WEST VIRGINIA CODE CHAPTER 8 ARTICLE 14A

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§8-14A-1. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

(1) "Accused officer" means any police officer or firefighter who is the subject of an investigation or interrogation which results in a recommendation of punitive action against him or her.

(2) "Civil service," when followed by the terms "department," "officer" or "accused officer", means any department, officer or accused officer who is subject to the civil service provisions of article fourteen, chapter eight of this code or article fifteen, chapter eight of this code.

(3) "Hearing" means any meeting in the course of an investigatory proceeding, other than an interrogation at which no testimony is taken under oath, conducted by a hearing board for the purpose of taking or inducing testimony or receiving evidence.

(4) "Hearing board" means a board appointed to hold a hearing on a complaint against an accused officer. The hearing board shall consist of three members to be appointed pursuant to paragraph (a), (b) or (c) of this subdivision. Hearing board members appointed under paragraph (b) or (c) of this subdivision may be removed from office as provided under paragraph (d) of this subdivision.

(a) For civil service departments, the department chief shall appoint the first member, the members of the accused officer's department shall appoint the second member, and the first and second members shall appoint the third member by agreement. Should the first and second members fail to agree on the appointment of the third member within five days, they shall submit to the department's civil service commission a list of four qualified candidates from which list the commission shall appoint the third member. The appointment of members under this paragraph shall be subject to the following qualifications and limitations:

(1) No member shall have had any part in the investigation or interrogation of the accused officer;

(2) Each member shall be a police officer or firefighter within the accused officer's department, or, with the department chief's approval, a law-enforcement officer or firefighter from another law-enforcement agency or fire department;

(3) At least one member shall be of the same rank as the accused officer; and

(4) If there are fewer than three persons who meet the qualifications described in subparagraphs (1), (2) and (3) of this paragraph, then the department's civil service commission shall appoint as many citizens of the municipality in which the department is located as may be necessary to constitute the board.

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(b) For noncivil service police departments, the hearing board shall be a standing hearing board. The department chief shall appoint the first member, the local fraternal order of police shall appoint the second member, and the local chamber of commerce or local businessmen's association shall appoint the third member. If there is no local fraternal order of police, the state fraternal order of police shall appoint the second member. If there is no local chamber of commerce or local businessmen's association, the first and second members shall appoint the third member by agreement. Of the three original appointments in each police department, the first member shall serve for six years from the date of his or her appointment; the second member shall serve four years from the date of his or her appointment; and the third member shall serve for two years from the date of his or her appointment. After the original appointments, all appointments shall be made for periods of four years each by the designated appointing authority. In the event that any member shall cease to be a member due to death, resignation, final removal or other cause, a new member shall be appointed within thirty days of the date the ex-member ceased to be a member. This appointment shall be made by the officer or body who in the first instance appointed the member who is no longer a member. When the hearing board is appointed, the three members shall elect one of their number to act as president of the board, who shall serve as president for one year. In the event that a member has had a part in the investigation or interrogation of an accused officer or is related by consanguinity or affinity to an accused officer, that member shall be recused from participation in the accused officer's hearing. In such an instance, the officer or body who in the first instance appointed the recused member shall appoint another person for sole purpose of the accused officer's hearing. No member shall hold any other office (other than the office of notary public) under the United States, this state, or any municipality, county or other political subdivision thereof; nor shall any member serve on any political committee or take any active part in the management of any political campaign.

(c) For noncivil service fire departments, the hearing board shall be a standing hearing board. The department chief shall appoint the first member, the local international association of firefighters shall appoint the second member, and the local chamber of commerce or local businessmen's association shall appoint the third member. If there is no local international association of firefighters in the municipality, the local central body of the West Virginia Federation of Labor AFL-CIO shall appoint the second member. If there is no local central body of the West Virginia Federation of Labor AFL-CIO in the municipality, the West Virginia Federation of Labor AFL-CIO shall appoint the second member. If there is no local chamber of commerce or local businessmen's association, the first and second members shall appoint the third member by agreement. Of the three original appointments in each fire department, the first member shall serve for six years from the date of his or her appointment; the second member shall serve four years from the date of his or her appointment; and the third member shall serve for two years from the date of his or her appointment. After the original appointments, all appointments shall be made for periods of four years each by the designated appointing authority. In the event that any member shall cease to be a member due to death, resignation, final removal or other cause, a new member shall be appointed within thirty days of the date the ex-member ceased to be a member. This

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appointment shall be made by the officer or body who in the first instance appointed the member who is no longer a member. Each of the three members shall elect one of their number to act as president of the board, who shall serve as president for one year. In the event that a member has had a part in the investigation or interrogation of an accused officer or is related by consanguinity or affinity to an accused officer, that member shall be recused from participation in the accused officer's hearing. In such an instance, the officer or body who in the first instance appointed the recused member shall appoint another person for the sole purpose of the accused officer's hearing. No member shall hold any other office (other than the office of notary public) under the United States, this state, or any municipality, county or other political subdivision thereof; nor shall any member serve on any political committee or take any active part in the management of any political campaign.

(d) Any member of a hearing board appointed under paragraph (b) or (c) of this subdivision may be removed as provided in this paragraph.

The mayor of the municipality may, at any time, remove any hearing board member for good cause, which shall be stated in writing and made a part of the records of the hearing board. However, within ten days of removing any member, the mayor shall file in the circuit clerk's office of the county in which the municipality is located a petition setting forth in full the reason for the removal and seeking the circuit court's confirmation of the mayor's removal of the member. The mayor shall file a copy of the petition with the removed member at the same time it is filed with the circuit clerk. The petition shall have precedence on the circuit court's docket and shall be heard as soon as practicable on the request of the removed member. All rights vested in a circuit court by this subsection may be exercised by the judge thereof in vacation. In the event that no term of the circuit court is being held at the time the petition is filed, and the judge thereof cannot be reached in the county in which the petition was filed, the petition shall be heard at the next succeeding circuit court term, whether regular or special, and the removed member shall remain removed until a hearing is held on the petition. The court or the judge thereof in vacation shall hear and decide the issues presented by the petition. The party affected adversely by the court's or judge's decision shall have the right to petition the Supreme Court of Appeals for a review of the decision as in other civil cases. If the mayor fails to file the petition with the circuit clerk's office within ten days as provided above, the removed member shall immediately resume his or her position as a hearing board member.

Any resident of the municipality shall have the right at any time to seek the removal of any hearing board member. To do so, the resident shall file a petition in the circuit clerk's office of the county where the municipality is located. The resident shall also serve a copy of the petition on the member sought to be removed. The petition shall be matured for hearing and heard by the circuit court or the judge thereof in vacation in the same manner as civil proceedings in the circuit courts of this state are heard. Any party adversely affected by the circuit court's or judge's decision shall have the right to petition the Supreme Court of Appeals for a review of the decision as in other civil cases.

(5) "Noncivil service," when followed by the terms "department," "officer" or "accused

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officer", means any department, officer or accused officer who is not subject to the civil service provisions of article fourteen, chapter eight of this code or article fifteen, chapter eight of this code.

(6) "Police officer or firefighter" or "officer" means any police officer or firefighter of a police or fire department employed by the city or municipality, but shall not include (a) the highest ranking officer of the police or fire department or (b) any noncivil service officer who has not completed the probationary period established by the department by which he or she is employed.

(7) "Punitive action" means any action which may lead to dismissal, demotion, suspension, reduction in salary, written reprimand or transfer for purposes of punishment.

(8) "Under investigation" or "under interrogation" means any situation in which any police officer or firefighter becomes the focus of inquiry regarding any matter which may result in punitive action.

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§8-14A-2. Investigation and interrogation of a police officer or fireman.

When any police officer or fireman is under investigation and subjected to interrogation by his commanding officer, or any other member of the employing police or fire department, which could lead to punitive action, such interrogation shall be conducted under the following conditions:

(1) The interrogation shall be conducted at a reasonable hour, preferably at a time when the police officer or fireman is on duty, or during his normal working hours, unless the seriousness of the investigation requires otherwise. If such interrogation does occur during off-duty time of the police officer or fireman being interrogated at any place other than his residence, such officer or fireman shall be compensated for such off-duty time in accordance with regular department procedure. If the interrogation of the police officer or fireman occurs during his regular duty hours, such officer or fireman shall not be released from employment for any work missed due to interrogation.

(2) Any police officer or fireman under investigation shall be informed of the nature of the investigation prior to any interrogation. Such officer shall also be informed of the name, rank and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. No more than three interrogators at one time shall question the officer or fireman under investigation.

(3) No police officer or fireman under interrogation shall be subjected to offensive language or threatened with punitive action. No promise of reward shall be made as an inducement to answering questions.

(4) The complete interrogation of any police officer or fireman shall be recorded, either written, taped or transcribed. Upon request of the law-enforcement officer or fireman under investigation or his counsel, and upon advance payment of the reasonable cost thereof a copy of the record shall be made available to him not less than ten days prior to any hearing.

(5) Upon the filing of a formal written statement of charges or whenever an interrogation focuses on matters which are likely to result in punitive action against any police officer or fireman, then that officer or fireman shall have the right to be represented by counsel who may be present at all times during such interrogation.

Nothing herein shall prohibit the immediate temporary suspension, pending an investigation, from duty of any police officer or fireman who reports for duty under the influence of alcohol or controlled substances which would prevent the officer or fireman from performing his duties as defined in chapter sixty-a of this code, or under the influence of an apparent mental or emotional disorder.

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§8-14A-3. Hearing.

(a) Before taking any punitive action against an accused officer, the police or fire department shall give notice to the accused officer that he or she is entitled to a hearing on the issues by a hearing board or the applicable civil service commission. The notice shall state the time and place of the hearing and the issues involved and shall be delivered to the accused officer no later than ten days prior to the hearing.

(b) When a civil service accused officer faces a recommended punitive action of discharge, suspension or reduction in rank or pay, but before such punitive action is taken, a hearing board must be appointed and must afford the accused civil service officer a hearing conducted pursuant to the provisions of article fourteen, section twenty, or article fifteen, section twenty-five of this chapter: Provided, That the punitive action may be taken before the hearing board conducts the hearing if exigent circumstances exist which require it.

(c) When a civil service accused officer faces a recommended punitive action of written reprimand or transfer for the purpose of punishment, or when a noncivil service accused officer faces any recommended punitive action, the applicable hearing board shall conduct hearing pursuant to the provisions of subsection (d) of this section.

(d) The following requirements shall govern the operation conduct of a hearing board under subsection (c) of this section:

(1) The hearing board shall keep an official record of each hearing it conducts. The official record shall include the testimony offered and exhibits introduced at the hearing.

(2) Both the police or fire department and the accused officer shall be given ample opportunity to present evidence and argument with respect to any issue raised at the hearing.

(3) The hearing board may subpoena witnesses and administer oaths or affirmations and examine any individual under oath, and may require and compel the production of records, books, papers, contracts and other documents, in connection with any issue raised at the hearing.

(4) The hearing board shall prepare a written order detailing any decision or action it takes as a result of the hearing. The written order shall include written findings of fact setting forth a concise statement of the hearing board's factual findings and conclusions on each issue raised at the hearing. The hearing board shall hand-deliver or promptly mail a copy of the written order to the accused officer or his attorney of record.

(e) A hearing board's order is binding on all parties involved unless it is overturned in the appeal process described in section five of this article.

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§8-14A-4. Right to refuse to disclose personal finances; exceptions.

No police officer or fireman shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures unless such information is obtained through proper legal procedures or is necessary for the employing agency to ascertain the desirability of assigning the police officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements might be offered.

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§8-14A-5. Appeal.

(a) For civil service departments, a hearing board's decision rendered under subsection (b) or (c), section three of this article may be appealed by the police officer or firefighter adversely affected by the order or by the department chief if he or she believes that the department would be adversely affected by the hearing board's order. An appeal under this subsection shall be made to the applicable civil service commission. Any party aggrieved by the civil service commission's ruling on the appeal may further appeal the civil service commission's ruling pursuant to the provisions of subsection (b), section twenty, article fourteen of this chapter or subsection (b), section twenty-five, article fifteen of this chapter.

(b) For noncivil service departments, a hearing board's decision rendered under subsection (c), section three of this article may be appealed by the police officer or firefighter adversely affected by the order or by the department chief if he or she believes that the department would be adversely affected by the hearing board's order. An appeal under this subsection shall be made to the circuit court of the county in which the police officer or firefighter resides.

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