

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-401
SENATE BILL 556**

AN ACT TO REVISE THE LAWS RELATING TO THE ASHEVILLE CIVIL SERVICE BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Section 1 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 1. There is hereby established as a part of government of the City of Asheville, a Civil Service Board which shall have the powers and perform the duties specified in this Act with respect to the classified service of the City of Asheville as defined in this Act. The City Manager shall recommend, and the City Council shall approve, shall provide funding for the operational needs of the Civil Service Board in the City's annual budget."

SECTION 2. Section 2 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 2. (a) The Civil Service Board shall consist of five members as follows: (i) two members who shall be chosen by the City Council at a meeting of the Council and they shall serve at the pleasure of the Council; (ii) two members who shall be elected by the members of the classified service of the City, as defined in this Act, at an election held for that purpose and on a normal City workday not less than 10 nor more than 30 days after written notice of the date of the election is provided to each member of the classified service; and (iii) one member who shall be selected by majority vote of the four other members already selected or elected at a meeting held within 30 days after the members elected by the classified service have taken office. If a member is not elected by majority vote of the four other members, the City Council shall appoint a member to the Board. Members of the Board shall serve two-year terms. All members of the Board shall be eligible for successive terms, in the same manner in which they were initially selected or elected and may serve beyond the end of their respective terms until their successors take office. The chair of the Civil Service Board shall be appointed annually by the City Council, or more often as needed, from among the membership of the Board. The members of the Board shall serve without compensation but may be reimbursed for expenses pursuant to policies adopted by the City.

The City Council shall, by ordinance not inconsistent with this act, establish the procedure for the election of the representatives of the employees in the classified service, and provide for meeting the expense for such elections. The members of the Civil Service Board must all be qualified voters of the City of Asheville, not employed by the ~~city~~ City or serving on the City Council. In the event of a vacancy on the Board, such vacancy shall be filled by the body or group, choosing the member, a successor to whom is to be chosen, and in the manner herein provided for the selection of such member.

(b) Former employees of the City of Asheville shall be eligible to serve as a member of the Asheville Civil Service Board provided they have been separated from City employment for a period of not less than seven consecutive years prior to becoming a member of the Board. No person shall be eligible to serve as a Civil Service Board member if such person directly, or indirectly through any corporation, partnership, or other entity, or contract, subcontract, or



otherwise benefits financially from a business relationship with the City, or if such person has an immediate family member or spouse of the immediate family member who directly, or indirectly through any corporation, partnership, or other entity, or contract, subcontract, or otherwise benefits financially from a business relationship with the City. No person shall engage or benefit directly or indirectly from any contractual work or employment with the City for a period of not less than two years following the expiration date of that person's term of office as a member of the Civil Service Board. The foregoing restrictions shall not be retroactively applied to the current term of anyone currently serving on the Board at the time this subsection is enacted.

(c) The Asheville City Clerk or the Clerk's designee shall be the Civil Service Board Secretary and shall perform all required ministerial functions and duties for the Board including, but not limited to, the electronic recording of and the preparation of minutes of all Civil Service Board meetings and hearings, the custody of all Board records and the posting and issuing of meeting notices to Board members and to the public in accordance with the Open Meetings Law, Article 33C of Chapter 143 of the General Statutes. The Secretary shall distribute the agenda for regular meetings and the approved minutes for all regular meetings to all City employees. Posting the agenda and minutes on an electronic bulletin board or similar location accessible to all employees shall be sufficient compliance with this requirement. To assist the Secretary in performing the functions and duties, all Civil Service Board meetings shall be electronically recorded and transcripts thereof made available to the Board members upon request without charge. All other persons shall be entitled to the Civil Service Board's recordings and records upon request made pursuant to the Public Records Act, Chapter 132 of the General Statutes, except for those items to which disclosure is prohibited by G.S. 160A-168, the Personnel Privacy Act, or other laws governing the privacy or confidentiality of employee or personnel records.

(d) The Board shall meet in January of each year to adopt a regular meeting schedule. The deadline for receiving items for the regular Board's meetings shall be seven days prior to the meeting. Special meetings may be called by the chair and shall be called upon written request signed by two or more Board members and submitted to the Board Secretary not less than seven days prior to the date of the requested special meeting. The notice for all meetings shall contain a meeting agenda which shall include a section for other business to hear and consider any other matters related to the Board's function and duties and which may be addressed by any member of the Board and by any person in attendance. Within a reasonable time after a meeting, the Board shall supply the Director of Human Resources with notification of any actions, reports, or recommendations made by the Board, and the Human Resources Department shall notify affected members of the classified service of actions, reports, and recommendations made by the Board.

(e) No uniform employees of the City of Asheville shall be prohibited, directed, or discouraged in any manner by a supervisor from wearing that employee's uniform while in attendance at any Civil Service Board meeting."

SECTION 3. Section 3 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 3. The classified service of the City shall include all officers and employees of the City of Asheville, except officers elected by the people, the city manager, directors of departments, as defined in the city charter, assistant directors of departments, (by whatever title designated) as described in the City's organizational plan, and members of advisory boards appointed by ~~such~~ directors, the city clerk, or any deputy clerk of the City of Asheville, and members of any board or commission appointed by the Council, and employees of independent boards now choosing their own employees."

SECTION 4. Section 4 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 4. The Civil Service Board shall make, and may amend substantive rules for promoting efficiency in the classified service of the City as provided in Section 5 of this Act. Such rules and any amendment thereto, shall be submitted to the Council for approval, and shall be open to public inspection, when filed with the Council for approval. The City Council, after giving members of the classified service and citizens of Asheville an opportunity to be heard at a public hearing, shall act upon such proposed rules and amendments, and such rules or amendments, when approved by a majority vote of the Council, shall be in full force and effect. The Civil Service Board shall also make, and may amend, procedural rules for the conduct of its official proceedings and functions as provided for by this act. The Council may, before approval, amend the rules or amendments thereto, submitted to it for approval."

SECTION 5. Section 5 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 5. Such rules, as authorized in Section 4 of this Act, among other things, may provide:

- (1) For the standardization and classification of all positions and employment in the classified service of the City. Such classification into groups and subdivisions shall be based upon and graded according to duties and responsibilities, and so arranged as to promote the filling of the higher grades, so far as practicable, through promotions. The City Manager ~~of~~ or his or her designee shall consult representative employee in the Police and Fire Departments to establish criteria to be used to fill each position within those respective departments, including lateral entry positions. If only one respective employee is consulted, he or she shall be a representative chosen by the employees of the respective departments. If a group of two or more employees is established for purposes of this subdivision, at least one-half of the employees shall be chosen by the employees of the respective department. The Civil Service Board shall have the authority to approve any criteria established and the criteria shall apply only to persons promoted or hired after the effective date of the approval. This provision shall not apply to hiring or promotional processes initiated prior to the effective date of this Act.
- (2) For temporary or part-time employment to meet the transitory or seasonal needs of the City, except no temporary or part-time employment may occur or continue in violation of applicable state or federal law.
- (3) For the establishment of a probationary period for new City employees prior to employees becoming members of the classified service, except not probationary period or any extension thereof may exceed one year in the aggregate.
- (4) For suspension for purpose of discipline, with or without pay, for not longer than 90 days.
- (5) For discharge or reduction in rank or compensation after the person to be discharged or reduced has, if he or she so ~~request,~~requests, been presented by the person responsible for his or her appointment with the reasons therefore specifically stated in writing and has been given an opportunity to be publicly heard in his or her own defense by the Civil Service Board, in accordance with Section 8 of this Act. The written reasons for the discharge or reduction and any reply in writing thereto by any such officer or employee shall be filed with the ~~Department of Civil Service.~~Director of Human Resources.

- (6) For investigation and keeping a record of the efficiency of officers and employees in the classified service, and for requiring markings and reports relative thereto from appointing authorities."

SECTION 6. Section 7 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 7. ~~The Council, Council by majority vote of the total membership of the Council, the City Manager, the Chair of the Civil Service Board, or any person designated by any of them, or the Civil Service Board by majority vote of the total membership of the Board,~~ may make official investigations concerning the facts in respect to the operation and enforcement of the provisions of this Act and of the rules established thereunder, and concerning the condition of the Civil Service of the City or and branch thereof and may refer such matters to the Civil Service Board for hearing in accordance with Section 8 of this Act, or for further investigation as appropriate. Any ~~person, person or persons,~~body making any investigation authorized or required by this section, shall have the power to subpoena and require the attendance of witnesses. A copy of the report of the investigation shall be filed with the City Clerk and be open for public inspection, subject to the provisions of the Personnel Privacy Act or other laws governing the disclosure of records in this State."

SECTION 7. Section 8 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303 and S.L. 2004-13, reads as rewritten:

"Section 8. (a) Whenever any member of the classified service of the City is discharge, suspended, reduced in rank, transferred against his or her will, or is denied any promotion or raise in pay which he or she would be entitled to, that member shall be entitled to a hearing before the Civil Service Board to determine whether or not the action complained of is justified. The Board may also conduct hearings on such matters as may be referred to it pursuant to Section 7 of this act.

(b) Any member of the classified service of the City who desires a hearing shall file his or her request for hearing with the City Clerk within 10 days after learning of the act or omission of which her or she complains but not before the member shall have exhausted his or her remedy provided by the grievance procedures established by ordinance or policy of the City and the grievance procedure shall be concluded within 30 days. If the grievance procedure is not concluded with 30 days, the member may proceed as provided in this section. Upon receipt of notice as required in this section, the City Clerk shall set the matter for hearing before the Civil Service Board at a date not less than five nor more than fifteen days from the Clerk's receipt of such notice. Except for the time for filing the initial request for hearing with the Board, the Board may extend the time for taking action under this section for cause or by agreement of the parties to the proceeding.

(c) Any member of the classified service of the City who requests a hearing pursuant to the Act shall be entitled to be represented by its attorney at any such hearing.

(d) For such hearings, the Board is authorized to issue subpoenas for the attendance of witnesses or the production of documents.

~~(d)~~(e) At such hearing, the burden of proving the justification of the act or omission complained of shall be upon the City and the member requesting the hearing shall be entitled to inspect and copy any records upon which the City plans to rely at the hearing if the records are requested in writing by the member or his or her attorney prior to the day set for the hearing.

~~(e)~~(f) The Civil Service Board shall render its decision in writing within ~~five~~ten days after the conclusion of the hearing. If the Board determines that the act or omission complained of is not justified, the Board shall order to rescind whatever action the Board has found to be unjustified and may order the City to take such steps as are necessary for a just conclusion of the matter before the Board. Such decision shall contain findings of fact and conclusions, and shall be based on competent, material, and substantial evidence in the record. Upon reaching its

decision, the Board shall, in writing, immediately inform the City Clerk and the member requesting the hearing of the Board's decision.

(f)(g) Within ten days of the receipt of notice of the decision of the Board, either party may appeal to the Superior Court Division of the General Court of Justice for Buncombe County for a trial de novo. The appeal shall be effected by filing with the Clerk of the Superior Court of Buncombe County a petition for trial in superior court, setting out the fact upon which the petitioner relies for relief. If the petitioner desires a trial by jury, the petition shall so state. Upon the filing of the petition, the Clerk of the Superior Court shall issue a civil summons as in regular civil action, and the sheriff of Buncombe County shall serve the summons and petition on all parties who did not join in the petition for trial. It shall be sufficient service upon the City for the sheriff to serve the petition and summons upon the clerk of the City. Therefore, the matter shall proceed to trial as any other civil action."

SECTION 8. Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303, is amended by adding a new section to read:

"Section 8.1. By a majority vote of those members present and voting at any of its official meetings, the Asheville Civil Service Board may designate independent legal counsel of its choice to advise or represent the Board, or both, on such occasions and in such matters as the majority of those Board members present and voting deem to be appropriate and necessary. The Civil Service Board shall establish a roster of attorneys from which it may select counsel for the purpose of advising the Board during or in connection with grievance hearings held pursuant to Section 8. Said list shall be subject to review and approval by the City Attorney as to qualifications and fees. The City shall be responsible for the payment of such professional legal services. The use of independent counsel for matters other than grievance hearings held pursuant to Section 8 shall be limited to 20 hours per year. In order to avoid the appearance of any possible conflict of interest, the Office of the City Attorney shall serve as legal advisor to or attorney for the Board, or both, only for those matters or proceedings when specifically requested to do so in a writing that has been signed by no fewer than four members of the Board."

SECTION 9. Section 10 of Chapter 757 of the 1953 Session Laws, as amended, and as rewritten by S.L. 1999-303, reads as rewritten:

"Section 10. It shall be the duty of the Civil Service Board to supervise the execution of the foregoing civil service provisions of this Act and of the rules made thereunder, and it shall be the duty of all persons in the service of the City to comply with such rules and to aid in their enforcement. Willful or deliberate violation of the Asheville Civil Service Law (this act) or Civil Service Rules by any person shall result in the City taking appropriate disciplinary action up to and including dismissal. Any City employee or any City official who threatens or intimidates other employees from exercising their rights under the Asheville Civil Service Law (this act) or Civil Service Rules shall be subject to the City taking appropriate disciplinary action up to and including dismissal."

SECTION 10. If any section, subsection, subdivision, sentence, clause, or phrase of this act shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portion of this act.

SECTION 11. All laws, rules, or clauses in conflict with the provisions of this act are hereby superseded or repealed as appropriate.

SECTION 12. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 3rd day of August, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives