municipalities.

Municipalities adopting a home rule charter shall have the power to:

- (1) Sue and be sued.
- (2) Have a corporate seal.
- (3) Contract and be contracted with.
- (4) Buy, sell, lease, hold and dispose of real and personal property.

- (5) Appropriate and expend moneys.
- (6) Adopt, amend and repeal any ordinances and resolutions as may be required.

§ 2965. Recording and filing of charter.

The municipal clerk or secretary shall have the new charter as approved by the qualified electors recorded in the ordinance books and shall also file a certified copy of the charter with the Department of State, the Department of Community Affairs and the county board of elections.

References in Text. The Department of Community Affairs, referred to in this section, was abolished by Act 58 of 1996 and its functions were transferred to the Department of Community and Economic Development.

§ 2966. Continuation of office of existing elective officials.

All elective officials in office at the time of the adoption of a home rule charter shall continue in office until their terms expire.

§ 2967. Repeal of home rule charter.

(a) *General rule.*—The procedure for repeal of a home rule charter shall be the same as for adoption of a home rule charter. Whenever the electors, by a majority vote of those voting on the question, vote in favor of repeal of a home rule charter and the establishment of a particular form of government, the municipality shall be governed under the form of government selected by the electors from the first Monday of January following the municipal election at which the elective officials of the form of government selected by the electors shall have been elected. The government study commission shall provide in its report for the new form of government to be established.

(b) *Election of new officials.*—The elective officials under a new form of government selected by the electors shall be elected at the first municipal election held after the referendum on the repeal of a home rule charter or at a later date as may be specified by the commission in its report.

**SUBCHAPTER F
GENERAL PROVISIONS AND LIMITATIONS FOR
OPTIONAL PLAN MUNICIPALITIES**

Sec.

- 2971. Law applicable to optional plan.
- 2972. Recording and filing of plan.
- 2973. Scope of powers of optional plan.
- 2974. Limitation on powers of optional plan.

Cross References. Subchapter F is referred to in sections 2963, 3001, 3031, 3041, 3051, 3071, 3091, 3095 of this title.

§ 2971. Law applicable to optional plan.

Upon the adoption by the electors of any of the optional plans of government as set forth in this subpart, the municipality shall thereafter be governed by the plan adopted and by the provisions of general law applicable to that class or classes of municipality except as otherwise provided in this