

NORTH CAROLINA GENERAL ASSEMBLY
1959 SESSION

CHAPTER 115
HOUSE BILL 174

AN ACT CREATING A CIVIL SERVICE COMMISSION IN THE CITY OF HENDERSONVILLE, NORTH CAROLINA, FOR THE MEMBERS OF THE HENDERSONVILLE POLICE DEPARTMENT AND THE HENDERSONVILLE FIRE DEPARTMENT, AND FIXING THE DUTIES, RESPONSIBILITIES AND QUALIFICATIONS THEREOF.

The General Assembly of North Carolina do enact:

Section 1. Civil Service Commission; Creation and terms of office. (a) There is hereby established as a part of the government of the City of Hendersonville, a municipal corporation of the State of North Carolina, a Civil Service Commission which shall be composed of three members, and having the powers and performing the duties specified in this Act with respect to the classified service of the City of Hendersonville, as hereinafter defined.

(b) The first members of the Commission shall be appointed by the governing body of the city within 30 days after the ratification of this Act. One of those appointed shall be appointed for a term of one year, one for a term of two years and one for a term of three years. Upon expiration of the terms of those persons first appointed to the Commission, their successors shall be appointed as follows:

(1) The successor to the member appointed for a one-year term shall be elected for a three-year term by the policemen and firemen of the city, in a manner to be specified by an appropriate city ordinance of the City of Hendersonville;

(2) The successor to the person appointed for a two-year term shall be elected for a three-year term by the governing body of the city; and

(3) The successor to the person appointed for a three-year term shall be elected for a three-year term by the other two members of the Commission.

All succeeding appointments shall be made by the same appointing authorities for terms of three years each. In the event of a vacancy on said Commission, otherwise than by expiration of a term, such vacancy shall be filled in the same manner provided in this Act for the appointment of a successor member to the Commission. Any person appointed to fill a vacancy occurring prior to the expiration of the term of such vacant office shall serve only for the remainder of such term. In the event the two members serving unexpired terms fail to appoint the third member as provided herein within ten days from the date of such vacancy, a committee of four policemen and firemen and four members of the governing body of the city shall meet and appoint said third member within 20 days from the date such vacancy occurs.

- (c) No person shall be appointed a member of the Commission who is not:
 - (1) A citizen of the United States;
 - (2) A resident of the City of Hendersonville for at least one year next preceding such appointment; and
 - (3) An elector of Henderson County.

Sec. 2. Removal of members of Commission. (a) Any member of the Commission may be removed from office by the governing body of the city for incompetency, dereliction of duty, malfeasance in office, or other good cause.

- (b) No removal under this Section shall be effectual until:
 - (1) Charges have been preferred in writing;
 - (2) Notice of charges and hearing thereon has been given for ten days; and
 - (3) Full public hearing had on the charges before the governing body of the city.

(c) Upon removal, the person removed shall have ten days within which to appeal such removal to the Superior Court of Henderson County, but if no appeal is taken within such time, the removal shall be final.

(d) If an appeal is taken from the order of removal, as provided in subsection (c), the resident judge or the judge holding Superior Court in the county shall hear the appeal promptly, on the questions only of good faith on the part of the governing body of the city and cause for removal, and no other grounds for appeal shall be allowed.

Sec. 3. Duties of members of the Commission. (a) The members of the Commission shall devote due time and attention to the performance of the duties imposed upon them by this Act, shall organize immediately after appointment and shall elect one of their members as chairman. Two members of the Commission shall constitute a quorum, and the votes of any two members of this Commission concurring shall be sufficient for the decision on any matters and the transaction of any business under the provisions of this Act.

- (b) The Commission shall:
 - (1) Meet at least twice annually for the transaction of Commission business and more often if necessary for the proper discharge of its duties.

(2) Appoint a secretary who may be a member of the Commission but may not be a member of the classified service, who shall keep the records of the Commission, preserve all reports made to it, superintend and keep a record of all examinations given by it, and perform such other duties as the Commission may prescribe.

(3) Make rules and regulations not inconsistent with the provisions of this Act, which shall provide the manner in which examinations may be held; appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges may be made; and shall also provide for and relate to any other matters connected with the general subject of personnel administration, considered desirable for the further implementation of the general purposes of this Act; all of which rules and regulations shall be reproduced for free public distribution.

(4) Formulate and give tests provided for by this Act, which shall be practical, shall consist of material relating to subjects which will fairly determine the capacity of the persons tested to perform duties of the position for which the test is given, and shall include parts relating to physical fitness for the position, manual dexterity for the position and general suitability for the position.

(5) Make investigations and reports of matters touching the enforcement and effect of this Act and the rules and regulations promulgated hereunder; inspect all institutions, departments, offices, places, positions and employments affected by this Act; and ascertain whether this Act and all rules and regulations promulgated hereunder are being obeyed;

(6) Hear and determine appeals or complaints respecting the administration of this Act, including the administrative work of personnel departments affected hereby, appeals from allocation of positions, appeals from results of examinations, and such other matters as may be referred to the Commission.

(7) Prepare and maintain a roster of the members of the fire department and the police department of the city, which shall contain the name, rank and seniority position of each member of such departments, which roster shall be posted in a conspicuous place at the offices of the fire department and the police department.

(8) Establish eligibility lists for the various positions available in the fire department and the police department, on the basis of competitive tests, formulated as provided in subdivision (4) and held to determine the relative qualifications of persons seeking employment by such departments.

(9) When a vacant position is to be filled by the fire department or the police department, certify to the appointing authority, on written request, the names of the three persons highest on the eligibility list for that position, and if there is no list as to that position, to prepare a provisional list for the position, from which an appointment for a period of not to exceed four months may be made.

(10) Keep such records as may be necessary for the proper administration of this Act.

Sec. 4. Rules and Regulations. The rules and regulations promulgated under the provisions of subdivision (3) of Section 3 shall include:

(1) Provision for a credit of ten per cent on competitive tests in favor of all applicants for appointment to a position in the classified service, who in time of war or declared national emergency has served in and been honorably discharged or otherwise honorably separated from any of the branches of the armed forces of the United States.

(2) Provision for the granting of leaves of absence to members of the classified service on the recommendation of the chief of the department of which the person granted leave is a member, which leave shall not be counted against the member in his order of seniority, and notice of which shall be given to the city.

(3) Provision that appointments for temporary employment caused by leaves of absence duly granted shall be made from the eligible list of the department concerned.

(4) Provision that men laid off because of curtailment of expenditures, reduction in force or for like cause, shall be the last man or men, including probationers,

that have been appointed to the department concerned, in numerical order beginning with the last man appointed.

(5) Provision that persons laid off under the provisions of subdivision (4) of this Section shall be reinstated before any new appointments to the department or departments concerned are made.

Sec. 5. Investigations. (a) Investigations conducted under the provisions of subdivision (5) of Section 3 may be made by the Commission on its own motion or upon petition of any resident of Hendersonville, duly verified, alleging wherein irregularities or abuses in the administration of the classified service exists, or otherwise setting forth facts sufficient to enable the Commission to determine whether an investigation should be made.

(b) Investigations may be conducted by the Commission as a whole or a member thereof appointed by and on behalf of the Commission.

(c) The Commission or member conducting an investigation shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production of books, papers, documents and accounts relative to the matter under investigation, and to cause the deposition of witnesses residing within or without the State to be taken in the manner prescribed by law for like depositions in civil actions in the Superior Courts of North Carolina. The oaths administered and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by the Judges of the Superior Courts of North Carolina, and refusal to be sworn or to testify or failure of any person subpoenaed to comply with the same shall be deemed a violation of this Act and punishable as hereinafter provided.

(d) All hearings and investigations before the Commission or member conducting an investigation shall be governed by the provisions of this Act and by rules of practice and procedure to be adopted by the Commission, and in the conduct thereof the Commission shall not be bound by technical rules of evidence or procedure. No informality in any proceeding or hearing, or in the manner of taking testimony before the Commission shall invalidate any order, decision, or ruling made by the Commission, provided that no order, decision, or ruling made by any member conducting an investigation alone shall be effective until concurred in by the Commission or a majority thereof.

Sec. 6. Classified service defined. Classified service shall include all presently employed officers and employees of the fire department and the police department of the City of Hendersonville regardless of age, and future appointees thereto who are under the age of 65 years, including jailors, telephone operators, the fire alarm superintendent and his helpers.

Sec. 7. Appointments, promotions, discharges, etc. (a) All appointments to and promotions in the fire department and the police department of the City of Hendersonville, North Carolina, shall be made on the basis of efficiency, suitability, and fitness, ascertained on the basis of open competitive examinations and impartial investigation, and shall be from among those persons who have taken an examination for and have made a passing grade for the particular class which includes the position to which appointment is to be made. Those persons eligible for appointment to positions

within a particular class, on the basis of examination and investigation, shall be placed on a list to be known as the "Eligible List", in the order of grades attained on the examinations, without regard to the date of the examination, except that those persons senior in service with either the fire department or the police department shall be placed at the top of the list, regardless of the grade by which the examination was passed.

(b) Before examination for any position within the classified service it must appear that the applicant is a citizen of the United States and has been an elector of Henderson County for at least one year next preceding the application. In addition, applicants for examination must be not less than 21 years nor over 30 years of age for service in the fire department and not less than 21 nor more than 35 years of age for service in the police department, be able to read and write the English language, be in ordinarily good health, of good moral character, of temperate and industrious habits and generally suitable for the position for which application is made.

Sec. 8. Appointments to vacant positions; certification from lists. (a) Whenever a position in the classified service becomes vacant, the governing body of the city shall make requisition upon the Commission for the name and address of the three persons standing highest on the eligible list for the vacant position. The Commission shall thereupon certify to the city the names of the three persons highest on the eligible list who are willing to accept employment. If there is no appropriate eligible list for the class which includes the vacant position, the Commission shall certify the name of the person standing highest on list of some other class of positions deemed by the Commission to be the equivalent to the class of the position which is vacant. The governing body of the city shall forthwith appoint one of those three persons certified to the vacant position, or may reject all those names certified and call upon the Commission to certify to it three additional names, from which additional list, the selection shall be made. If more than one vacancy is to be filled, an additional name shall be certified on the list furnished the city for each additional vacancy.

(b) The governing body of the city may, in lieu of permanent appointment to a vacant position as provided in subsection (a) of this Section, appoint any certified person to a vacant position for a period of six months only, during which time such appointee shall be on probation and subject to removal for cause, or transfer to another position if found to be unfit or unsatisfactory for the position to which appointed on probation. If dismissal or transfer is made for being unfit or unsatisfactory for the position, transfer or dismissal shall be without prejudice to such applicant or his position on any other eligible list. Action under this subsection shall not be reviewable. In the event of dismissal of a probationer for any reason, the Commission shall certify to the governing body of the city a new list consisting of the three names of those persons highest on the eligible list for the position from which list a replacement may be appointed permanently or on probation. At the end of the six months probationary period, records of the probationer shall be reviewed by the appointing authority who shall either tender the probationer a permanent appointment on finding his record satisfactory, or discharge him.

Sec. 9. Tenure of office under classified service; cause and manner of discharge. (a) Tenure of any person holding a permanent office, place, position or

employment in any department of the city covered by the provisions of this Act shall be during good behavior, but any such person may be removed or discharged, suspended without pay, demoted or reduced in rank, or deprived of vacation privileges or other special privileges by the Commission for any of the following reasons:

(1) Dishonesty, intemperance, immoral conduct, insubordination, or any other act of omission or commission tending to injure the classified service;

(2) Any willful failure on the part of the employee to properly conduct himself;

(3) Any willful violation of the provisions of this Act or the rules and regulations promulgated in compliance herewith;

(4) Conviction of a felony or a misdemeanor involving moral turpitude; and

(5) Any other act or failure to act which in the judgment of the Commission is sufficient to show the offender to be unsuitable or unfit for employment in the classified service.

(b) Any employee member of the classified service may be removed, suspended or discharged by the authority by which he was appointed for any of the causes enumerated in subsection (b) of this Section. Upon such removal, suspension or discharge, the member concerned shall be given verbal or written notice thereof either by giving such notice to the employee or leaving such notice at, or mailing such notice to, the member's usual place of residence.

Upon the giving of such notice, the removal, suspension or discharge shall be effective, provided that the member so notified may, within five days thereafter, demand a written statement of the reasons for removal, suspension or discharge and the right to be heard before the Commission. Upon such demand, the appointing authority effecting the removal, suspension or discharge shall supply to the member concerned and to the Commission a written statement of the reasons for such removal, suspension or discharge, and the Commission shall fix a time and place for a public hearing. At such hearing testimony shall be reduced to writing and the Commission shall thereafter make a report of its findings and recommendations regarding the removal, suspension or discharge, which report, together with a transcript of the evidence and the charges, shall be filed with the city clerk and be open to public inspection. No statement made in good faith by the appointing authority in effecting such removal, suspension or discharge shall constitute defamation of character or libel.

Within five days after the filing of the Commission report, the appointing authority or the employee concerned may request the governing body of the city to approve or disapprove the report, but in the absence of any such request, the report shall be final and conclusive at the expiration of such five-day period. If request is made to the governing body of the city to approve or disapprove the report of the Commission, it shall require the votes of two-thirds of the membership of the governing body to disapprove the report. Lacking such two-thirds majority, the report shall be approved. Action by the governing body on any report by the Commission shall be final.

If the Commission, upon its hearing, finds that the removal, suspension or discharge was made for political reasons or was not made in good faith for any of the

causes hereinbefore enumerated, the Commission shall order the immediate reinstatement or reemployment of such member of the classified service in the office, place, or position or employment from which such member was removed, suspended or discharged, and may, if it so desires, provide in its report that the reinstatement shall be retroactive and that the person reinstated shall be entitled to pay or compensation from the time of such removal, suspension or discharge.

Sec. 10. Adoption and induction of incumbents in classified service. For the benefit of the public service and to prevent delay, injury or interruption therein by reason of the enactment of this Act, all persons holding positions in the fire department and police department, including the chiefs thereof, when this Act becomes effective, are hereby declared eligible for permanent appointment under the classified service to the offices, places, positions or employments which they then hold, without examination or other act on their part, and every such person is hereby automatically adopted and inducted into the classified service in such office, place, position or employment which such person then holds as completely and effectively as if such person had been permanently appointed thereto under the provisions of this Act after examination and investigation.

Sec. 11. Duties of officers and employees to assist the Commission. It shall be the duty of all officers and employees of the City of Hendersonville to aid in the carrying out of the provisions of this Act and such rules and regulations as may, from time to time, be prescribed by the Commission and to afford the Commission, its members and employees, all reasonable facilities and assistance in the inspection of books, papers, documents and accounts applying, or in any way appertaining to any and all offices, places, positions and employments subject to the classified service, and also to produce such books, papers, documents and accounts and attend and testify before the Commission whenever required or requested so to do by the Commission or any member conducting an investigation.

Sec. 12. False marking, grading, etc., prohibited. No commissioner or any other person, shall, by himself or in conjunction with another, defeat, deceive, or obstruct any person with respect to the right of examination or registration under this Act or the rules and regulations promulgated in accordance herewith, nor falsely mark, grade, estimate or report the examination or standing of any person examined, registered or certified pursuant to the provisions of this Act, nor aid in so doing, nor make any false representation concerning the name, nor concerning the person examined, nor furnish to any person special or secret information for the purpose of improving or injuring the prospects or chances of any person to be examined, registered or certified.

Sec. 13. Political activities prohibited. (a) No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified service because of his political opinions or affiliations.

(b) No person shall seek or attempt to use any political endorsement in connection with any appointment to a position in the classified service.

(c) No person shall use or promise to use, directly or indirectly any official authority or influence, whether possessed or anticipated, to secure or attempt to

secure for any person an appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any other consideration.

(d) No employee in the classified service, and no member of the Commission shall, directly or indirectly, pay or promise to pay any assessment, subscription, or contribution to any political organization or purpose, or solicit or take any part in soliciting any such assessment, subscription, or contribution of any employee in the classified service.

(e) No employee in the classified service, and no member of the Commission, shall be a member of any National, State or local committee of a political party, or an officer or member of a committee of a political club, or a candidate for nomination or election to any public office, nor shall any such member or employee take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote.

Sec. 14. Definition of terms. As used in this Act, the following terms shall mean:

(1) The term "Commission" means the Civil Service Commission herein created, and the term "Commissioner" means any one of the three commissioners of that Commission.

(2) The term "appointment" means the selection, appointment or employment of any person to hold any office, place, position or employment subject to Civil Service.

(3) The term "City of Hendersonville" shall include all the territory now comprising the corporate limits of the City of Hendersonville or any extensions thereof.

(4) The terms "Fire Department" and "Police Department" means and is intended to include all the officers and employees in their respective departments who are paid regularly by the City of Hendersonville and devote their full time to the duties involved.

Sec. 15. Facilities furnished. The governing body of the City of Hendersonville shall provide the Commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the Commission and shall also furnish such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in the City of Hendersonville coming within the purview of this Act; and the failure on the part of the governing body to do so, shall be considered a violation of this Act and shall be punishable as such.

Sec. 16. Operating funds; creation. The governing body of the City of Hendersonville shall have authority to appropriate from the general funds of said city a sum sufficient to carry out the purposes of this Act. Within 30 days after the effective date of this Act it shall be the duty of the governing body of the City of Hendersonville, subject to the provisions of this Act, to appoint and create the Civil Service Commission as provided in Section 1 hereof.

Sec. 17. Violation of this Act a misdemeanor; penalty. Any person who shall willfully violate any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars (\$50.00) or more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not longer than one year, or by both such fine and imprisonment.

Sec. 18. Constitutionality of Act. If any Section, subsection, subdivision, sentence, clause or phrase of this Act shall for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act.

Sec. 19. All laws and clauses of laws in conflict with the provisions of this Act are hereby repealed.

Sec. 20. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 24th day of March, 1959.