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Technical Bulletins: The Police Bill of Rights: Not for Everyone

Dennis Huffer  
*Municipal Technical Advisory Service*

Richard Stokes  
*Municipal Technical Advisory Service, Richard.Stokes@tennessee.edu*

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THE POLICE BILL OF RIGHTS: NOT FOR EVERYONE

by Dennis Huffer, TML Risk Management Pool
and
Richard Stokes, MTAS Nashville

The state legislature recently passed an Act affecting the manner in which certain police officers are disciplined. The Act, Chapter 398 of the 1989 General Assembly, known as the Police Bill of Rights, requires that, effective January 1, 1990, questioning of any police officers on matters that are likely to lead to the discipline of officers for punitive reasons, take place at a reasonable time and place designated by the investigating official. Of extreme significance is the fact that the act applies only to municipalities that already provide a property interest in employment and have no other established grievance or disciplinary procedures for dealing with the disciplining of officers. Additionally, the act does not apply to the disciplining of Chiefs of Police.

Prior to 1972, the U.S. Supreme Court applied the "doctrine of privilege" to public employees. According to this doctrine, individuals were expected to regard public employment as an honor and an opportunity to serve. In Board of Regents v. Roth, and Perry v. Sinderman, however, the Court held that public employment could involve the kind of liberty and property interest afforded private employees and must include due process protection if it does.

In Tennessee public employees do not have a general right to continued public employment, although the legislature and municipalities themselves have the authority to grant property rights to certain classes of individuals. In Huddleston v. City of Murfreesboro, 635 S.W.2d 694 (Tenn. 1982), it was determined that a local policy, regulation, or practice may give rise to proprietary rights in employment in Tennessee. As a result, property rights may be created by:

- contracts of employment entered into for a certain period
- city policies that provide for "progressive discipline" of certain employees or provide that employees may be dismissed only for certain causes, or provide for the right to appeal and hearing prior to final dismissal
handbooks or rules developed for employees that contain any of the same provisions noted above

bargaining contracts that contain any of the above, or

informal practices or customs.

Note that if a city grants a property right in employment through any of these methods and then takes it away (disciplines the individual) without going through proper due process procedures, the city and its officials may be held liable for damages for violation of the employee's civil rights.

The Police Bill of Rights, like the Tennessee Teachers Tenure Act, legitimizes a property right in employment for police officers where a property right already exists. It provides that before a police officer can be dismissed, demoted, suspended without pay, or transferred for punitive reasons, the officer must be afforded his due process rights. The officer must be notified in writing of all charges and the actions that may be taken. The officer must be given an opportunity to respond orally and in writing within a reasonable time and may be assisted by counsel.

If dismissed, demoted, suspended, or transferred for punitive reasons, the officer may request a hearing. The hearing must be set no later than 14 calendar days after the date of the request unless a later time is acceptable to the officer. At the hearing both sides may present evidence and examine and cross examine witnesses. Documentation of the hearing must be maintained.

Before implementing this bill, however, municipal employers must determine the current employment status of their police officers. If the municipality begins providing due process hearings for police officers in accordance with this Act, they may be establishing a property right when it is not necessary nor required. It is recommended that municipal officials review their current city and personnel documentation (Charter, Codes, Ordinances, or Personnel Handbooks) to determine if a property interest was created. If not, then it's business as usual.

Further Information

For further information on the new police bill of rights, contact Rick Stokes, Personnel Consultant in Nashville at (615) 256-8141; Dennis Huffer, Director of Legal Services, Tennessee Municipal League Risk Management Pool in Nashville at (615) 255-6416; or call your MTAS Municipal Consultant.
PUBLIC CHAPTER NO. 398

HOUSE BILL NO. 467

By Rhinehart

Substituted for: Senate Bill No. 835

By Crutchfield

AN ACT relative to the rights of certain police officers during agency investigations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this act, the following terms shall have the following meaning unless the context requires otherwise:

(1) "Police Officer" means police officer as defined by law; however, this act shall exclude chiefs of police and sheriffs and any probationary member of any agency affected by this act.

(2) "Agency" means any municipality or county.

SECTION 2. Whenever an investigation by an agency focuses on matters which are likely to lead to the dismissal, demotion, suspension or transfer for punitive reasons of a police officer, the following conditions shall be complied with:

(1) Any questioning of the officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the officer under investigation is on duty and at the office of the command of the investigating officer or at the office of the local precinct or police unit of the officer being investigated, unless circumstances dictate otherwise.

(2) Prior to the officer being questioned, he shall be informed of (A) the name and rank of the investigating officer and of any individual present during the questioning, and (B) the nature of the investigation.

SECTION 3. No police officer shall be required or requested to disclose any item of his property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his family or household, unless such information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, unless such disclosure is required by law, or unless such information is related to an investigation. Nothing in this section shall preclude an agency from requiring such police officer to disclose any place of off-duty employment and where he may be contacted.

SECTION 4. Before any dismissal, demotion, suspension without pay or transfer for punitive reasons may be imposed, the following must be complied with:
(1) The police officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken;

(2) The police officer shall be given an opportunity, within a reasonable time limit after the date of the written notice provided for above, to respond orally and in writing to the charges. The time limit shall be determined by the agency, but in no event shall it be less than five (5) calendar days unless agreed to by the police officer; and

(3) In making his response, the police officer may be assisted by counsel at his own expense.

SECTION 5.

(a) Whenever a police officer is dismissed, demoted, suspended or transferred for punitive reasons, he may within a reasonable amount of time following such action, as set by his agency, request a hearing. If such request is made in a timely manner, a hearing shall be held within a reasonable amount of time set by the agency; provided, however, that the hearing shall be set no later than fourteen (14) calendar days following the date of request unless a later date is acceptable to the police officer. At the hearing, the police officer and his agency shall be afforded the opportunity to present evidence to examine and to cross-examine witnesses. The hearing panel shall have the power to, and on the request of either the police officer or his agency shall, issue subpoenas requiring the testimony of witnesses who have refused or failed to appear at the hearing. The police officer shall also be given the opportunity to be represented by counsel at the hearing unless such officer and agency are afforded, by regulation, the right to counsel in a subsequent de novo hearing. The panel conducting the hearing shall rule on the admissibility of the evidence. A record shall be made of the hearing.

SECTION 6. Nothing in this act shall prevent the immediate suspension without pay of any police officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of his agency or the public, nor shall anything in this act prevent the suspension of a police officer for refusing to obey a direct order issued in conformance with the agency's written and disseminated rules and regulations. In such case, the police officer shall upon request be afforded the rights provided for under this chapter within a reasonable amount of time set by the agency.

SECTION 7. Nothing in this act shall be construed to prohibit the informal counselling a police officer by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the police officer.

SECTION 8. The rights accorded police officers in this act shall be minimum rights and all agencies shall promulgate grievance procedures not inconsistent herewith; provided that any agency may provide for the rights of police officers in addition hereto.

SECTION 9. This act shall apply only to those agencies that now provide a property interest in employment for their police officers and that have no other established procedures for dealing with the dismissal, demotion, suspension, or transfer for punitive reasons of police officers.

SECTION 10. This act shall take effect on January 1, 1990, the public welfare requiring it.
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