

NORTH CAROLINA GENERAL ASSEMBLY
1979 SESSION

CHAPTER 449
SENATE BILL 457

AN ACT TO AMEND CHAPTER IV, SUBCHAPTER D OF THE CHARTER OF
THE CITY OF CHARLOTTE RELATING TO THE CIVIL SERVICE BOARD.

The General Assembly of North Carolina enacts:

Section 1. Chapter IV, Subchapter D of the Charter of the City of Charlotte as contained in Section 1 of Chapter 713 of the 1965 Session Laws, as amended, is hereby further amended by deleting said Subchapter in its entirety and substituting in lieu thereof the following:

"Subchapter D.

"Civil Service.

"Sec. 4.61. There is hereby continued a Civil Service Board for the City of Charlotte, to consist of five members, to be appointed by the City Council. The members of said Board shall be the ones now serving under the provisions of Chapter 124 of the Private Laws of 1929, as amended, and their terms of office shall expire as provided in said act; and at the end of each term, the City Council shall appoint a member of said Board to serve for a term of three years. In case of a vacancy on the Civil Service Board, the City Council shall fill such vacancy for the unexpired term of said member. A majority of said Board shall constitute a quorum. Any member who fails to attend at least seventy-five percent (75%) of the regular and special meetings and hearings held by the Board during any one-year period shall be automatically removed from said Board. Vacancies resulting from a member's failure to attend the required number of meetings or hearings shall be filled as provided herein.

- (1) The members of the Civil Service Board shall be electors of the City of Charlotte and shall take an oath to faithfully perform their duties. The members of said Board shall be subject to removal from office by a two-thirds vote of the City Council, with or without cause.
- (2) The Board shall establish and fix requirements for applicants for employment in the Fire and Police Departments. All applicants shall be subjected to examination by or at the direction of said Board. The examination shall be competitive and free to all persons meeting the requirements of the Board, subject to reasonable limitations as to residence, age, health and moral character; provided, (a) that applicants for employment in the Fire Department shall be at least 18 years of age and shall not have attained their 30th birthday, and (b) that applicants for employment in the Police Department shall be at

least 20 years of age and shall not have attained their 35th birthday. The City Council may, by ordinance, at any time and from time to time, fix and establish such lesser maximum age limits for applicants as may be consistent with the needs of the respective departments. The examination for applicants shall be practical in character and shall be limited to matters which fairly test the relative ability of the applicant to discharge the duties of the position applied for and shall include tests of physical qualifications and health, but no applicant shall be examined concerning his political or religious opinions or affiliations.

- (3) Notice of time and place of every examination shall be given by the Board for one week preceding such examination in a newspaper published in the city, and such notice shall be posted in a conspicuous place in the office of the Board, or its designee, for at least two weeks preceding such examination.
- (4) The Board shall prepare and keep a register of persons passing the examination, graded according to the respective showings upon the examination, which register shall determine the appointments to be made in each of the departments under the eligibility rules and regulations established by the Board.
- (5) The terms 'officer or employee' or 'officer' as used in this Subchapter shall mean sworn officers with regard to the Police Department and shall mean uniformed personnel with regard to the Fire Department.
- (6) No officer or employee of the Fire and Police Departments shall take any part in any election or political function while in uniform or on duty other than that of exercising his right to vote. Any officer or employee found by the Board to have violated this provision may be dismissed from service by the Board, or the Board may adjudge other punishment.
- (7) a. Relieving a member from duty. The Chief of either the Fire or Police Department, or the officer in charge in the absence of the Chief, may relieve an officer or employee of the respective departments of all duties, and the Chief, or the officer in charge in the absence of the Chief, shall provide such officer or employee with a written complaint setting forth the department rules or regulations the officer or employee is charged with violating, along with a statement of the basic facts supporting the charge, and the Chief, or the officer in charge in the absence of the Chief, shall simultaneously cite such officer to the Board for an automatic hearing as set forth herein with a recommendation that such officer be dismissed from the department. Any officer so relieved of duty shall not receive any pay or be assigned any duties until the Board has acted upon the charges at the conclusion of its hearing. In the alternative, the Chief, or the officer in charge in the absence of

the Chief, may cite such officer to the Board for an automatic hearing in accordance with the foregoing procedure, but without relieving the officer from duty.

- b. Dismissal or suspension of officer. The Chief of either or Police Department, or the officer in charge in the absence of the Chief, may suspend without pay for a period not exceeding 30 days, any officer or employee of the respective departments. In suspending such officer, the Chief, or the officer in charge in the absence of the Chief, will provide such officer with a written complaint setting forth the department rules or regulations the officer is charged with violating, along with a statement of the basic facts supporting the charge. Any such officer so suspended may appeal to the Board by giving written notice of appeal to the Board with a copy to the Chief of such officer's department. Such notice of appeal must be received by the Board within a period of 15 days from the date of the officer's suspension, whereupon a hearing before the Board on such appeal shall be conducted as provided in subparagraph c. Any officer suspended without pay shall receive no pay for the period of suspension unless the officer is found by the Board not to have committed the offense, or unless the Board adjudges a different period of suspension without pay, in which case the officer shall receive no pay for such different period of suspension.
- c. Appeal hearings. Upon receipt of a citation from either Chief or upon receipt of notice of appeal from any officer or employee of the Fire or Police Department, the Board shall hold a hearing not less than 15 days nor more than 30 days from the date the notice of appeal, or the citation, is received by the Board, and shall promptly notify the officer of the hearing date. In the event an officer desires a hearing at a date other than that set by the Board within the period set forth above, such officer may file a written request for a change of hearing date setting forth the reasons for such request, and the Chairman of the Board is empowered to approve or disapprove such request; provided, that such request must be received by the Board at least seven days prior to the date set for the hearing. For good cause, the Chairman of the Board may set a hearing date other than within the period set forth above, or may continue the hearing from time to time.

In the conduct of its hearing, each member of the Board shall have the power to subpoena witnesses, administer oaths and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board may apply to the General

Court of Justice, Superior Court Division, for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all parties. If any person, while under oath at a hearing of the Board, willfully swears falsely, such person shall be guilty of a misdemeanor. Both the officer and the Police or Fire Department shall have the right to present relevant evidence to the Board at its hearing. The officer must be furnished with a copy of the charges which have been brought against an officer and which will be heard by the Board. The officer shall be required to answer questions from members of the Board or the Board's counsel; however, the officer may refuse to answer any question where the answer might incriminate the officer with respect to any criminal violation of State or federal laws. The officer may be present at all evidentiary portions of the hearing, may retain counsel to represent the officer at the hearing, and may cross-examine those witnesses who testify against the officer. The officer will be given the right to an open or closed hearing as he may elect. After the evidentiary portion of the hearing is concluded, the Board will consider the evidence in closed session, and the Board will make findings of facts which will be provided to the officer together with a statement of the action taken by the Board on the basis of its findings of fact.

- d. General powers of the Board. (1) If, at the completion of its hearing, the Board shall find that an officer has not committed the offense or offenses with which such officer has been charged, the Board may restore such officer to full duty with reimbursement of any pay lost during the period the officer was suspended or relieved from duty. (2) If, at the completion of its hearing, the Board shall find that an officer has committed the offense or offenses with which such officer has been charged, the Board may issue an order (a) dismissing such officer; (b) suspending such officer, without pay, for a period not exceeding 90 days; or (c) imposing such other lesser punishment as it deems just and proper. The Board may suspend its dismissal or suspension without pay, and place such officer on probation for a period not to exceed one year upon such reasonable conditions as the Board may deem appropriate. The Board may order the department to furnish to the Board, during the period of probation, such information regarding the officer as the Board deems necessary.
- e. Appeal from action of Board. Any officer may appeal from any order of the Board to the Superior Court of Mecklenburg County by giving notice of appeal, in writing, to the Superior Court within 10 days after the entry of the order. Assignments of error must be filed with the Court and served upon the Board

within 30 days after the entry of the order. The appeal to the Superior Court will be upon the record of the proceedings before the Board at its hearing.

- f. Incapability of performance. In those situations where the Chief of the Fire or Police Department determines that an officer of the respective department is permanently disabled, the Chief may cite that officer to the Board with a statement of the facts relating to the inability of such officer to perform his duties, and the Board shall, upon receipt of any such citation, hold a hearing as provided for herein, and the Board may dismiss such officer if it finds that such officer can no longer perform his duty. Permanently disabled as used in this paragraph shall mean the continuing or enduring incapacity because of physical injury, sickness or mental illness as determined by competent medical authority, to earn the wages which the officer was receiving at the time of the injury, sickness or determination of mental illness in the same or any other related employment.
 - g. Power of the Board to require investigation. The Board is hereby empowered to require the Chief of the Fire or Police Department to investigate any incident or circumstance involving officers of such departments which shall come to the Board's attention; provided, that a majority of the Board shall first determine that such an investigation is in the public's interest. The respective Chief shall report the results of an investigation to the Board in writing within a time to be set by the Board.
- (8) The Board shall make an Annual Report of its actions for the preceding year and said Annual Report shall be kept in the files of the Board and a copy delivered to the City Council.
 - (9) The City Clerk shall act as secretary to the Board and shall keep the minutes of its meetings and shall be custodian of all papers and records pertaining to the business of said Board and shall perform such other duties as the Board may require.
 - (10) The City Council shall provide suitable rooms for the Board and shall provide sufficient reasonable use of public buildings for meetings and hearings of said Board as may be necessary.
 - (11) The members of said Board shall serve without compensation.
 - (12) Nothing in this Subchapter shall be so construed as to deprive the City Council of its control of the finances of said city.
 - (13) The provisions of this Subchapter pertaining to Civil Service coverage of officers and employees of the Fire and Police Departments shall not apply to the Chief of the Fire Department or the Chief of the Police Department, and shall not apply to an officer of the Police or Fire Department until he or she has been an officer of the respective

department for at least 12 months. During such 12 months' probationary period, he or she shall be subject to discharge by the Chief of such department under rules promulgated with respect thereto, such rules to be approved by the City Council.

- (14) The Chief of the Police Department and the Chief of the Fire Department shall have authority to make all promotions of officers of their respective departments, subject to majority approval of the Civil Service Board. Promotions are probationary for six months from the date they became effective. Any demotions, except voluntary demotions, shall be made only after written charges are preferred and a hearing held before the Civil Service Board. Except as otherwise provided, demotions must be approved by a majority vote of the Board.
- (15) Notwithstanding any other provisions of this Subchapter, during any wartime emergency and for six months thereafter, officers of the Fire Department and Police Department may be employed on a temporary basis and such temporarily employed officers may be discharged by the City Manager without the preferment of charges.
- (16) The City Council may authorize the City Manager to appoint auxiliary officers of the Fire and Police Departments without previous examinations by the Civil Service Board, who, when called to duty by the Chief of their respective departments, shall have all the powers and duties of regular members of the Police and Fire Departments. Such auxiliary officers of the said departments shall be subject to discharge by the City Manager, with or without cause, and without a hearing before the Civil Service Board.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 23rd day of April, 1979.