WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
Committee Substitute for
SENATE BILL NO. 473

(By Mr. [Signature], Mr. President)

PASSED March 8, 1979

In Effect from Passage
AN ACT to amend and reenact section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the department of public safety generally; creating procedures for appeals, convening appeals boards and selection of board members by lot; authorizing members of the appeals boards to administer oaths; subpoena witness and require the production of books and records; no liability for testimony; and providing for contempt proceedings.

Be it enacted by the Legislature of West Virginia:

That section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-6. Departmental appeals boards; appeal procedures.

1 Appeals of transfers, suspensions, demotions in rank and discharges shall be heard by boards of appeals convened pursuant to the provisions of this section. The boards shall each consist of seven members and five members shall constitute a quorum. A new board shall be convened to hear and determine each new appeal filed by a member of the department. There may be more than one board in existence at the same time meeting on different appeals.

9 A member of the retirement board is eligible to serve on an appeals board.
The members of a board shall be chosen by lot by the superintendent with one member to be so chosen from among all the members of each of the seven ranks of trooper through lieutenant, inclusive. No department member may serve on an appeals board if his rank is the same, or if he is a member of the same detachment, as the member making the appeal. If the person making the appeal is a member of one of the ranks of lieutenant through trooper, inclusive, then a captain shall be chosen by lot from among all members of that rank to serve on the board. Within ten days after he has been notified of his selection and assignment to serve on a board, a member may for cause request to be relieved of such assignment. The superintendent shall determine whether the reasons alleged by the member are sufficient cause to relieve the member of such assignment. If such request is granted by the superintendent, a new board member shall be selected by lot from the same rank to replace the member who has been relieved of such assignment.

A chairman shall be selected by the members of the board. Each member of a board shall be reimbursed for all reasonable and necessary expenses actually incurred in attending meetings of a board. All expenses of a board shall be paid from appropriations to the department.

Within fifteen days after a member of the department has received a notice of transfer or a statement of charges and an order of suspension, demotion in rank or discharge by the superintendent, he may appeal the transfer or order to an appeals board by filing a written notice of appeal with the superintendent. The superintendent shall promptly record and file each appeal, select a board, notify each new board member of his selection, and furnish to each board member a copy of the notice or order appealed from and the notice of appeal. A hearing by a board of appeals shall be held within thirty days after the superintendent has received a member's notice of appeal. At least fifteen days prior to the hearing date, the board shall notify the superintendent and the member making the appeal of the date, time and place of the hearing.
Any member of the department who makes such an appeal, as aforesaid, may be represented by an attorney or
by any member of the department or retired member who is receiving benefits from the death, disability and retirement fund. The superintendent may be represented by counsel of his choice. In the appeal of a transfer, the member has the burden of proof that the transfer is not for the purpose of the operational needs of the department. In any other appeal the superintendent has the burden of proof as to the charges alleged. The procedure in any hearing before the board shall be informal and without adherence to the technical rules of evidence required in proceedings in courts of record. All evidence submitted to the board shall be submitted under oath. The chairman, or any member of the board, shall have authority to administer oaths to witnesses, subpoena witnesses and compel the production of books and papers pertinent to any appeal or hearing authorized by this section.

If any person subpoenaed to appear at any appeal or hearing shall refuse to appear, or shall refuse to answer inquiries propounded at the appeal or hearing or shall fail or refuse to produce books and papers which have been subpoenaed which are pertinent to any appeal or hearing authorized by this section, the board shall report the facts to the circuit court of Kanawha County or the circuit court of any county in which the hearing is being conducted and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance. A person giving testimony at an appeal or hearing authorized by this section shall not be liable for such testimony given in good faith and without malicious intent.

The board shall designate a reporter for any such hearing who shall record and transcribe all the proceedings. Upon his demand, the member making the appeal shall have a public hearing on the charges and in the absence of such demand, the board may determine whether or not the hearing should be public. Any hearing may be continued, recessed or adjourned by the board.

The superintendent shall provide reasonable space for
the conduct of hearings. The charges of the reporter shall be paid by the superintendent from available appropriations. At the conclusion of the hearing, the board shall determine whether or not the superintendent's order shall be sustained. The board's decision shall be issued in writing, with copies thereof being sent by the board to the superintendent and to the appealing member by certified mail, return receipt requested. A hearing shall be conducted by at least five members of the board and the decision of the board shall be made by the majority vote of all the members of the board.

Either party aggrieved by a decision of a board of appeals may appeal the decision to the circuit court of Kanawha County within sixty days of receipt of a copy of the board's decision.

The court shall hear the appeal upon the record and determine all questions submitted to it on appeal.

In the event any decision sustaining the superintendent's order or notice is reversed upon judicial review, which reversal is final, the superintendent shall return the member to his status prior to the superintendent's order or notice, with full payment of any compensation withheld and with full credit for service between the date the superintendent issued his order or notice and the date of the final judicial decision reversing the decision of the board.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence C. Furrer  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J.R. Ferrante  
Clerk of the Senate

Clerk of the House of Delegates

W.I. Bullock  
President of the Senate

Speaker House of Delegates

The within approved this the 15 day of March, 1979.  

Governor