

MINNESOTA STATUTES 1953 ANNOTATIONS

CHAPTER 419

POLICE CIVIL SERVICE COMMISSIONS

419.01 VILLAGES, CITIES

The provisions of sections 419.01 to 419.18 authorizing the establishment of police civil service, are mandatory, and strict compliance therewith is required. The doctrine of substantial compliance has no application. The purposes of the civil service law are to determine the fitness for appointment solely upon the basis of the candidate's qualifications. In the instant case, the certification by the police civil service commission of a candidate for appointment as city chief of police was void, where, although the candidate's fitness was determined by examination, the commission failed to otherwise comply with the civil service law. State ex rel v Adamson, 226 M 177, 32 NW(2d) 281.

Appeal from an order of the district court quashing a writ of certiorari to review an examination and attempted certification for the position of chief of police for the city of Mankato, in order to limit the time for issuance of a writ of certiorari under MSA, Section 606.01, due notice requires written notice to be served upon the party applying for the writ. Actual knowledge of results of a civil service examination does not preclude writ of certiorari on the ground of laches where it was within power of civil service commission, by compliance with its own rules, to limit time by service of written notice on testee. Mere fact that others may be affected will not make legal an examination which did not substantially comply with law and with rules for holding examination. State ex rel v Webster, 231 M 309, 43 NW(2d) 116.

Police civil service commission has power to grant leaves of absence and sick leaves, fix vacation time, create new job classifications, make rules regulating the duties of members of the police force and decide minimum qualifications. The police and fire commission has power to fix hours of employment and budget salaries. OAG Sept. 13, 1949 (120).

The council should adopt a resolution separating the office of chief of police from the office of street commissioner as authorized by the charter. The police civil service commission may create and classify the present police officers. OAG Nov. 24, 1948 (120).

A police civil service commission may be created in the city of Wabasha whenever the city council by resolution accepts the provisions of sections 419.01 to 419.18 and such action has the approval of the mayor. The council could in its classification blanket in the policeman then in service including the city street commissioner whom he considers as a part-time policeman. OAG March 31, 1950 (120).

Under a city charter the appointment of a chief of police is made by the mayor with the advice and consent of the city council, from an eligible list certified to by the police civil service commission. Salaries of officers in the police department are fixed in accordance with the terms of the city charter by the city council and not by the police civil service commission. OAG Jan. 27, 1953 (120).

There is no distinction in the veterans preference law between a veteran of World War I and World War II. The position of chief of police in a village having a police civil service commission is subject to the veterans preference provided by section 197.45. OAG March 9, 1953 (120).

Minnesota Statutes, Chapter 419, makes no provision for abolishing the office of chief of police in a city having a police civil service commission. OAG Oct. 5, 1953 (120).

Members of the police force regularly employed are automatically blanketed in upon the adoption of the law and should be immediately graded and classified by the commission. OAG April 30, 1948 (785-E-1).

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POLICE CIVIL SERVICE COMMISSIONS 419.05

A police civil service commission may be created under the provisions of section 419.01. It is created by the adoption of a resolution of the governing body excepting the provisions of the law. Until such resolution is adopted the police civil service commission law does not apply. A commission created by proclamation or otherwise has neither a legal nor a de facto existence and acts cannot be ratified by the municipal council. OAG Dec. 6, 1949 (785-E-1).

The voters of the city of Brainerd may not abolish the present police commission if created pursuant to Laws 1929, Chapter 299, prior to the amendment thereof by Laws 1933, Chapter 197. OAG Dec. 21, 1949 (785-E-1).

The police civil service commission, established under section 419.01, had no authority to expend municipal moneys in connection with the operation or conduct of the police department, nor did it have any authority to make appropriations of public moneys therefor. This is a matter which rests with the city council under the applicable provisions of the city charter. OAG Feb. 28, 1950 (785-E-1).

The city council unanimously adopted a resolution accepting the provisions of Minnesota Statutes, Chapter 419, the police civil service commission law. The provisions of such resolution are effective notwithstanding through inadvertence the resolution was not published. OAG Oct. 14, 1947 (785-E-2).

419.02 MEMBERSHIP; APPOINTMENT; OATH

A member of the police civil service commission cannot become a member of the charter commission of the city of International Falls. OAG Feb. 14, 1947 (358-E-1).

A member of a village volunteer fire department may not accept office as a police civil service commissioner. OAG Sept. 15, 1947 (358-E-1); OAG Jan. 17, 1952 (358-E-4); OAG Jan. 28, 1952 (358-E-4).

A member of the planning commission may be appointed a member of the police civil service commission, but if he accepts such appointment he thereby vacates his office of the planning commission. OAG Dec. 27, 1949 (358-E-1).

419.05 DUTIES OF COMMISSION

Failure of the city civil service commission to comply with a mandatory statutory provision requiring keeping of a proper register will prevent an employee acquiring a civil service status. An applicant lowest in civil service examination may not be given preference by the expedient of placing him in a nonexistent classification for which no examination is given. Evidence discloses such failure to comply with the mandatory provisions of Minnesota Statutes, Chapter 419, that the appellant never acquired a civil service status. State ex rel v Thorfinnson, M, 61 NW(2d) 231.

The police civil service commission may create police officers and may classify the present police officers. OAG Nov. 24, 1948 (120).

The duty imposed by section 419.05 upon members of the commission is mandatory. OAG March 31, 1950 (120).

Unless the provisions of Minnesota Statutes 1949, Chapter 419, are strictly complied with a certification by a police civil service commission of a candidate for appointment as chief of police is void. OAG March 3, 1952 (120).

The village manager, where a village is under Optional Plan "B," is not subject to the jurisdiction of the village police civil service commission. OAG Feb. 19, 1942 (120).

Upon the adoption of a police civil service commission law by a city, members of the existing force regularly employed are automatically blanketed in and should be immediately accredited and classified by the commission. OAG April 20, 1948 (785-E-1).

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419.06 POLICE CIVIL SERVICE COMMISSIONS

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419.06 RULES FOR POLICE DEPARTMENT

The provisions of Minnesota Statutes, Sections 419.01 to 419.18, authorizing the establishment of police civil service are mandatory, and strict compliance therewith is required. The doctrine of substantial compliance has no application. The purposes of the civil service law are to determine the fitness for appointment solely upon the basis of the candidate's qualifications. In the instant case, the certification by the police civil service commission of a candidate for appointment as city chief of police was void, where, although the candidate's fitness was determined by examination, the commission failed to otherwise comply with the civil service law. *State ex rel v Adamson*, 226 M 177, 32 NW(2d) 281.

Under the charter of the city of Rochester the mayor may maintain an action of mandamus against any delinquent city official, and the city attorney shall represent the mayor in such action. OAG Jan. 28, 1949 (59-A-5).

The police civil service commission may adopt rules specifying minimum and maximum age limits for promotional examinations. OAG Oct. 19, 1948 (120).

Under the Police Civil Service Commission Act applying to cities fourth class, where civil service rules do not require that the office of chief of police be filled by promotion, competitive examinations are open to any eligible candidate. OAG Oct. 11, 1949 (120).

If the Civil Service Act was properly adopted by a city and the commission was thereby created and still in existence, failure of members of the commission to grade and classify all employees of the police department did not render ineffective and void the establishment of the commission. OAG March 31, 1950 (120).

The police civil service commission may not make any rule inconsistent with the laws relating to veterans preference. OAG Aug. 1, 1950 (120).

A veteran is entitled to take an examination for patrolman and is entitled to preference in appointment unless he is incompetent to perform the duties of a patrolman. OAG Aug. 1, 1950 (120).

A temporary appointment to fill a vacancy caused by a police officer being on leave of absence, can only be for 30 days, at the end of which time a selection must be made from the proper register. The provision found in section 419.06 relating to temporary appointments until 60 days after the cessation of hostilities is no longer in force in view of the presidential proclamation of December 31, 1946. OAG Feb. 5, 1951 (120).

Unless the appointment of a chief of police is temporary and for not to exceed 30 days, the appointment of the acting incumbent to fill the vacancy must be from an eligible list. OAG Jan. 19, 1951 (120).

Unless the provisions of the charter authorizing and establishing a police civil service are strictly complied with, certification of the police civil service commission of a candidate for chief of police is void. OAG March 2, 1952 (120).

Under police civil service temporary employment under section 419.06 is limited to 30 days. At the expiration of that time, if the vacancy still exists, it should be filled from the appropriate eligible register. OAG Sept. 19, 1952 (120).

Statutory provisions and rules promulgated thereunder govern employment policy and conditions of employment relating to firemen and policemen, but the fixing of their compensation is within the power of the village council. OAG May 4, 1951 (469-B).

Under the Workmen's Compensation Act the city or its insurer would be liable if the death of an employee occurs by accident arising out of or in the course of his employment. Generally if the death of the employee was not covered under the Workmen's Compensation Act the city would not be liable unless the death was due to the negligence of the city with respect to streets, sidewalks and sewers. OAG May 28, 1948 (523-E-1).

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Where the chief of police and policemen had resigned but had not relinquished their duties, their resignations were not as yet effective and could be withdrawn. OAG Aug. 14, 1946 (785-C-2).

It is the duty of the police civil service commission to make rules providing for suspension of police officers with or without pay. The village council has no such powers. For purposes of discipline the chief of police has power to suspend a subordinate for a reasonable time, not exceeding 60 days, pending investigation of charges. OAG Jan. 29, 1948 (785-E-2).

If a policeman is not guilty of misconduct or inefficiency there exists no ground for discharge unless the commission has adopted a rule applicable to the instant case. OAG May 28, 1948 (785-E-2).

Following the decision of State ex rel v Adamson, 32 NW(2d) 281, the eligibility register should be established in accordance with duly adopted rules of the commission; examinations should be in conformity with the rules, and should be based upon objective standards. OAG May 28, 1948 (785-E-2).

Honorably discharged veterans holding temporary appointments under section 419.06 (8) may continue in that employment until the time arrives for making permanent appointment unless removed under the provisions of section 197.46. OAG June 4, 1948 (785-E-2).

419.07 OFFICERS DISCHARGED ONLY AFTER HEARING

It is the duty of the police civil service commission to make rules providing for suspension of police officers with or without pay. The village council has no such powers. For purposes of discipline the chief of police has power to suspend a subordinate for a reasonable time, not to exceed 60 days, pending investigation of charges. OAG Jan. 29, 1948 (785-E-2).

A police officer may be suspended without pay by the mayor for purposes of discipline. OAG April 30, 1948 (785-E-2).

A policeman may not be discharged because he has an ailment. Unless there is a rule governing the situation he may be discharged only for inefficiency, misconduct, or breach of duty. OAG May 28, 1948 (785-E-2).

The police civil service commission has no duty to question ex parte appointments of policemen; and the city council may not withhold a policeman's pay until the court determines tenure. OAG Sept. 11, 1948 (785-E-2).

The city of Fairmont could not terminate the services of the chief of police because he had completed 20 years of service in the police department and had attained the age of 65. OAG June 13, 1950 (785-E-2).

419.11 CHARGES FILED WITH SECRETARY OF COMMISSION

Sections 419.01 to 419.18 contain no provision authorizing the commission to remove from the eligible list a person guilty of misconduct between the date of certification and appointment. Without rules granting it, no such authority for removal from the eligible list exists. OAG Nov. 26, 1947 (120); OAG May 28, 1948 (785-E-2).

The village council may pass a resolution requiring policemen and firemen to take a physical examination. Such examination must be made by the civil service commission under its own rules and they only have the power to remove. OAG Jan. 29, 1948 (688-B).

A superior officer or any member of the police civil service commission may prefer charges against a peace officer on which charges there may be a trial upon ten days notice. The village council has no power to file charges. OAG Jan. 29, 1948 (785-E-2).

419.13 CERTAIN ACTS A MISDEMEANOR

Constitutionality of provisions prohibiting active participation in political management of political campaigns by federal employees. 32 MLR 176, 179.

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419.15 POLICE CIVIL SERVICE COMMISSIONS

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419.15 OFFICERS TO COME UNDER COMMISSION

Upon the adoption of a police civil service commission law by a city, members of the existing force regularly employed are automatically blanketed in and should be immediately accredited and classified by the commission. OAG April 20, 1948 (785-E-1).

419.16 DISCONTINUANCE OF COMMISSION

A police civil service commission lawfully created under section 419.01 may be legally abolished only in compliance with section 419.16. OAG March 31, 1950 (120).

A police civil service commission created by a village under the provisions of section 419.01 may be abolished only in accordance with the procedure outlined in sections 419.16 and 419.17. It is not abolished by the adoption of a city charter. Where the charter provision is in conflict with the civil service statutes, the statutes control. OAG Feb. 28, 1950 (785-E-1).

After a petition has been filed with the council of the city asking for discontinuance of the police civil service commission, the council may require that signatures on the petition be verified by an affidavit from each signer as to the genuineness of the signature and his qualifications to sign as a legal voter. OAG Feb. 15, 1951 (785-E-1).

419.17 DISCONTINUANCE SUBMITTED TO VOTERS

A police civil service commission created by a village under the provisions of section 419.01 may be abolished only in accordance with the procedure outlined in sections 419.16 and 419.17. It is not abolished by the adoption of a city charter. Where the charter provision is in conflict with the civil service statutes, the statutes control. OAG Feb. 28, 1950 (785-E-1).

419.18 APPLICATION

The provisions of MSA, Sections 419.01 to 419.18 authorizing the establishment of police civil service, are mandatory, and strict compliance therewith is required. The doctrine of substantial compliance has no application. The purposes of the civil service law are to determine the fitness for appointment solely upon the basis of the candidate's qualifications. In the instant case, the certification by the police civil service commission of a candidate for appointment as city chief of police was void, where, although the candidate's fitness was determined by examination, the commission failed otherwise to comply with the civil service law. State ex rel v Adamson, 226 M 177, 32 NW(2d) 281.

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The police civil service commission has no authority to expend or appropriate moneys for the operation of the police department. OAG Feb. 28, 1950 (785-E-1).

419.24 DUTIES OF COMMISSION

In an action in mandamus to compel the mayor and city council of Mankato to appoint relator in the court below as chief of police of said city, the action was not yet at issue when the trial court signed its findings of fact, conclusions of law, and order for judgment.

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FIREMEN'S CIVIL SERVICE COMMISSION 420.06

Where on the return day and while a motion was still pending by respondents below for a stay of two or three days to enable them to interpose an answer, the court signed findings of fact in favor of relator, no testimony having been given or offered in support of the facts set out in the alternative writ, the action was not at issue and there was no evidence to sustain said findings. *State v Hodapp*, 230 M 208, 41 NW(2d) 188.

419.28 EXAMINATIONS

In the absence of a rule to the contrary, a police officer who resigned cannot be reinstated and placed on the eligible register without an examination. OAG Sept. 11, 1951 (120).

419.34 COMMISSIONS ABOLISHED

Where a petition for the discontinuance of a police civil service commission was circulated and filed with the council and the council directed that the petition be filed in the office of the city recorder for inspection and for the purpose of striking out or adding names until a specified date, additional petitions circulated for or against the discontinuance were separate from the original petition and could not be given any effect in determining the legal sufficiency of the original petition. OAG March 6, 1951 (785-E-1).

CHAPTER 420

FIREMEN'S CIVIL SERVICE COMMISSION

420.01 CREATION

HISTORY. 1929 c 57 s 1; Ex1936 c 13 s 1.

A disabled veteran applying for a position as a fireman cannot be disqualified by reason of any physical disability unless it renders him incompetent to properly perform the duties of the position applied for. OAG Sept. 8, 1952 (120).

An agreement between a city and the firemen's union containing provisions contrary to the statutes or the city charter is invalid. OAG Aug. 26, 1952 (270-D).

420.03 MEMBERSHIP; DUES; TERMS

The fire department civil service commission, established under MSA, Chapter 420, has no authority to inspect fire department equipment, or supervise purchase of equipment, or to correct hazardous employment conditions. The duties of the commission relate purely to civil service duties. OAG Sept. 9, 1947 (688-B).

420.06 POWERS AND DUTIES

Control over the employment, promotion, discharge, and suspension of officers and employees of the fire department of the city of International Falls vests in the firemen's civil service commission and not in the city council. Failure to perform its duties does not divest the commission of its control. It is the duty of the commission to make rules and regulations as required by section 420.07. OAG April 26, 1951 (120).

Under section 421.221 a village council may fix the hours and time of employment of members of the fire department and appoint a person to fill a vacancy from names certified to it by the civil service commission from the eligible register. OAG Oct. 3, 1952 (120).

Commission may establish retirement age; determine by resolution whether retirement is compulsory when reaching that age; abolish the office of assistant chief.