

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-238
HOUSE BILL 1197**

AN ACT AMENDING THE CHARTER OF THE CITY OF STATESVILLE TO
MODIFY THE POWERS AND DUTIES OF THE CIVIL SERVICE BOARD AND
AMENDING THE ACT ESTABLISHING THE BUNCOMBE COUNTY
SHERIFF'S PERSONNEL ADVISORY BOARD.

The General Assembly of North Carolina enacts:

SECTION 1. Article V of the Charter of the City of Statesville, being Chapter 289 of the 1977 Session Laws, as amended by Chapter 799 of the 1981 Session Laws, reads as rewritten:

"ARTICLE V.

"CIVIL SERVICE BOARD.

"Sec. 5.1. Members; Term of Office. The Civil Service Board of the City, hereinafter referred to as the 'Board', shall consist of five members. Terms shall begin on the first day of July and expire on the last day of June.

The present members of the Board shall continue to serve until their present terms expire. That person appointed to fill the first term expiring shall be appointed to a three-year term. Of those appointed to the next three terms expiring, one shall serve a one-year term, one shall serve a two-year term, and one shall serve a three-year term. That person appointed to fill the last present term expiring shall serve a three-year term. These staggered terms are to ensure that a majority of the terms shall not expire during the same year. After the expiration of the term of these appointments, all appointments shall be for a three-year term.

"Sec. 5.2. Appointment of Members; Vacancies; Reappointments. All members of the Board shall be appointed by the senior Resident Judge of the Superior Court of the Judicial District of which Iredell County is a part. Vacancies on the Board shall be filled by appointment in the same manner, and any member appointed to fill a vacancy shall serve the remainder of the unexpired term. No member of the Board, after having served a full two or three-year term, shall be eligible for reappointment to the next succeeding term.

"Sec. 5.3. Qualifications; Removal From Office. Any person, other than a member of the City Council, an elective officer, a member or employee of the police or fire department, or an employee of the City, who is a qualified voter in the municipal elections in the City, shall be eligible for membership on the Board; provided that at least two members shall be of a political party different from that of the majority of the Board. Each member of the Board shall take an oath (or affirmation) for the faithful discharge of the duties of his office. The members of the Board shall be subject to

removal from office by the senior Resident Superior Court Judge for any cause which, in his discretion, makes such removal in the best interests of the public.

"Sec. 5.4. Election of Officers; Duties; Records Open to Public. The Board shall elect from its membership a chairman and a secretary for a term of one year. The chairman shall preside at all meetings of the Board. The secretary shall keep the minutes of the proceedings of the Board and shall be the custodian of all papers and records pertaining to the business of the Board, and shall perform such other duties as the Board may direct. All of the records of the Board shall be open to public inspection, during normal business hours at their place of keeping, except where otherwise prohibited by law.

~~"Sec. 5.5. Powers and Duties. The Board shall establish and fix requirements of applicants for employment in the police department and the fire department of the City, not contrary to State law. These requirements shall be printed and made available for public inspection and for the use of the employees of and applicants for employment in such departments. The board shall institute an affirmative action program in locating, testing and employing qualified blacks for entry level positions in police and fire departments, maintain accurate records and report regularly to city council on progress made in complying with federal court order. The Board shall hear grievances as to promotions, demotions, suspensions, and terminations of members of the fire and police departments.~~

"Sec. 5.5.1. Equal Opportunity. The Board shall maintain a program to insure that all employment decisions made by any person under this section shall be made without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition.

"Sec. 5.6. Compensation. The members of the Board shall receive as compensation for each meeting the sum of fifteen dollars (\$15.00).

"Sec. 5.7. Rooms and Clerical Help. The City shall provide suitable rooms for the Board and shall provide all necessary clerical and stenographic help and all stationery, forms, and other supplies needed by the Board, and shall allow such reasonable use of the facilities of the City ~~for the holding of examinations, and such other use as may be necessary for the proper conduct of its affairs.~~

~~"Sec. 5.8. Examination of Applicants. All applicants for sworn positions in the police department and qualified firefighters in the fire department of the City shall be subject to an examination by the Board, which examination shall be competitive and open to all persons, subject to a reasonable limitation as to age, health, moral character and general reputation. The examination shall relate to those matters which will fairly test the relative ability of the person examined to discharge in a proper fashion the duties of the position which he seeks to be appointed to, and shall include tests of physical, mental, and moral qualifications, but no applicant shall be examined concerning his political opinions or affiliations. Due regard shall be given by the Board in its examination of applicants for positions in the police department and fire department to the experience or training of any applicant which may qualify him for the duties which he would be called upon to discharge as a member of either department.~~

~~"Sec. 5.9. Notice of Examinations. Notice of the time and place of every examination shall be given by the Board by advertisement in some newspaper published in the City.~~

~~"Sec. 5.10. Eligibility List; Appointments. The Board shall prepare and keep an eligibility list of persons successfully passing its examinations for the positions of patrolmen and firefighters. Each person shall be graded according to his respective showing upon such examinations, and the Board shall make appointments to vacancies, which occur in the departments, on a basis of the grades made by the various applicants upon the examinations so given. All examinations given by the Board shall be made under the rules and regulations established by the Board.~~

~~All names which remain on the eligibility list for a period of two years shall be stricken therefrom; provided, however, any person who becomes eligible for appointment to either the police department or fire department, and is given proper notification that a vacancy exists, shall have seven days to accept or reject the appointment and if he rejects same, his name shall be removed immediately from the eligibility list.~~

~~"Sec. 5.11. Appointment of Policemen and Firemen; Responsible to Mayor and Council. The Chiefs and members of the Police and Fire Departments shall be appointed by a majority vote of the Board.~~

~~The Chiefs and members of the Police and Fire Departments shall be under the direction and control of, and shall be directly responsible to, the Mayor and City Council or, upon proper delegation, to the City Manager.~~

~~"Sec. 5.12. Promotions. All promotions shall be by competitive examination within the departments and shall be made by the respective chiefs, with the approval of the Board.~~

~~"Sec. 5.13. Acting Chiefs. Notwithstanding any other section to the contrary, if The City Manager shall hire and may terminate the Chiefs of the fire and police departments. If a vacancy occurs in the position of Chief and a new Chief is not immediately appointed, an acting Chief shall be appointed by the City Manager from within the department. The acting Chief shall have all the powers, duties and responsibilities as does the Chief. The acting Chief may be removed from office at any time by the City Manager, in which case he or she shall be restored to his former position.~~

~~"Sec. 5.14. Suspension of Fire and Police Chiefs. The mayor and city council or, upon proper delegation, the city manager shall have the authority to suspend, demote or terminate from employment the chief of either the police or fire department, but no such suspension, demotion or termination shall become final until concurred in by the civil service board.The City Manager shall be responsible for the hiring, firing, and discipline of the police and fire Chiefs.~~

~~"Sec. 5.14.1. Hiring Members of Police and Fire Departments; Promotions. The Chiefs of the police and fire departments shall hire the members of their respective departments. All promotions shall be by competitive examination within the departments and shall be made by the respective Chiefs.~~

"Sec. 5.15. Suspensions; Demotions; Terminations. The Chief of the police or fire department may suspend, demote, or terminate from employment any member of their respective departments for the infraction of any departmental rules and regulations. The Chief may also suspend a departmental employee during the investigation, hearing, or trial of said employee on any criminal charge, when suspension would be in the best interest of the department; where the suspension is terminated by full reinstatement of the employee, back pay shall be recoverable. Suspensions for an infraction of departmental rules and regulations of more than 15 days at any one time, or one which would make the total number of days suspended exceed 25 during any six-month period; demotions in rank and terminations may be appealed to the Board, upon written request filed with the respective Chief within three days of notification of the disciplinary action taken. The rules and regulations of each department may provide for appeals in the case of all suspensions for infractions of departmental rules and regulations; the Board shall have the power to hear such appeals. Upon notification of an appeal, the Board may make such investigation as it may direct and shall hold a hearing at which the accused shall be given an opportunity to be heard and present evidence in his own behalf. The Board shall have power to subpoena witnesses and compel testimony.

~~The board shall have the authority to suspend, demote in rank, or terminate from employment any employee who has appealed.~~ The board shall have the authority to sustain the disciplinary action imposed by the chief or vacate the same or impose such disciplinary action as it may determine; provided that no such ~~suspension, demotion or termination~~ action shall become final until concurred in by the city council.

~~Notwithstanding any provisions to the contrary herein, a~~ Any probationary employee of either department may be summarily discharged by the Chief of that department with no right to appeal to the Board.

Decisions regarding disciplinary actions made by the Chiefs, where no right to appeal exists, and all decisions of the Board under this section, shall be final and not subject to judicial review.

This section shall not apply to terminations due to a reduction in personnel.

"Sec. 5.16. Political Activity. No member or employee of the police department or the fire department shall contribute to or take part in any manner, directly or indirectly, in any election or function involving the election of a candidate for municipal office, other than casting his secret ballot.

No employee of the police department or the fire department shall seek a political office while employed as a member of either department, and shall not be granted a leave of absence prior to offering for election. Such employee shall automatically be dropped from the payroll of the City on the date the filing fee is paid to the Election Board."

SECTION 2.(a) Effective with the appointments made under Section 2(b) of this act, Section 1 of Chapter 297 of the 1973 Session Laws reads as rewritten:

"Section 1. Creation. There is hereby created a Personnel Advisory Board for the Sheriff's Department of Buncombe County which shall be composed of ~~three~~ five

members to be appointed by the senior regular resident Superior Court judge of the 28th Judicial District."

SECTION 2.(b) Effective with the appointments made under this subsection, Section 2 of Chapter 297 of the 1973 Session Laws reads as rewritten:

"**Sec. 2.** Terms, and Qualifications and Removal. The senior regular resident judge of Superior Court shall, ~~on or before July 1, 1973, appoint the three members~~ on or before September 1, 2007, appoint the five members of his selection who shall constitute the Personnel Advisory Board. The terms of office of the three persons serving on the date of the new appointments expire on that date. The initial term of office of ~~one member~~ two members of the Board shall be for one year; the initial term of office of ~~one member~~ two members shall be for two years; and the initial term of office of one member shall be for three years. The resident judge shall determine and announce the terms of the respective members of the Board.

At the expiration of the term of each member of said Board the resident judge shall appoint a successor for a term of three years. Any vacancy in the Personnel Advisory Board shall be filled in the manner herein provided for the appointment of members, and the person so appointed shall serve for the unexpired term of the member whose place he fills. Members of the Board shall hold office until their successors are appointed and qualified.

All persons appointed to the Personnel Advisory Board shall be interested in promoting a merit system of personnel administration and none shall ~~practice or have practiced law in the criminal courts of Buncombe County or hold or have held political office or an office in a political party during the previous three years.~~ be a current elected officeholder.

The members of the Board shall serve without pay or remuneration but shall be reimbursed for travel expenses incurred in the course of their duties.

The Board shall annually elect one of its members as chairman.

A member of the Board may be removed by the senior resident judge only for cause, after being given a copy of the charges against him and an opportunity to be heard publicly on such charges."

SECTION 2.(c) Section 3 of Chapter 297 of the 1973 Session Laws reads as rewritten:

"**Sec. 3.** Duties of Personnel Advisory Board. The duties of the Personnel Board shall be as follows:

- (1) ~~to~~ To represent the public interest in the improvement of personnel administration;
- (2) ~~to~~ To advise the Sheriff of Buncombe County concerning personnel administration, including minimum standards of employment established by the Criminal Justice and Training and Standards Council, and the methods used to publicize vacancies;
- (3) ~~to~~ To make any investigations which it may consider desirable concerning the administration of personnel in the Department;
- (4) ~~to~~ To advise the Sheriff on such personnel rules as he shall establish; and

- (5) ~~to~~ To hear appeals, receive evidence, determine facts and make recommendations to the Sheriff in case of employee appeals of suspension, demotion and dismissal and/or dismissal, and to determine and establish a rotating board for hiring and promotions."

SECTION 2.(d) Sections 5 and 6 of Chapter 297 of the 1973 Session Laws read as rewritten:

"Sec. 5. Political Activity Restricted. Every employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, and may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and in accordance with the Constitution and laws of the United States of America. However, no employee of the Department ~~shall~~ shall, as a duty of his office or employment, or as a condition for employment, promotion, or tenure of office: (1) engage in any political activity while on duty, (2) be required ~~as a duty of his office or employment, or as a condition for employment, promotion, or tenure of office, to contribute~~ to contribute funds for political or partisan purposes, (3) solicit, or act as custodian of, funds for political or partisan purposes, (4) coerce or compel contributions for political or partisan purposes by any other employee of the County, or (5) use any supplies or equipment of the County for political purposes. Any violation of this section shall be deemed improper conduct and shall subject such employee to dismissal or other disciplinary action by the Sheriff.

Sec. 6. Exemptions. All employees in the Sheriff's Department shall be subject to this act except the Sheriff, the Chief Deputy Sheriff, ~~the Assistant Chief Deputy Sheriff and the Administrative Deputy Sheriff.~~ and the majors and captains of the Buncombe County Sheriff's Department."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of July, 2007.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives