

Date 4-14-82

WEST VIRGINIA LEGISLATURE

FIRST EXTRAORDINARY SESSION, 1982



ENROLLED

Committee Substitute for

SENATE BILL NO. 1

(By Mr. Boettner)



PASSED April 3, 1982

In Effect ninety days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 1

(BY MR. BOETTNER, *original sponsor*)

[Passed April 3, 1982; in effect ninety days from passage.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fourteen-a, relating to municipal police officers and firemen generally; providing for a procedure concerning punitive actions; providing for appointment of a hearing board; providing for the duties of the circuit judge with respect thereto; defining certain terms relative to the investigation of a police officer or fireman; requiring an interrogation of a police officer or fireman be conducted at a reasonable hour; stipulating that a police officer or fireman must be informed of the nature of any investigation against him; prohibiting the act of subjecting an officer or fireman under interrogation to offensive language; requiring all interrogations of police officers or firemen to be recorded; granting a police officer or fireman the right to counsel when upon filing formal written charges against him or when an interrogation may lead to punitive action; providing a hearing procedure for police officers or firemen if punitive action is recommended from an interrogation or investigation; requiring notification by the police department or fire department to the police officer or fireman that he is entitled to a hearing; granting the hearing board power of subpoena; granting police officers or firemen the right to refuse to disclose personal finances, exceptions thereto; granting any police officer or fireman adversely affected by any action as a result of a hearing the right to appeal said adverse action to the

policemen's or firemen's civil service commission; and exempting suspension of police officers and firemen under the influence of alcohol or controlled substances or for apparent emotional or mental disturbances.

Be it enacted by the Legislature of West Virginia:

That chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article designated article fourteen-a, to read as follows:

**ARTICLE 14A. MUNICIPAL POLICE OFFICERS AND FIREMEN;
PROCEDURE FOR INVESTIGATION.**

§8-14A-1. Definitions.

- 1 Unless the context clearly indicates otherwise, as used in
2 this article:
- 3 (1) "Police officer" or "fireman" means any police officer
4 or fireman of a police or fire department employed by the city
5 or municipality but shall not include the highest ranking
6 officer of such police or fire department.
- 7 (2) "Under investigation" or "under interrogation" means
8 any situation in which any police officer or fireman becomes
9 the focus of inquiry regarding any matter which may result in
10 punitive action.
- 11 (3) "Punitive action" means any action which may lead to
12 dismissal, demotion, suspension, reduction in salary, written
13 reprimand or transfer for purposes of punishment.
- 14 (4) "Hearing board" means a board which is authorized by
15 the chief of police or chief of the fire department to hold a
16 hearing on a complaint against a law-enforcement officer or
17 fireman and which consists of three members, all to be
18 selected from law-enforcement officers or firemen within that
19 agency, or law-enforcement officers or firemen of another
20 agency with the approval of the chief of police or chief of the
21 fire department of the other agency and who have had no part
22 in the investigation or interrogation of the law-enforcement
23 officer or fireman under investigation. One of the members of
24 the board shall be appointed by the chief of police or chief of
25 the fire department, one shall be appointed by the police
26 officers or firemen of that agency, and these two members of
27 the board shall, by mutual agreement, appoint the third
28 member of the board: *Provided*, That should the first two
29 members of the board fail to agree upon the appointment of

30 the third member of the board within five days they shall
31 submit to the policemen's civil service commission or to the
32 firemen's civil service commission, as may be appropriate, or
33 if there be no civil service commission, to the chief judge of
34 the circuit court of the county, a list of four qualified
35 candidates from which list the commission or chief judge
36 shall appoint the third member of the board: *Provided,*
37 *however,* That in the event one or more members of the board
38 cannot be appointed as otherwise provided in this section,
39 then the chief judge shall appoint a sufficient number of the
40 citizens of the municipality as may be necessary to constitute
41 the board. At least one member of the hearing board shall be
42 of the same rank as the law-enforcement officer or fireman
43 against whom the complaint has been filed.

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

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

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

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

18 (2) Any police officer or fireman under investigation shall
19 be informed of the nature of the investigation prior to any
20 interrogation. Such officer shall also be informed of the name,
21 rank and command of the officer in charge of the
22 interrogation, the interrogating officers, and all other persons

23 to be present during the interrogation. No more than three
24 interrogators at one time shall question the officer or fireman
25 under investigation.

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

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

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

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

§8-14A-3. Hearing.

1 (a) If the investigation or interrogation of a police officer
2 or fireman results in the recommendation of some punitive
3 action, then, before taking such action the police or fire
4 department shall give notice to the police officer or fireman
5 that he is entitled to a hearing on the issues by a hearing
6 board. The notice shall state the time and place of the hearing
7 and the issues involved and be delivered to the police officer
8 no later than ten days prior to the hearing. An official record,
9 including testimony and exhibits, shall be kept of the
10 hearing.

11 (b) The hearing shall be conducted by the hearing board of
12 the police or fire department except that in the event the
13 recommended punitive action is discharge, suspension or
14 reduction in rank or pay, and such action has been taken the

15 hearing shall be pursuant to the provisions of article fourteen,
16 section twenty, and article fifteen, section twenty-five of this
17 chapter, if applicable. Both the police or fire department and
18 the police officer or fireman shall be given ample opportunity
19 to present evidence and argument with respect to the issues
20 involved.

21 (c) With respect to the subject of any investigation or
22 hearing conducted pursuant to this section, the hearing board
23 may subpoena witnesses and administer oaths or
24 affirmations and examine any individual under oath, and may
25 require and compel the production of records, books, papers,
26 contracts and other documents.

27 (d) Any decision, order or action taken as a result of the
28 hearing shall be in writing and shall be accompanied by
29 findings of fact. The findings shall consist of a concise
30 statement upon each issue in the case. A copy of the decision
31 or order and accompanying findings and conclusions, along
32 with written recommendations for action, shall be delivered
33 or mailed promptly to the police officer or fireman, or to his
34 attorney of record.

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

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

§8-14A-5. Appeal.

1 Any police officer or fireman adversely affected by any
2 decision, order or action taken as a result of a hearing as
3 herein provided shall have the right to appeal the same to the
4 policemen's or firemen's civil service commission, if
5 applicable, in the manner provided for in section nineteen,
6 article fourteen and section twenty-five, article fifteen of this
7 chapter, or if there be no civil service commission, to the
8 circuit court of the county wherein said police officer or
9 fireman resides.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayler

Chairman Senate Committee

Tony E. Whitlow

Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Judd C. Hatcher

Clerk of the Senate

V. Blankenship

Clerk of the House of Delegates

Warren R. McInnis

President of the Senate

Thurmond Lee, Jr.

Speaker House of Delegates

The within *is approved* this the *14*

day of *April*, 1982.

John R. Rhyne
Governor

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