

difficult task, the official will be removed from local office for a reasonable period of time and there will be afforded a reasonable cooling off period in the conflict which led to the removal of the official.

Thus, a rational basis for Hamtramck Charter, Ch VI, § 13 can be found and, under the rational standard test, it does not conflict with US Const, Am XIV and Const 1963, art 1, § 1.

Therefore, it is my opinion that Hamtramck Charter Ch VI, § 13 is valid.

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CIVIL SERVICE: Firemen and Policemen Civil Service Act

Pursuant to the firemen and policemen civil service act, an appointing authority has the power to suspend an employee for a reasonable period up to 30 days and also initiate discharge proceedings.

Opinion No. 4960

April 6, 1976.

Honorable Richard A. Young
State Representative, 32nd District
24100 W. Warren Avenue
Dearborn Heights, Michigan 48127

You have requested my opinion upon a seeming inconsistency in and between §§ 13 and 14 of the Firemen and Policemen Civil Service Act; 1935 PA 78, respectively MCLA 38.513; MSA 5.3363; and MCLA 38.514; MSA 5.3364.

The following rephrased questions are presented, and they will be answered *seriatim*:

1. Is the provision of § 14 which states: "Pending the period between the making of the charges as a basis for removal and the decision thereon by the commission the member shall remain in office.", inconsistent with the authority granted in § 13 to suspend the employee for a reasonable period not exceeding 30 days?
2. Is the language quoted in question 1 above inconsistent with other language contained in § 14?
3. Does the appointing authority have the power to suspend and terminate the employee without the approval of the civil service commission, subject to review by the civil service commission?

Section 13 contains a prohibition against reduction in pay or position, lay-off, suspension, discharge, or other discrimination by reason of religious or political considerations. The remainder of the section addresses itself to reductions, lay-offs, and suspensions. Appointing officers are authorized to suspend an employee without pay, for purposes of discipline, for a reasonable period not to exceed 30 days, and the employee is entitled to a hearing before the civil service commission as provided in § 14. A distinction should be recognized between a disciplinary suspension under § 13,

and a discharge under § 14. The Court of Appeals expressed such distinction in *Hunn v City of Madison Heights*, 60 Mich App 326, 311; 230 NW2d 414, 417 (1975):

“Secondly, the statutory prohibition against successive suspensions included in MCLA 38.513; MSA 5.3393 is, by the expressed terms of the statute, confined to cases of suspension and it does not apply to cases of discharge. The statute clearly states immediately before the provision barring successive suspensions: ‘Nothing in this act contained shall limit the power of an appointing officer to suspend without pay, for purposes of discipline, an employee or subordinate for a reasonable period, not exceeding 30 days: Provided, however, That successive suspensions shall not be allowed.’ Discharge following a suspension cannot be construed to come within the statutory prohibition; indeed, in most cases, a discharge would be expected to follow a suspension during which an investigation is made and formal proceedings are conducted as required by statute.

“Furthermore, the word ‘suspension’ is alone used in the proviso; while the word ‘discharge’ is used elsewhere in the statute, it is not included in this part of the statute.”

Compare the result in *Solomon v Highland Park Civil Service Commission*, 47 Mich App 536; 209 NW2d 698 (1973); and *Locke v Macomb County*, 387 Mich 634; 199 NW2d 166 (1972), where notice of suspension was given, but where discharge charges were not timely filed. Section 13 authorizes the imposition of disciplinary suspension as a sanction, with subsequent right of review by the civil service commission. Discharge as a sanction, as opposed to suspension, is authorized as provided in § 14. Therefore, it is my opinion that § 13 is not inconsistent with § 14, and your first question is answered in the negative.

Section 14 prescribes the manner in which an employee may be discharged from employment, or otherwise disciplined as therein provided. Such sanction must be for cause; the employee must be furnished a written statement of the charges and the reasons for such actions; the statement of charges must be filed within 90 days of the date of violation, with an exception for probationary employees; the employee may file an answer to the charges within 5 days after service; and if the employee demands it, a hearing must be held within 10 days from the filing of the charges. Section 14 expressly provides:

“ . . . and any such person may be removed or discharged, suspended without pay, deprived of vacation privileges or other special privileges, by the civil service commission, . . . ” [Emphasis supplied]

Throughout the section, reference is made to “the person sought to be removed. . . .” [Emphasis supplied]. Finally, the Legislature has expressly included the mandatory provision:

“ . . . Pending the period between the making of the charges as a basis for removal and the decision thereon by the commission the member shall remain in office. . . . ”

The foregoing language contemplates that, although the appointing authority may initiate charges for removal, discharge, etc., it is the civil service commission which renders the final administrative decision, and the employee remains in his position until such decision is made, by express statutory requirement. The only language in the section that appears to be at variance with the foregoing is as follows:

“. . . In event that the civil service commission fails to justify the action of the removing officer then the person sought to be removed shall be reinstated with full pay for the entire period during which he may have been prevented from performing his usual employment, . . .”

Reference to reinstatement with full pay for a period in which the employee might have been prevented from performing his duties, suggests that the employee has been removed, which appears contrary to the requirement that the employee remain in office. However, the latter requirement is subordinated to a § 13 suspension in the following language:

“. . . *Nothing in this act contained shall limit the power of an appointing officer to suspend without pay, for purposes of discipline, an employee or subordinate for a reasonable period, not exceeding 30 days: . . .*” [Emphasis supplied]

Such a circumstance was discussed by the Court of Appeals in *Hunn, supra*. Therefore, notwithstanding the requirement that the employee remain in office, the appointing officer may suspend for a reasonable period up to 30 days. The statute so construed gives validity and effect to all its provisions. See *In Re Petition of State Highway Commission*, 383 Mich 709, 714; 178 NW2d 923, 926 (1970):

“. . . The fundamental rule of construction of statutes is to ascertain and give effect to the intention of the Legislature; courts are bound, whenever possible, so to construe statutes as to give them validity and a reasonable construction; seeming inconsistencies in the various provisions of a statute should be reconciled, if possible, so as to arrive at a meaning which gives effect to all parts of the statute; a construction leading to an absurd consequence should be avoided. . . .”

It is my opinion that there is no inconsistency between §§ 13 and 14, and your second question is answered in the negative.

For the reasons stated above, the appointing authority has the power to suspend an employee for a reasonable period up to 30 days, and to initiate discharge proceedings as provided in § 14. The final decision regarding such discharge is vested in the civil service commission. Your third question is therefore answered in the affirmative as to the suspension and initiation of discharge proceedings, but in the negative as to a summary discharge.

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