

LEGISLATIVE BILL 372

Approved by the Governor May 9, 1985

Introduced by Rupp, 22; Lundy, 36; Withem, 14

AN ACT relating to civil service; to amend sections 19-601, 19-618, 19-646, 19-1801 to 19-1803, 19-1804, and 19-1806 to 19-1823, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to civil service as prescribed; to adopt the Civil Service Act; to provide a penalty; to harmonize provisions; to eliminate an obsolete provision; to eliminate provisions relating to civil service boards in cities with city manager plans; and to repeal the original sections, and also sections 19-649 to 19-661, 19-1803.01, and 19-1805, Reissue Revised Statutes of Nebraska, 1943.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 19-601, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-601. Wherever the term this act appears in sections 19-601 to ~~19-661~~ 19-648, it shall be construed as referring exclusively to those sections. The term city as used in this act includes any city having a population of one thousand or more and less than two hundred thousand.

Sec. 2. That section 19-618, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-618. The council shall choose a city manager, a city clerk, and, where required, a civil service ~~board~~ commission, but no member of the council shall be chosen as manager, or as a member of the civil service ~~board~~ commission. Neither the council nor any of its committees or members shall dictate the appointment of any person to office or employment by the city manager, or in any manner seek to prevent him or her from exercising his or her own judgment in the appointment of officers and employees in the administrative service. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any of the subordinates of the city manager, either publicly or privately. The council, or a committee thereof, may investigate the affairs of any department or the official acts and conduct of any city officer. It shall have power to administer oaths, and compel the attendance of witnesses and the production of books and papers, and may punish for contempt any person failing to obey its subpoena or refusing to testify. No

person shall be excused from testifying, but his or her testimony shall not be used against him or her in any criminal proceeding other than for perjury.

Sec. 3. That section 19-646, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-646. The powers and duties of the city manager shall be (1) to see that the laws and ordinances are enforced, (2) to appoint and remove all heads of departments and all subordinate officers and employees in the departments in both the classified and unclassified service, which appointments shall be upon merit and fitness alone, and in the classified service all appointments and removals shall be subject to the civil service provisions of the Civil Service Act, ~~this act~~, (3) to exercise control over all departments and divisions thereof that may be created by the council, (4) to attend all meetings of the council with the right to take part in the discussion but not to vote, (5) to recommend to the council for adoption such measures as he or she may deem necessary or expedient, (6) to prepare the annual budget and keep the council fully advised as to the financial condition and needs of the city, and (7) to perform such other duties as may be required of him or her by this act, or by ordinance or resolution of the council.

Sec. 4. Sections 4 to 26 of this act shall be known and may be cited as the Civil Service Act.

Sec. 5. That section 19-1823, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1823~~. As used in sections ~~19-1801 to 19-1823~~ the Civil Service Act, unless the context otherwise requires:

(1) Commission shall mean ~~the~~ a civil service commission; ~~herein created~~ created pursuant to the Civil Service Act, and commissioner shall mean any one of the ~~three commissioners~~ a member of that such commission;

(2) Appointing authority shall mean: (a) In a mayor and council form of government, the mayor with the approval of the council, except to the extent that the appointing authority is otherwise designated by ordinance to be the mayor or city administrator; (b) in a commission form of government, the mayor and city council or village board; (c) in a village form of government, the village board; and (d) in a city manager plan of government, the city manager; Appointing power shall mean every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position, or employment subject to civil service;

(3) Appointment shall mean all means of selecting ~~selection~~, appointing, or employing any person to hold any office, place, position, or employment subject to civil service;

(4) City Municipality shall mean all cities and villages specified in subsection (1) of section 6 of this act having a full paid fire or police department or a fire or police department having paid members full-time police officers or full-time firefighters; except cities with a population in excess of forty thousand which have adopted or which hereafter adopt a home rule charter under sections 2 to 5 inclusive of Article XI of the Constitution of this state; as set forth in subsection (1) of section 19-1801; and

(5) Full paid fire or police department or fire or police department having paid members means a fire or police department in which the officers and firemen are paid regularly by the city and devote their whole time to firefighting or law enforcement-

(5) Governing body shall mean: (a) In a mayor and council form of government, the mayor and council; (b) in a commission form of government, the mayor and council or village board; (c) in a village form of government, the village board; and (d) in a city manager plan of government, the mayor and council;

(6) Full-time police officers shall mean police officers in positions which require certification by the Nebraska Law Enforcement Training Center, created pursuant to section 81-1402, who have the power of arrest, who are paid regularly by a municipality, and for whom law enforcement is a full-time career, but shall not include clerical, custodial, or maintenance personnel;

(7) Full-time firefighter shall mean duly appointed firefighters who are paid regularly by a municipality and for whom firefighting is a full-time career, but shall not include clerical, custodial, or maintenance personnel who are not engaged in fire suppression;

(8) Promotion or demotion shall mean changing from one position to another, accompanied by a corresponding change in current rate of pay; and

(9) Position shall mean an individual job which is designated by an official title indicative of the nature of the work.

Sec. 6. That section 19-1801, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1801-~~ (1) There is hereby created, in every city cities in the State of Nebraska having a population of more than five thousand inhabitants and having a full paid fire or police department or a fire or police department having paid members full-time police officers or full-time firefighters, a civil service commission, except in which shall be composed of three persons; PROVIDED, sections 19-1801 to 19-1823 shall not apply to cities with a population in excess of forty thousand which have adopted or which hereafter may adopt a home rule charter under and pursuant to sections 2 to 5, inclusive, of Article XI of

the Constitution of this state. Any city or village having a population of five thousand or less may ~~come within~~ adopt the Civil Service Act and create a civil service commission ~~provisions of sections 19-1801 to 19-1823~~ by a vote of the electors of such city or village. If any city of the first class which established a civil service commission decreases in population to less than five thousand, as determined by the latest federal census, and continues to have a ~~full paid fire or police department or a fire or police department having paid members full-time police officers or full-time firefighters~~, the civil service commission shall be continued for at least ~~two~~ four years, and thereafter continued at the option of the local governing body of such city. The members of such commission shall be appointed by the ~~person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, commission, or otherwise, is or are vested by law with the power and authority to select, appoint, or employ the chief of a fire or police department in any such city prior to April 17, 1957~~ appointing authority.

(2) The governing body shall by ordinance determine if the commission shall be comprised of three or five members. The members of the civil service commission, referred to in subsections (1), (3), and (4) of this section, shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such municipality city for at least three years immediately preceding such appointment, and an elector of the county wherein such person resides. If the commission is comprised of three members, the The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. If the commission is comprised of five members, the term of office of such members shall be for five years, except that the first members of such commission shall be appointed for different terms, as follows: One to serve for a period of one year, one to serve for a period of two years, one to serve for a period of three years, one to serve for a period of four years, and one to serve for a period of five years. If the municipality determines by ordinance to change from a three-member commission to a five-member commission, or from a five-member commission to a three-member commission, the members of the commission serving before the effective date of such ordinance shall hold office until reappointed or their successors are appointed.

(3) Any member of the civil service commission, referred to in subsections (1), (2), and (4) of this section, may be removed from office for incompetency,

incompatibility; dereliction of duty, malfeasance in office, or other good cause by the appointing authority, except power; PROVIDED, that no member of the commission shall be removed until written charges have been preferred, due notice given such member, and a full hearing had before the appointing authority. Any member power; AND PROVIDED FURTHER, that the commissioner so removed shall have the right to appeal to the district court of the county in which such commission is located, which court shall thereupon proceed to hear and determine such appeal in a summary manner. Such an appeal shall be only upon the ground that such judgment or order of removal was not made in good faith for cause, and the hearing on such appeal shall be confined to the determination of whether or not it was so made.

(4) The members of the civil service commission, referred to in subsections (1), (2), and (3) of this section, shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by sections 19-1801 to 19-1823 the Civil Service Act. Two members of such Two commissioners in a three-member commission and three commissioners in a five-member commission shall constitute a quorum for the transaction of business. The concurring votes of two members of such commission shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission, under or by virtue of the provisions of sections 19-1801 to 19-1823. Confirmation of the appointment or appointments of commissioners, made under the provisions of subsection (1) of this section, by any other legislative body shall not be required. At the time of any appointment, not more than two commissioners of a three-member commission, or three commissioners of a five-member commission, including the one or ones to be appointed, shall be registered electors adherents of the same political party.

Sec. 7. That section 19-1802, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1802: The provisions of sections 19-1801 to 19-1823 The Civil Service Act shall apply to all municipalities, as defined in section 5 of this act, cities in the State of Nebraska having a paid fire or police department or a fire or police department having paid members; included under the provisions of specified in subsection (1) of section 6 of this act. 19-1801: All present full-time firefighters and full-time police officers of such municipalities incumbents and future appointees to such full-time positions of such fire or police departments shall be subject to civil service.

Sec. 8. That section 19-1803, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1803: The classified civil service and the Civil Service Act provisions of sections 19-1801 to

19-1823 shall only apply to include all full-time firefighters or full-time police officers employees of the fire or police department of each municipality, city coming within their purview, including the any paid full-time police or fire chief of that such department. All appointments to and promotions in such department shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation. If the appointing authority fills a vacancy in a position subject to the Civil Service Act, the appointing authority shall consider factors including, but not limited to:

(1) The multiple job skills recently or currently being performed by the applicant which are necessary for the position;

(2) The knowledge, skills, and abilities of the applicant which are necessary for the position;

(3) The performance appraisal of any applicant who is already employed in the department, including any recent or pending disciplinary actions involving the employee;

(4) The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;

(5) Required federal, state, or local certifications or licenses necessary for the position; and

(6) The qualifications of the applicants who are already employed in the department and have successfully completed all parts of the examination for the position. If one or more members of the department shall successfully complete all parts of the examination for a promotional position, any vacancy in such promotional position shall be filled by one of such members of the department. No person shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of sections 19-1801 to 19-1823 the Civil Service Act.

Sec. 9. That section 19-1804, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1804: (1) Immediately after the appointment of the commission, and annually thereafter, upon the appointment of a new commissioner, the commission shall organize, by electing one of its members chairman chairperson. It The commission shall hold regular meetings, at least once a month, and such additional meetings as may be required for the proper discharge of its duties. It The commission shall appoint some person as a secretary and a chief examiner who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe. The commission may merge the positions of secretary and chief examiner and appoint one

person to perform the duties of both positions. If the municipality has a personnel officer, the commission shall appoint such personnel officer as secretary and chief examiner, if requested to do so by the appointing authority. The secretary and chief examiner shall be appointed as a result of a competitive examination, which may be either original and open to all properly qualified citizens of the city, town or municipality or promotional and limited to persons already in the service of the fire or police department or some other department of said city, as the commission may decide. The secretary and chief examiner may shall be subject to suspension, reduction or discharge upon the vote of a majority of the appointed members of the commission. in the same manner and subject to the same limitations as are provided in sections 19-1801 to 19-1823 for members of the fire or police department. It shall be the duty of the civil service commission to-

(2) The commission shall adopt and promulgate (1) Make suitable procedural rules and regulations consistent not inconsistent with the provisions of sections 19-1801 to 19-1823 Civil Service Act. Such rules and regulations shall provide in detail the manner in which examinations may be held, appointments, promotions, transfers, reinstatements, demotions, suspensions, and discharges may be made and for any other matters which may be considered desirable to further carry out the general purposes of sections 19-1801 to 19-1823 or found to be in the interest of good personnel administration assigned by the appointing authority. Such At least one copy of the rules and regulations, and any amendments, thereto, shall be printed, mimeographed, or multigraphed for free public distribution and may be changed from time to time, made available for examination and reproduction by members of the public. One copy of the rules and regulations and any amendments shall be given to each full-time firefighter and full-time police officer.

(3) The commission shall provide (2) Provide that all tests shall be practical and consist only of subjects which will fairly determine the capacity of persons, who are to be examined, to perform the duties of the position to which an appointment is to be made and may include, but not be limited to, tests of physical fitness and of manual skill, and psychological testing.

(4) The commission shall provide, (3) Provide, by the rules and regulations, for a credit of ten per cent in favor of all applicants, for an appointment under civil service, who, in time of war or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the Army, Navy, and Marine Corps and who have equaled or exceeded the minimum qualifying standard established by the appointing authority. These credits shall only apply to entrance examinations, entry level

positions as defined by the appointing authority.

(5) The commission may conduct (4) Make an investigation concerning and report upon all matters touching regarding the enforcement and effect of the provisions of sections 19-1801 to 19-1823 Civil Service Act and the rules and regulations prescribed hereunder; inspect The commission may inspect all institutions, departments, offices, places, positions, and employments affected by sections 19-1801 to 19-1823 such act to determine whether ; and ascertain whether sections 19-1801 to 19-1823 such act and all such rules and regulations are being obeyed. Such investigations may be made conducted by the commission or by any commissioner designated by the commission for that purpose. The commission shall also make a like investigation on the written petition of a citizen, duly verified, stating that irregularities or abuses exist or setting forth, in concise language, the necessity for such an investigation. The commission may be represented in such investigations by the municipal attorney, if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission in any such investigation. In the course of such an investigation, the commission, designated commissioner, or chief examiner shall have the power to administer oaths, issue subpoenas to require the attendance of witnesses and the production by them of books, papers, documents, and accounts; appertaining to the 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 courts of this state. The oaths administered and subpoenas issued hereunder shall have the same force and effect as the oaths; administered by a district judge in a judicial capacity; and subpoenas issued by the district courts of Nebraska. The failure of any person so subpoenaed to comply therewith shall be deemed a violation of sections 19-1801 to 19-1823 the Civil Service Act; and be punishable as such. No investigation shall be made pursuant to this section if there is a written accusation concerning the same subject matter against a person in the civil service. Such accusations shall be handled pursuant to section 12 of this act. ;

(6) The commission shall provide (5) Provide that all hearings and investigations; before the commission, designated commissioner, or chief examiner; shall be governed by the Civil Service Act sections 19-1801 to 19-1823 and the rules of practice and procedure to be adopted by the commission. In the conduct thereof, they shall not be bound by the technical rules of evidence. No informality in any proceedings or hearing or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the

commission, ~~except~~ ; PROVIDED, that no order, decision, rule, or regulation made by any designated commissioner, conducting any hearing or investigation alone, shall be of any force or effect ~~whatsoever~~ unless and ~~until~~ it is concurred in by a majority of the appointed members of the commission, including the vote of any commissioner making the investigation, ~~at least one of the other two members;~~

(6) ~~Hear and determine appeals or complaints respecting the administrative work of the personnel department, the allocation of positions, the rejection of an examination, and such other matters as may be referred to the commission;~~

(7) ~~The commission shall establish~~ Establish and maintain, ~~in card or other suitable form,~~ a roster of officers and employees. ~~;~~

(8) ~~The commission shall provide~~ Provide for, ~~formulate~~ establish, and hold competitive tests to determine the relative qualifications of persons who seek employment in any ~~class or~~ position and, as a result thereof, establish eligible lists for the various ~~classes~~ positions.

(9) ~~The commission shall make recommendations concerning a reduction in force policy to the governing body or city manager in a city manager plan of government. The governing body or city manager in a city manager plan of government shall consider such recommendations, but shall not be bound by them in establishing a reduction in force policy. Prior to the adoption of a reduction in force policy, the governing body or, in the case of a city manager plan, the city manager and the governing body shall, after giving reasonable notice to each police officer and firefighter by first class mail, conduct a public hearing.~~

(10) ~~The governing body shall in all municipalities, except those with a city manager plan in which the city manager shall, adopt a reduction in force policy which shall consider factors including, but not limited to:~~

(a) ~~The multiple job skills recently or currently being performed by the employee;~~

(b) ~~The knowledge, skills, and abilities of the employee;~~

(c) ~~The performance appraisal of the employee including any recent or pending disciplinary actions involving the employee;~~

(d) ~~The employment policies and staffing needs of the department together with contracts, ordinances, and statutes related thereto;~~

(e) ~~Required federal, state, or local certifications or licenses; and~~

(f) ~~Seniority. of positions. Provide that men laid off, because of curtailment of expenditures, reduction in force, or similar causes, shall be the last~~

man or men, including probationers, that have been appointed to said fire or police department. Such removal shall be accomplished by suspending in numerical order, commencing with the last person or persons appointed to the fire or police department, until such necessary reductions have been accomplished. When and if the said fire or police department shall again be increased in numbers, such firemen or policemen suspended, under the terms of sections 19-1801 to 19-1823, shall be reinstated before any new appointments to said fire or police department shall be made.

(9) Certify, on a written request, when a vacant position is to be filled, to the appointing authority the name of the person highest on the eligible list for the class. If there is no such list, to authorize a provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months. No person shall receive more than one provisional appointment or serve more than four months as a provisional appointee in any one fiscal year, and

(11) (10) The commission shall keep such records as may be necessary for the proper administration of sections 19-1801 to 19-1823 the Civil Service Act.

Sec. 10. That section 19-1806, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1806- An applicant for a position of any kind under civil service must shall be able to read and write the English language, meet the minimum job qualifications of the position as established by the appointing authority, and be a resident of said city for at least one year last past, of good moral character, and of temperate and industrious habits. An applicant shall be required to disclose his or her past employment history and his or her criminal record, if any. Prior to certifying to the appointing authority the names of the persons eligible for the position or positions, the commission shall validate the qualifications of such persons. Provided, that the commission may, at its discretion, waive the requirement that the applicant be a resident of such city. These facts are to be ascertained in such manner as the commission may deem advisable.

Sec. 11. That section 19-1807, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1807- The tenure of everyone a person holding a position of employment an officer, place, position or employment, under the Civil Service Act provisions of sections 19-1801 to 19-1823, shall be only during good behavior. Any such persons person may be removed or discharged, suspended with or without pay, demoted, reduced in rank, or deprived of vacation, benefits, compensation, or other special privileges, except pension benefits, for any of the following reasons:

(1) Incompetency, inefficiency, or inattention to or dereliction of duty;

(2) Dishonesty, prejudicial conduct, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, any act of omission or commission tending to injure the public service, any willful failure on the part of the employee to properly conduct himself or herself, or any willful violation of the Civil Service Act provisions of sections 19-1801 to 19-1823 or the rules and regulations to be adopted pursuant to such act; hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest; disgraceful; immoral or prejudicial conduct;

(5) (4) Drunkenness or the use of intoxicating liquors, narcotics, or any other habit-forming drug, liquid, or preparation to such an extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee or precludes the employee from properly performing the functions and duties of his or her any position; under civil service;

(6) (5) Conviction of a felony or misdemeanor tending to injure the employee's ability to effectively perform the duties of his or her position; or involving moral turpitude;

(7) (6) Any other act or failure to act which, in the judgment of the civil service commissioners, is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service.

Sec. 12. That section 19-1808, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1808-~~ (1) No person in the ~~classified~~ civil service, who shall have been permanently appointed or inducted into civil service under the provisions of sections 19-1801 to 19-1823 Civil Service Act, shall be removed, suspended, demoted, or discharged except for cause and then only upon the written accusation of the police or fire chief, appointing power authority, or any citizen or taxpayer. A written statement of such accusation, in general terms, shall be served upon the accused and a duplicate filed with the commission. The chief of the fire or police department may suspend a member, pending the confirmation of the suspension by the regular appointing power under sections 19-1801 to 19-1823. The commission must act upon the same within three days-

(2) The governing body of the municipality shall establish by ordinance procedures for acting upon such written accusations and the manner by which suspensions, demotions, removals, discharges, or other disciplinary actions may be imposed by the appointing authority. At least one copy of the rules and regulations, and any

amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer.

(3) Any person so removed, suspended, demoted, or discharged may, within ten days after being notified by the appointing authority of such from the time of his removal, suspension, demotion, or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The governing body of the municipality shall establish procedures by ordinance consistent with this section by which the commission shall conduct such investigation. At least one copy of the rules and regulations, and any amendments to such rules and regulations, shall be made available for examination and reproduction by members of the public. One copy of the rules and regulations and any such amendments shall be given to each full-time firefighter and full-time police officer. Such procedures shall comply with minimum due process requirements. The commission may be represented in such investigation and hearing by the municipal attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the commission may be represented by special counsel appointed by the commission for any such investigation and hearing. The investigation shall be confined to the determination of the question of whether or not such removal, suspension, demotion, or discharge was made ~~for political or religious reasons~~ and in good faith for cause which shall mean that the action was not arbitrary or capricious and was not made for political or religious reasons.

(4) After such investigation, the commission shall hold a public hearing after giving reasonable notice to the accused of the time and place of such hearing. Such hearing shall be held not less than ten or more than twenty days after filing of the written demand for an investigation and a decision shall be rendered no later than ten days after the hearing. At such hearing the accused shall be permitted to appear in person and by counsel and to present his or her defense. The commission may, ~~if in its estimation the evidence is conclusive,~~ affirm the ~~removal~~ action taken if such action of the appointing authority is supported by a preponderance of the evidence. If it shall find that the removal, suspension, demotion, or discharge, ~~was made for political or religious reasons or was not made in good faith for cause,~~ it shall order the immediate reinstatement or reemployment of such person in the ~~office, place,~~ position, or employment from which such person was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission in its discretion

so provides, be retroactive and entitle such person to ~~pay or~~ compensation and restoration of benefits and privileges from the time of such removal, suspension, demotion, or discharge. The commission upon such investigation hearing, in lieu of affirming the removal, suspension, demotion, or discharge, may modify the order of removal, suspension, demotion, or discharge by directing a suspension, with or without pay, for a given period; and the subsequent restoration to duty or demotion in classification, grade, position or pay. The findings of the commission shall be certified in writing to and enforced by the appointing power authority. All investigations made by the commission, pursuant to the provisions of this section, shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing. Such hearing shall be held not less than ten nor more than twenty days after filing of the written demand therefor and a decision shall be rendered no later than ten days after the hearing. At such hearing the accused shall be afforded an opportunity of appearing, in person and by counsel, and presenting his defense.

(5) If such judgment or order be concurred in by the commission or a majority thereof, the accused or governing body may appeal therefrom to the district court. Such appeal shall be taken within forty-five ~~thirty~~ days after the entry of such judgment or order by serving the commission with a written notice of appeal stating the grounds thereof and demanding that a certified transcript of the record and all papers, on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify, and file such transcript with and deliver ~~said such~~ papers to the district court. The district court shall ~~thereupon~~ proceed to hear and determine such appeal in a summary manner. ~~The~~ PROVIDED, that such hearing shall be confined to the determination of whether or not the judgment or order of removal, discharge, demotion, or suspension, made by the commission, was made in good faith for cause which shall mean that the action of the commission was based upon a preponderance of the evidence, was not arbitrary or capricious, and was not made for political or religious reasons. No appeal to such court shall be taken except upon such ground or grounds.

If such appeal is taken by the governing body and the district court affirms the decision of the commission, the municipality shall pay to the employee court costs and reasonable attorney's fees incurred as a result of such appeal and as approved by the district court. If such appeal is taken by the governing body and the district court does not affirm the decision of the commission, the court may award court costs and reasonable attorney's fees to the employee as approved by the district court.

Sec. 13. That section 19-1809, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1809- It shall be the duty of all officers and employees of any such city to aid, in all proper ways, the carrying out of the provisions of sections 19-1801 to 19-1823 and such rules and regulations as may, from time to time, be prescribed by the commission thereunder, to The municipality shall afford the commission, and its members and employees, all reasonable facilities and assistance to inspect all books, papers, documents, and accounts applying or in any way appertaining to any and all offices, places, positions and employments, subject to civil service, and to shall produce such said books, papers, documents, and accounts. All municipal officers and employees shall and to attend and testify, whenever required to do so by the commission, the accused, or the appointing authority. or any commissioner.~~

Sec. 14. That section 19-1810, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1810- (1) Whenever a position subject to the Civil Service Act in the classified service becomes vacant, the appointing authority power shall make requisition upon the commission for the names and addresses of the persons eligible for appointment thereto. The and may decline to fill such vacancy for an indefinite period.~~

(2) The commission, upon request of the appointing authority, shall establish and maintain a list, for a period of time established by the appointing authority, of those eligible for appointment to or promotion within the department. Such list shall be established and maintained through the open competitive examinations required by section 8 of this act, with the time and date of any examination to be established by the appointing authority. Any person having satisfactorily passed the examination for any position shall be placed on the list of those eligible for appointment or promotion to such position.

(3) Upon the request of the appointing authority, the commission shall certify the names of the persons willing to accept such employment who are the three highest on the eligible list, following the most recent examination, and whose qualifications have been validated by the commission for the class to which the vacant position has been allocated. If less fewer than three names are on the eligible list the commission shall certify those that do the number that does appear. If the commission certifies fewer than three names for each vacancy to the appointing authority, the appointing authority may appoint one of such persons to fill the vacancy, may decline to fill the vacancy, or may order that another examination be held by the civil service commission.

(4) If a vacancy occurs and there is no eligible list for the position or if the commission has not certified persons from the eligible list, a temporary appointment may be made by the appointing authority. Such temporary appointment shall not continue for a period longer than four months. No person shall receive more than one temporary appointment or serve more than four months as a temporary appointee in any one fiscal year.

(5) If there is no appropriate eligible list for the class, the commission shall certify in the manner aforesaid the names of the persons on its list who are held appropriate for such class. If more than one vacancy is to be filled, an additional name, if available, shall be certified for each additional vacancy. The appointing power shall forthwith appoint one of such persons to such vacant position or positions. Whenever a requisition is to be made or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the names of the persons eligible for appointment to the appointing power and said appointing power shall forthwith appoint one of the persons so certified to said position. No person so certified shall be laid off, suspended, given a leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity has been given such person to be heard by the commission and then only with the consent and approval of the commission. To enable the appointing authority power to exercise a choice in the filling of positions, no appointment, employment, or promotion, in any position in the classified service, shall be deemed complete until after the expiration of a period of three to six months' probationary service for firefighters and not less than six months nor more than one year after certification by the Nebraska Law Enforcement Training Center for police officers, as may be provided in the rules of the civil service commission, during which time the appointing power authority may terminate the employment of the person appointed by it if, during the performance test thus afforded and upon an observation or consideration of the performance of duty, the appointing power authority deems such person unfit or unsatisfactory for service in the department. The appointing authority may whereupon the appointing power shall appoint one of the other persons certified by the commission and such person shall likewise enter upon said such duties until some person is found who is deemed fit for appointment, employment, or promotion for the probationary period provided therefor and then the appointment, employment, or promotion shall be deemed to be complete.

Sec. 15. That section 19-1811, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1811- All offices, places, positions and employments, coming within subject to the purview of sections 19-1801 to 19-1823 Civil Service Act, shall be created or eliminated by the governing body of the municipality, person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, commission or otherwise, is or are vested by law, at and prior to August 29, 1943, with power and authority to select, appoint or employ any person coming within the purview of sections 19-1801 to 19-1823. Nothing herein contained shall The Civil Service Act shall not be construed to infringe upon the power and authority of (1) the governing body of the municipality to establish pursuant to sections 16-310, 17-108, or 17-209 any such person, group of persons or appointing power, to fix the salaries and compensation of all employees employed hereunder or (2) the city manager, pursuant to Chapter 19, article 6, to establish the salaries and compensation of employees within the compensation schedule or ranges established by the governing body for the positions.

Sec. 16. That section 19-1812, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1812- No treasurer, auditor, comptroller, or other officer or employee of any city, town or municipality, in which sections 19-1801 to 19-1823 are effective subject to the Civil Service Act, shall approve the payment of or be in any manner concerned in paying, auditing, or approving any salary, wage, or other compensation for services to any person subject to the jurisdiction and scope of sections 19-1801 to 19-1823, the Civil Service Act unless the person to receive such salary, wage, or other compensation has been appointed or employed in compliance with such act. a payroll, estimate or account of such salary, wage or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services, on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on said payroll, bears the certificate of the civil service commission, its secretary or other duly authorized agent, that the persons named in such payroll, estimate or account have been appointed or employed in compliance with the terms of sections 19-1801 to 19-1823 and with the rules of the commission, and that the said payroll, estimate or account is, so far as known to the said commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee, whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who shall willfully, or through culpable negligence, violate or fail to comply with sections 19-1801 to 19-1823 or with the rules of the commission.

Sec. 17. That section 19-1813, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1813-~~ A leave of absence, with or without pay, may be granted by any appointing power the appointing authority to any person under civil service. The appointing authority; Provided, that such appointing power shall give notice of such leave to the commission. All appointments for temporary employment, resulting from such leaves of absence, shall be made from the eligible list, if any, of the ~~classified~~ civil service.

Sec. 18. That section 19-1814, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1814-~~ It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of the Civil Service Act sections 19-1801 to 19-1823 and of the rules of the commission. The commission ~~shall~~ may be represented in such suits and all investigations pursuant to the Civil Service Act by the municipal city attorney if authorized by the appointing authority. If the municipal attorney does not represent the commission, the but said commission may also be represented by special counsel appointed by it in any particular case.

Sec. 19. That section 19-1815, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1815-~~ No commissioner or any other person shall, by himself or herself or in cooperation with one or more persons, (1) defeat, deceive, or obstruct any person in respect to the right of examination or registration, according to the rules and regulations made pursuant to sections 19-1801 to 19-1823 the Civil Service Act, (2) falsely mark, grade, estimate, or report upon the examination and standing of any person examined, registered or certified, in accordance with such act the provisions of sections 19-1801 to 19-1823 or aid in so doing, (3) make any false representation concerning the same or concerning the persons examined, (4) furnish any person any special or secret information, for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified or to be examined, registered or certified, or (5) persuade any other person, or permit or aid in any manner any other person to personate impersonate him or her, in connection with any examination, registration, application, or request to be so examined, or registered.

Sec. 20. That section 19-1816, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1816-~~ No person holding any office, place, position or employment, subject to civil service, is shall be under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever. No person shall be removed, reduced in position grade or salary, or otherwise prejudiced for

refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service, or promise or threaten to do so, for giving, withholding, or neglecting to make any contribution of money, services, or any other valuable thing for any political purpose.

Sec. 21. That section 19-1817, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1817. The various cities affected by Any municipality subject to the Civil Service Act provisions of sections 19-1801 to 19-1823 shall, immediately upon the taking effect thereof on August 29, 1943 after the effective date of this act, enact appropriate legislation for carrying it into effect such act. The failure of the duly constituted authorities of any such city governing body of any such municipality to do so shall be considered a violation of the Civil Service Act sections 19-1801 to 19-1823 and shall be punishable as such.

Sec. 22. That section 19-1818, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1818. The duly constituted authorities of each and every city governing body of every municipality, coming within the purview of sections 19-1801 to 19-1823, subject to the Civil Service Act shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated, lighted, and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such municipality city coming within subject to the purview of sections 19-1801 to 19-1823, and the failure, Civil Service Act. Failure upon the part of the governing body duly constituted authorities to do so, shall be considered a violation of the Civil Service Act sections 19-1801 to 19-1823 and shall be punishable as such.

Sec. 23. That section 19-1819, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

19-1819. Within ninety days after a municipality becomes subject to the Civil Service Act, August 29, 1943, it shall be the duty of the duly constituted authorities in each such city governing body of such municipality, subject to the provisions of sections 19-1801 to 19-1823 such act, to appoint and create a civil service commission, as provided for in section 19-1801 6 of this act, and the failure, upon the part of such governing body said duly constituted authorities, or any of them, to do so, shall be deemed a violation of the Civil Service Act sections 19-1801 to 19-1823 and shall be punishable as such.

Sec. 24. That section 19-1820, Reissue Revised

Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1820-~~ It shall be the duty of each commission, appointed subject to the the provisions of sections 19-1801 to 19-1823 Civil Service Act, to immediately organize and make suitable adopt and promulgate procedural rules and regulations, not inconsistent consistent with the purpose of sections 19-1801 to 19-1823 such act, for the purpose of carrying out such act, carrying into effect the provisions of sections 19-1801 to 19-1823. The failure upon the part of said such commission, or any individual member thereof, to do so shall be deemed a violation of the Civil Service Act sections 19-1801 to 19-1823 and shall be punishable as such.

Sec. 25. That section 19-1821, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1821-~~ It shall be the duty of each city, town or municipality, coming within subject to the provisions of sections 19-1801 to 19-1823, Civil Service Act to appropriate each fiscal year, from the general funds of such city, town or municipality, a sum of money sufficient to pay the necessary expenses involved in carrying out the purposes of sections 19-1801 to 19-1823 such act, including, but not limited to, reasonable attorney's fees for any special counsel appointed by the commission when the municipal attorney is not authorized by the appointing authority to represent the commission. The appointing authority may establish the hourly or monthly rate of pay of such special counsel.

Sec. 26. That section 19-1822, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

~~19-1822-~~ Any person who shall willfully violate any of the provisions of the Civil Service Act sections 19-1801 to 19-1823 shall be deemed guilty of a Class IV misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars or more than one thousand dollars, or by imprisonment in the county jail for not longer than one year, or by both such fine and imprisonment.

Sec. 27. That original sections 19-601, 19-618, 19-646, 19-1801 to 19-1803, 19-1804, and 19-1806 to 19-1823, Reissue Revised Statutes of Nebraska, 1943, and also sections 19-649 to 19-661, 19-1803.01, and 19-1805, Reissue Revised Statutes of Nebraska, 1943, are repealed.