

SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CITY OF LAUREL, MISSISSIPPI

APPELLANT

V.

CASE NO. 2008-CA-00984

KENNETH (KEN) KEYES

APPELLEE

APPEAL FROM JONES COUNTY CIRCUIT COURT
SECOND JUDICIAL DISTRICT
HONORABLE BILLY JOE LANDRUM

BRIEF FOR APPELLANT
CITY OF LAUREL, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

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**SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

CITY OF LAUREL, MISSISSIPPI

APPELLANT

v.

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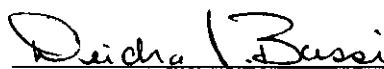
KENNETH (KEN) KEYES

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for the City of Laurel, Mississippi/Appellant certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualifications or recusal.

1. City of Laurel, Mississippi - Appellant
 - a. Mayor of the City of Laurel, Melvin Mack
 - b. Laurel City Council
2. David M. Ratcliff, Attorney for City of Laurel, Mississippi
3. Law Firm of Hortman Harlow Bassi Robinson & McDaniel, PLLC,
Attorneys for City of Laurel, Mississippi
4. Deidra J. Bassi, Attorney for City of Laurel, Mississippi
5. Kenneth Keyes, Appellee
6. Thomas Tucker Buchanan, attorney for Kenneth Keyes
7. Laurel Civil Service Commission
8. Honorable Billy Joe Landrum, Circuit Court Judge
Second Judicial District of Jones County, Mississippi



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IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

CITY OF LAUREL, MISSISSIPPI

APPELLANT

v.

CASE NO. 2008-CA-00984

KENNETH (KEN) KEYES,

APPELLEE

**BRIEF FOR APPELLANT
CITY OF LAUREL, MISSISSIPPI**

Comes now the City of Laurel, Mississippi, Appellant, and files its Brief in the above-styled appeal.

I. STATEMENT OF THE ISSUES

1. Whether or not the Court or the Circuit Court below has subject matter jurisdiction to consider this appeal from a decision of the Laurel Civil Service Commission regarding a promotion.
2. Whether or not Mr. Keyes had standing to pursue the appeal.
3. Whether or not the Laurel Civil Service Commission's decision to not promote Ken Keyes was in good faith for cause.
4. Whether or not the Jones County Circuit Court's decision should be reversed and the Civil Service Commission's decision affirmed.

II. STATEMENT OF THE CASE

A. Nature of the Case

This is an appeal by the City of Laurel from an order of the Circuit Court of the Second Judicial District of Jones County, Mississippi, dated May 19, 2008, (R. 332-334; RE-002-004) reversing a ruling of the Laurel Civil Service Commission dated June 23, 2003 (R. 278-280; RE-030-

032). In its Order, the Laurel Civil Service Commission rejected Ken Keyes' grievance that he had not been promoted to the position of Battalion Chief in the Laurel Fire Department. (R. 278-280; RE-030-032)

B. Course of Proceedings

On July 7, 1998, Ken Keyes filed a grievance with the City of Laurel in the Laurel Civil Service Commission for not having been given the Battalion Chief promotion in the Fire Department (R. 183; RE-010). On June 20, 2003, the Laurel Civil Service Commission conducted a hearing on Mr. Keyes' grievance. (See Transcript of Hearing, R. 117-165 and Exhibits to the Transcript, R. 166-257) On June 23, 2003, the Civil Service Commission entered its Order rejecting Mr. Keyes' grievance (R. 278-280; RE-030-032).

On July 8, 2003, Mr. Keyes filed an Appeal of the Order of the Civil Service Commission in the Circuit Court of Jones County, Second Judicial District (R. 9-13; RE-005-009). On February 23, 2004, Mr. Keyes filed his Brief in the Circuit Court (R. 258-265; RE-011-018). On March 18, 2004, the City of Laurel filed its Responsive Brief in the Circuit Court (R. 266-276; RE-019-029).

C. Disposition in the Court Below

On May 19, 2008, the Circuit Court of Jones County entered its **"FINDINGS OF FACT AND CONCLUSIONS OF LAW"** (R. 332-334; RE-002-004), whereby it reversed the ruling of the Civil Service Commission and ordered the City to promote Mr. Keyes as a Battalion Chief effective June 23, 2003 "with all the promotions, benefits and privileges, of the Battalion Chief rank, . . ." This Order was filed of record on May 19, 2008.

On June 6, 2008, the City of Laurel filed its Notice of Appeal to the Supreme Court of Mississippi from the Final Judgment entered by the Circuit Court on May 19, 2008. (R. 335)

D. Statement of Facts Relative to Issues Presented for Review

- § 21-31-23 Mississippi Code Annotated provides whether this Court has jurisdiction over the issue at bar, i.e. the decision of the Laurel Civil Service Commission to not promote Mr. Keys.
- Mr. Keyes was not given a promotion to Battalion Chief, but rather it was given to David Chancellor.
- The Civil Service Commission conducted a hearing regarding Mr. Keyes' complaint, heard testimony and considered evidence, and then ruled in favor of the City of Laurel.
- The Circuit Court reversed the 2003 decision of the Civil Service Commission in 2008 and ruled that Mr. Keyes be given the promotion.

III. SUMMARY OF THE ARGUMENT

- A. The Circuit Court nor this Court has subject matter jurisdiction of this appeal under § 21-31-23 Mississippi Code Annotated since this does not involve an order of removal, discharge, suspension, or combination thereof. Further Mr. Keyes did not have standing to pursue the appeal.
- B. The Circuit Court used the wrong standard of review.
- C. The Civil Service Commission ruling was made in good faith for cause.
- D. The Circuit Court's order is impossible to be complied with and exceeded its authority.
- E. Mr. Keyes has retired from the city; thus, the appeal is moot.

IV. ARGUMENT

A. Standard of Review

1. Circuit Court Standard of Review

The Circuit Court's standard of review of an appeal of an order from a Civil Service Commission is limited and is specifically defined by statute, i.e., §21-31-23 Mississippi Code Annotated. The applicable language in the statute is:

“ . . . The said Circuit Court shall thereupon proceed to hear and determine such appeal. However, such a hearing shall be confined to the determination of whether a judgment or **order of removal, discharge, demotion, suspension, or combination thereof made by the Commission was or was not made in good faith for cause**, and no appeal to such court shall be taken except upon such ground or grounds. (excerpt from § 21-31-23, Mississippi Code Annotated)

Accordingly, this statute provides the exclusive jurisdiction of the Circuit Court.

2. The Supreme Court/Court of Appeals Standard of Review

The standard of review by this Court is the same as the Circuit Court, i.e., whether or not the decision of the Civil Service Commission was in “**good faith for cause**.” This was articulated by the Mississippi Supreme Court in *City of Jackson v. Froshour*, 530 So.2d 1348, 1355 (Miss. 1988) as follows:

It is thus clear that the scope of review of the Circuit Court, **and of this court**, is limited and we must ever bear in mind that it is not what the Court, had it been a member of the governing authority, might have done in a particular instance, or indeed whether or not the Court thinks a mistake may have been made, but instead, the criterion is whether or not from an examination of the Record there exists **credible evidence substantiating the action taken by the City. It is upon this basis that the Court determines whether or not the decision was made in ‘good faith for cause.’** Courts are not empowered to supervise the intelligence, wisdom or fairness of the governing authorities, and no resources are available to a court to exercise such a function even if granted, in this extremely difficult task of determining the fitness of a particular person for a particular job. The task must be left to the governing authorities of the city. It is only when the Record makes it

clear that there is no 'substantial evidence' supporting the governing authorities' determination that a court can act, and in such case it must. [Emphasis added]

B. Mr. Keyes' Appeal Should be Denied Due to Lack of Subject Matter Jurisdiction of the Courts and Due to Mr. Keyes' Lack of Standing to Prosecute This Appeal.

The jurisdiction of the Circuit Court and this Court to hear appeals from a Civil Service Commission ruling are derived by statute, namely Miss. Code Ann. § 21-31-23, entitled "**Removal, suspension, demotion, and discharge.**" This statute deals with how persons who are classified as civil service employees may be removed, suspended, demoted, or discharged. The statute provides the steps an aggrieved civil service employee must take, the steps the municipal government must take, and the steps the civil service must take to investigate a **removal, suspension, demotion, or discharge.** Most importantly, for purposes of this appeal, it specifically provides the jurisdiction for the circuit court in hearing and determining an appeal from a civil service hearing. It also provides when a civil service employee has standing to pursue an appeal. The applicable language in Miss. Code Ann. § 21-31-23 is:

. . . The said circuit court shall thereupon proceed to hear and determine such appeal. However, such hearing shall be confined to the determination of whether the judgment or order of **removal, discharge, demotion, suspension or combination thereof** made by the commission, was or was not **made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.** [Emphasis added]

It is undisputed that Mr. Keyes is complaining about not getting a promotion. Mr. Keyes was not removed, discharged, demoted, suspended, or a combination thereof. Rather, he simply did not get a promotion, which does not fall into one of the required categories under the statute. Accordingly, the Circuit Court did not have subject matter jurisdiction of the appeal from the Civil

Service Commission. It also follows that this Court also does not have subject matter jurisdiction of this appeal because the statute does not specifically provide the jurisdiction. In addition Mr. Keyes did not have standing to pursue this appeal. Therefore, this appeal should be dismissed for want of subject matter jurisdiction over the dispute and Mr. Keyes' lack of standing to bring the appeal.

C. Alternatively, the Circuit Court Applied the Wrong Standard of Review on Appeal.

If the Court finds that the Circuit Court and this Court does have subject matter jurisdiction of this dispute/appeal, then the City would state that the Circuit Court applied the wrong standard of review. As set out above, Miss. Code Ann. § 21-31-23 provides the standard of review for the Circuit Court in a civil service appeal. The Circuit Court should determine whether the judgment/order of the Civil Service Commission was or was not made **in good faith for cause**.

The Circuit Court held in its May 19, 2008 order that:

The Court finds from the evidence that the City's appointment was clearly in violation of Rule 11(1) of the Civil Service Rules and for the Civil Service Board to uphold that decision, when a qualified person holding the next highest rank was available, was **arbitrary and unreasonable as a matter of law and in violation of their own rule**. [Emphasis added] R. 332-334; RE-002-004

This is the wrong standard of review. The standard of review was prescribed by statute (i.e. was or was not made in good faith for cause), and the Circuit Court did not apply that standard, but rather used a standard of "arbitrary and unreasonable as a matter of law and in violation of their own rule." Since the wrong standard of review was used, the Circuit Court's ruling should be reversed.

D. The Civil Service Commission's Ruling Was Made in Good Faith for Cause.

Regardless of the standard of review used by the Circuit Court, its ruling on the merits was misplaced because the Civil Service ruling of June 23, 2003 was made in good faith for cause. There is ample evidence substantiating the action taken by the Civil Service Commission and the City.

Rule 11(1) of the Civil Service Commission Rules and Regulations deals with **promotions**, and it provides: "Vacancies and positions shall be filled, **so far as practicable**, by promotion from among persons holding positions in a lower grade from the same office or area of activity of function in which the vacancy exists. . ." [Emphasis added] (R. 321; RE-040) This means, so far as practicable, the City should seek to fill vacancies for jobs by promoting a lower ranking person to the office. The rule does not limit the City to fill the vacancy by promoting a person from the "next lowest position," as argued by Mr. Keyes. In its findings, the Circuit Court found that when a qualified person holding the next highest rank was available and the City did not promote that person, it was a violation of Rule 11(1) and was arbitrary and unreasonable as a matter of law. (R. 332-334; RE-002-0004) The Court also stated as support for its decision that the City has a long history of promoting on the basis of seniority, which has created a strong and stable Fire Department in the City, and that tradition was the basis of Rule 11(1) having been adopted. The Court stated that the rule itself is **compulsory**, provided Mr. Keyes or another candidate of equal rank was qualified. (R. 332-334; RE-002-004)

This is simply an inaccurate interpretation of Rule 11(1) and can be seen by the clear qualifying language, i.e. "so far as practicable" in Rule 11(1) (R. 321; RE-040). The only possible interpretation of this rule with this qualifying language is that the rule is not compulsory and lock step promotions are not required. As discussed below, the City had very good reasons to give the

promotion to someone else versus Mr. Keyes. The City's process of choosing the person to be promoted was sound, well thought out, fair, and in no way political.

Mr. Keyes argued that the language of Civil Service Rule 11(3) somehow applied to his not getting the promotion at issue. (R. 258-265; RE-011-018) A close examination of this rule shows that it is not applicable to the promotion decision. Rule 11(3) of the Civil Service Rules and Regulations addresses who may take Civil Service **promotion examinations**. That rule provides: "Promotion examinations shall be open, **as far as practicable**, to employees who are employed in permanent positions in the next lowest position or grade. . ." (R. 321; RE-040)

The phrase "as far as practicable" takes on special significance in regard to promotion examinations because they are so expensive. Promotion examinations are the only method by which the City establishes new eligibility lists. For example, in 2008 the City of Laurel spent \$23,000 to conduct the Civil Service examinations for the Laurel Fire Department (R. 129). Rule 8(5) of the Civil Service Commission provides that where an eligibility list has less than 3 names on it before the expiration of 2 years from the time it was established, a new list for the same position may be established. (R. 317-318; RE-038-039)

When the Battalion Chief position came open in 2002 due to a retirement, there were only 2 Shift Captains, one of whom was Ken Keyes. (R. 125-126) Limiting the list of persons eligible to take the Civil Service examination to 2 Shift Captains would have resulted to a list of only 2 persons and would have meant that the Fire Department would have started a 2-year period with less than the desired minimum of 3 persons on the promotion list as required by Rule 8(5) of the Civil Service Rules. (R. 128, 129, 131) Therefore, the Fire Department opened up the examination to the Station Captains and Lieutenants and allowed 12 people to take the test. The test was given and 7 people passed. (R. 128, 129, 138) Thereafter, the Fire Department Promotion Board, composed of

Chief Steve Russell, Battalion Chief Alford Jordan, Greg King, and David Chance, met to consider to who to recommend to fill the vacancy of Battalion Chief. (R. 138) Civil Service Rule 11(2) guided them, which states: "Promotions shall be based upon merit and competition and upon superior qualifications of the person promoted as shown by his previous service, due weight given to seniority." (R. 321; RE-040)

Therefore, test scores, as well as years of service, merit, and qualifications were considered in deciding who to recommend. (R. 145-147) Based on those considerations, the Fire Department decided that David Chancellor, who had 21 years of seniority vs. Mr. Keyes with 17 years of seniority, would be the best candidate for Battalion Chief. (R. 143, 146-147) This decision was based upon Chancellor's leadership skills, interpersonal skills, superior qualifications, merit, test scores, and seniority. (R. 139, 146) This recommendation was made to Mayor Vincent for promotion and, based upon that recommendation, Mayor Vincent then approved David Chancellor's promotion. (R. 156-157) There is no evidence that the Fire Department or the Mayor did not act in good faith for cause. There was nothing in the record to indicate that the Civil Service Commission did not act in good faith for cause in upholding the City's decision.

E. Proof that the Civil Service Commission's Decision Was Made in Good Faith for Cause

There are several items which are evidence that the Civil Service Commission acted in good faith with cause in not promoting Mr. Keyes, but rather promoting David Chancellor to Battalion Chief. They are as follows:

- The Civil Service Commission conducted a public hearing on June 20, 2003.
(R. 278-280; RE-030-032)

- Mr. Keyes was represented by counsel (Tucker Buchanan) at the hearing. (R. 278-280; RE-030-032)
- Sworn testimony was taken and written exhibits were presented at the Civil Service Commission hearing (R. 278-280; RE-030-032).
- A substantial order was provided by the Civil Service Commission explaining the factors considered by them in making their decision and noting that it saw no evidence that the promotion of Mr. Chancellor was not based upon merit, efficiency, and fitness. (R. 278-280; RE-030-032)

A more detailed examination of the Civil Service Commission order shows the Commission's good faith. David Chancellor was given the promotion to Battalion Chief which was being sought by Mr. Keyes. (R. 278-280; RE-030-032) Mr. Chancellor was promoted from "Station" Captain. (R. 278-280; RE-030-032) Mr. Keyes was a "Shift" Captain, which is a level above Station Captain. (R. 278-280; RE-030-032) Mr. Keyes' complaint to the Civil Service Commission was that the other "Station" Captains were allowed to take the promotion test and be considered for promotion to the position of Battalion Chief. (R. 278-280; RE-030-032)

Miss. Code Ann. § 21-31-13 provides that all promotions are to be made "solely on merit, efficiency, and fitness, which may be ascertained by open competitive examination and impartial investigation." (R. 278-280; RE-030-032)

In its order, the Civil Service Commission found:

There was no evidence that the promotion of Captain David Chancellor was not based upon merit, efficiency and fitness. Rather, Captain Keyes' complaint was that Chancellor should have never been considered for promotion to Battalion Chief without having previously held the position of Shift Captain.

The City offered testimony concerning the large cost of competitive examinations and the desirability of compiling an adequate eligibility list with a sufficient number

of names to last for at least two years. There was additional testimony as to the importance of an eligibility list with more than three names in order to have an adequate group of qualified individuals from which to select for promotions.

The Commission finds that Rule 11 requires that vacancies be filled, so far as practicable, by persons holding positions in a lower grade from the same office or area of activity, but it does not limit promotions to individuals already holding the very next lowest position or grade. Such a restrictive interpretation of the rules may not in all cases insure that promotion is granted to the best candidate based upon merit, efficiency and fitness.

Therefore, the promotion of Captain David Chancellor to Battalion Chief is upheld.

(R. 278-280; RE-030-032)

Accordingly, the Civil Service Commission clearly set out its considerations, the authorities it was applying, and the factors considered in choosing Mr. Chancellor over Mr. Keyes for promotion. It also noted that there was no proof that the promotion procedure followed failed to meet the requirements of the Civil Service Commission Rules and Regulations.

Mr. Keyes did not present to the Civil Service Commission nor the Circuit Court any credible evidence showing that the promotion was not made in good faith for cause, or that Mr. Keyes not being given the promotion was not made in good faith for cause.

F. The Relief Ordered by the Circuit Court Exceeded Its Authority and is Impossible to Accurately be Complied With

The Circuit Court in its order dated May 19, 2008, ordered the City to “**promote the appellant as Battalion Chief, effective June 23, 2003, with all the promotions, benefits and privileges, of the Battalion Chief rank, which was the rank he deserved.**” (R.332-334; RE-002-004) [Emphasis added] Ordering the City to go back five years and place Mr. Keyes as the Battalion Chief and then give him all the promotions, benefits and privileges of Battalion Chief from 2003 to the present is hardly an easy task, if not impossible. It is specifically relevant that on March 4, 2009, Mr. Keyes retired as an employee of the City. Therefore, it is the City’s position that this appeal

really is moot at this point because Mr. Keyes is asking to be promoted to Battalion Chief although he no longer works for the City. Alternatively, if it is not moot, the uncertainty of what would have happened as far as promotions, benefits, and privileges regarding Mr. Keyes is hard to reconstruct. For example, on March 19, 2007, Mr. Keyes was injured at work and took leave under the Workers Compensation Act. On May 5, 2008, he returned to work but injured himself on that day and went back out on a Workers Compensation injury. Thereafter, he retired. How this leave could have affected any "promotions, benefits or privileges" is uncertain.

Another factor that needs to be considered is that currently Mr. Keyes is running for City Council. This is significant in that he wants to be the Battalion Chief, but if Mr. Keyes is elected to the City Council he cannot serve as an employee of the City. In addition to the aforementioned uncertainties, the Circuit Court did not address what to do with Mr. Chancellor, who had been given the promotion to Battalion Chief and which he has held for five years. Accordingly, the City would state that since Mr. Keyes is no longer employed by the City, the appeal is moot. Alternatively, the Circuit Court exceeded its authority by ordering a retroactive promotion to predate the Judge's May 2008 order to five years earlier, i.e. June 2003. Finally, the relief being requested, i.e. put Mr. Keyes in the Battalion Chief position, is problematic due to the fact that the position is being held, and has been held, by Mr. Chancellor since 2003.

G. Political Reasons/Mayor's Involvement

During the June 20, 2003 hearing before the Civil Service Commission, Mr. Keyes indicated that his failure to obtain the promotion was due to political reasons of the Mayor. (R. 149-150) However, as can be seen by a review of the hearing transcript, the Mayor received a recommendation from the Fire Chief, which recommendation was derived by a process as is fully explained above and which was explained during the hearing before the Civil Service Commission, and the Mayor simply

adopted the recommendation to promote Mr. Chancellor. (R. 157) No credible evidence was presented that the Mayor acted in any improper or political manner, or that any political reason was the motivational factor for Mr. Chancellor receiving a promotion over Mr. Keyes.

V. CONCLUSION

The City of Laurel respectfully requests that this Court deny Mr. Keyes' appeal due to the lack of subject matter jurisdiction of the Circuit Court and of this Court . Alternatively, for the reasons above, the City of Laurel respectfully requests the Court to reverse the Circuit Court's order of May 19, 2008, which upheld the promotion of Mr. Keyes to Battalion Chief.

Respectfully submitted,

THE CITY OF LAUREL, MISSISSIPPI
Appellant

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CERTIFICATE OF SERVICE

I, Deidra J. Bassi, do hereby certify that I have this served a true and correct copy of the above and foregoing Brief to:

Honorable Billy Joe Landrum
Jones County Circuit Court Judge
Jones County Courthouse
Laurel, MS 39440

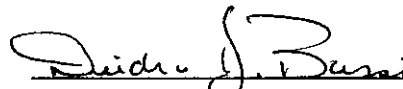
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*Via United States Mail
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This, the 23rd day of April, A.D. 2009.


Deidra J. Bassi

VI. ADDENDUM - AUTHORITIES

1. *City of Jackson v. Froshour*
530 So.2d 1348, 1355 (Miss. 1988)
2. § 21-31-13 Mississippi Code Annotated
3. § 21-31-23 Mississippi Code Annotated

C

Supreme Court of Mississippi.
CITY OF JACKSON, Mississippi
v.
Dennis FROSHOUR.
No. 57849.

Aug. 24, 1988.

Police officer sought judicial review of an order of a civil service commission affirming the city's discharge of the officer. The Circuit Court, Hinds County, L. Breland Hilburn, J., reversed the order and directed the officer's reinstatement. The city appealed. The Supreme Court, Hawkins, P.J., held that substantial evidence supported the civil service commission's decision to affirm the city's discharge of the police officer for insubordination and for striking a handcuffed arrestee.

Judgment of Circuit Court reversed and rendered; order of civil service commission reinstated.

West Headnotes

[1] Municipal Corporations 268 ↪ 185(12)

268 Municipal Corporations
268V Officers, Agents, and Employees
268V(B) Municipal Departments and Officers
Thereof

268k179 Police
268k185 Suspension and Removal of
Policemen

268k185(12) k. Review in General.
Most Cited Cases
Scope of review of city's civil service commission's decision upholding police officer's discharge is limited to examination of record to determine whether there exists credible evidence substantiating city's action; on that basis court determines whether decision was in "good faith for cause." Code 1972, §§ 21-31-21, 21-31-23.

[2] Municipal Corporations 268 ↪ 185(10)

268 Municipal Corporations

268V Officers, Agents, and Employees
268V(B) Municipal Departments and Officers
Thereof

268k179 Police
268k185 Suspension and Removal of
Policemen

268k185(10) k. Sufficiency of Evidence to Support Finding or Decision. Most Cited Cases

Substantial evidence supported civil service commission's order affirming city's discharge of police officer for insubordination in refusing to identify which questions he had lied about during polygraph examination, despite order from chief of police, and for physically assaulting handcuffed arrestee. Code 1972, §§ 21-31-21, 21-31-23.

[3] Municipal Corporations 268 ↪ 185(11)

268 Municipal Corporations
268V Officers, Agents, and Employees
268V(B) Municipal Departments and Officers
Thereof

268k179 Police
268k185 Suspension and Removal of
Policemen

268k185(11) k. Order or Recommendation. Most Cited Cases
Civil service commission gave sufficiently clear analysis and reasons for affirming police officer's discharge, even if commission could have been more specific. Code 1972, §§ 21-31-21, 21-31-23.

*1349 Paul O. Miller, III, W. Thomas Siler, Jr., Susan D. Fahey, Miller, Milam & Moeller, Jackson, for appellant.

E.P. Lobrano, Jr., Jackson, for appellee.

Before HAWKINS, P.J., and ANDERSON and GRIFFIN, JJ.

HAWKINS, Presiding Justice, for the Court:

The City of Jackson has appealed the judgment of the circuit court of the First Judicial District of Hinds County reversing the order of the Civil Service

Commission of Jackson affirming the City's discharge of Dennis Froshour, and directing that he be reinstated as an employee of the Jackson Police Department.

We find that the order of the Civil Service Commission was based upon substantial evidence, was made in good faith for cause, and therefore reverse the judgment of the circuit court and reinstate the order of the Commission.

FACTS

The seed from which this case eventually developed grew from a domestic dispute between Kenneth Fike (Fike) and his estranged wife Connie. The Fikes' marriage had lasted approximately four and one-half years, during which there were many separations during which divorce was contemplated. The last separation occurred in July of 1985 when Connie moved out taking the Fikes' three and one-half-year-old son. On the night of October 29, 1975, Fike followed Connie to her friend's house and threatened Connie with a shotgun as she was getting out of her car. Fike pointed the gun at Connie's head and asked if she was ready to die. Observing neighbors called the police, and one neighbor forced Fike to leave. Later that night he checked himself into the Veterans Administration Hospital (the VA) in Jackson. Fike spent four days at the VA, where he was given mild sedatives and was monitored by hospital personnel.

Because Connie could not get the police in the appropriate precinct to allow her to file charges against Fike, she consulted Police Sergeant Burton, who worked in another precinct, to take an offense report. Sergeant Burton was assisted on that day by Officer Froshour.

After Fike's four days' stay in the VA Hospital, through counseling by Hinds County Deputy Sheriff Hal Morris, a personal friend of Fike's, Fike requested to be released from the VA. Fike was told by the doctor that because he was still upset and nervous he should not be released. Fike was, however, eventually released after the doctor told Fike that he would have to be released into custody of the Jackson Police Department. Because Froshour had accompanied Sergeant Burton in the investigation, when the arrest warrant was issued, it went to Froshour to make the arrest. Froshour then traveled to the security captain's

office in the VA to arrest Fike. Upon arrival, Froshour frisked Fike and placed him in handcuffs behind his back. Froshour then escorted Fike through the emergency room and out in the parking lot to Froshour's car. Fike then complained to Froshour about the handcuffs being too tight. From this point forward Fike's and Froshour's stories, although somewhat similar, become different.

FIKE

Fike stated that Froshour then tightened the handcuffs even tighter. Froshour opened the back door of the police car and shoved Fike into it. Then as Froshour cranked the car, he began telling Fike how he was going to beat him up and show him what it was like to point a gun at a woman's head. Froshour drove "wild", running yellow lights and cursing Fike. Froshour stopped on the way to the police station at the police garage where Froshour cursed the mechanic, stating that he needed to fix the car. Froshour then jumped back into the car and drove to the city jail. Froshour pulled the car into the back of the parking *1350 garage. He got out of the car, opened the back door and grabbed Fike by the handcuffs. He jerked Fike out of the car by his left arm and told him to stand by a certain door. Fike saw Froshour pull some black gloves out of his jacket and put them on. Fike then tried to turn a door knob on the door where he was standing, but it was apparently locked. Froshour approached Fike cursing and began hitting and kicking Fike, knocking Fike to the ground. Froshour then continued stomping and kicking Fike. At this point Froshour pulled out his pistol from his holster and struck Fike on the side of the head about five or six times. Fike was then escorted by Froshour to a small room where Fike was unhandcuffed and again kicked against the wall by Froshour. Fike further testified that Froshour stated, "You want my name and you want my badge number? ^{FN1} Nobody would believe this. You just come off a nut ward. Nobody is going to believe nothing you say or anything."

^{FN1}. It was related by Froshour's counsel at oral argument that Jackson Police officers have no badge number.

Fike went on to testify that he just sat in the cell with his ribs and back hurting. Someone came in to sweep and Fike told him that he had just been beaten up by a police officer and needed help, which Fike said was

ignored. Later, after Froshour had left, another detective brought in a prisoner and Fike once again repeated that he had been beaten up by a police officer and needed help. The officer told Fike that because of police policy the arresting officer would have to take him back to the hospital. Fike, believing that he would be beaten up worse, declined to be taken back to the hospital by Froshour. Once Fike was taken upstairs, he requested to phone Deputy Sheriff Morris. Shortly thereafter Deputy Morris arrived and was allowed to transport Fike back to the VA. There Fike was examined, x-rayed and given aspirin. Fike then was returned to the city jail. The VA medical record notes that the physical examination of Fike following his arrest showed multiple contusions. There was some bruising, or petechiae, noted on his trunk, right and left lower chest, and left flank. His lower lip was cut and bruised.

Around the second day of Fike's incarceration, investigators from Internal Affairs talked with him and took pictures. Connie's charges against Fike had been dropped as part of the divorce proceedings which became effective that day or the day before. Fike, however, remained in jail for violation of his three-year probation of a Florida conviction for arson. Once the Florida officials found that Fike's arrest stemmed from a domestic problem, Fike was released.

FROSHOUR

Froshour's account of what happened after Fike complained about the tight handcuffs was that most arrestees complain about the handcuffs. Froshour went on to testify that he checked the chains and could slip the cuffs up and down on Fike's wrist, and were not too tight. As Froshour and Fike approached the vehicle, Fike questioned Froshour concerning the warrants. Froshour stated that because of the people watching, he would discuss it with him only in the car. Froshour then opened the door to the car and asked Fike to sit down. Fike would not, and he then reached behind Fike's head and put his knee in Fike's stomach and bent him down into the seat of the car. Once both individuals were inside the car, Fike started cursing Froshour, and saying he would get even with him. Fike continued cursing and accusing Froshour of having a personal vendetta toward him. Froshour stated that he did stop at the garage to pick up his paperwork which was in his usual patrol car which was being repaired, but proceeded to the city jail.

Finding no parking place, he parked in a place belonging to one of the deputy chiefs. He opened the door to let Fike get out. Because Fike would not exit the car, Froshour reached in, grabbed Fike's leg and turned him, at which point Fike kicked at Froshour. Froshour then grabbed Fike by the hair of the head and pulled him out of *1351 the car. Then he told Fike to stand still while he got the paperwork out of the car. Fike, however, began walking away around the front of the car. After Froshour got his paperwork out of the car, he walked down to retrieve Fike from near the corner of the garage. Froshour maintained that he and Fike could be seen by anyone coming into the garage at any time. Froshour grabbed Fike, turned him around, "jacked" the handcuffs up to immobilize Fike, and started bringing him back. When Fike tried to spit on him, Froshour popped him with his open hand "with papers in it" to Fike's mouth area. Froshour further stated that Fike stomped his foot on which he had recently had minor surgery.

CITY INVESTIGATION

Froshour was interviewed several times by the City's Internal Affairs Division. The first interview was the day after Fike's arrest and was conducted by Sergeant J.L. Covington. When asked by Covington if he had struck Fike, Froshour denied it. In his testimony Froshour explained this answer by stating that he thought Covington meant had he hit Fike with his fist or a club, and his slapping Fike with his open hand (holding papers) did not register with him. A second interview was conducted on November 6, 1985, at approximately 8:24 a.m. by Sergeant Covington, primarily to inform Froshour that he might need to submit to a polygraph examination. A polygraph examination was subsequently conducted by William B. Inman, Jr., around 11:00 that morning. On the afternoon of the next day, Froshour was interviewed by Chief of Police L.C. Smith concerning discrepancies between the initial interview with Sergeant Covington and statements made to the polygraph examiner. Froshour was then immediately sent to Sergeant Covington to explain the discrepancies. During this interview when asked if he had lied on the polygraph, Froshour refused to answer. Subsequently the chief of police was called to order an answer from Froshour. Based on Froshour's continued refusal, the chief suspended him.

Froshour was later sent a letter of intent to dismiss and offered a pre-termination hearing. On November 25,

1985, Froshour was terminated and given notice that he had a right to appeal to the Commission within ten days. Froshour did appeal to the Commission which held a hearing on January 30, 1986, before Gene A. Wilkinson, chairman, William K. Dease and Jacqueline Povall. At the conclusion of the hearing, the Commission took the matter under advisement. An opinion was subsequently rendered on February 13, 1986.

The Commission's order first noted that Froshour's termination letter notified him that: the police department had found his and Fike's statements conflicted and that his answers were evasive; both parties submitted to a polygraph examination; and that Froshour had admitted to "lying to the polygraph examiner, but refused to answer which questions" he had "lied about," and even after he received an order of the chief of police to answer the question. This constituted insubordination. Froshour was also notified that he was not truthful when he told Internal Affairs that he did not strike Fike; that he in fact kneed and struck Fike more than once. The letter went on to note that Froshour's file contained more complaints than any other officer of the police department, and of nineteen complaints against him, eleven had been for brutality.

The letter further noted that Froshour had admitted to "popping" Fike more than once, pulling his hair, and kneeling him, all while he was handcuffed. The letter concluded that Froshour's insubordination, refusal to cooperate in the investigation, brutality and dishonesty would no longer be tolerated.

The Commission order further found that Froshour physically assaulted Fike when the latter was handcuffed, that bruises had been noted on Fike's wrists, trunk, abdomen and back, and that Fike had a swollen lower lip with a cut on the inside.

The order further noted that while Froshour at the hearing had denied striking Fike other than with the back of his hand, he had admitted to the polygraph examination that he had struck Fike in the *1352 stomach with his knee, and "rabbit punched" him several times in the back and stomach. The order then contained the following sentence:

Moreover, given the circumstances immediately leading up to his arrest, there is no indication of any motivation for Mr. Fike to lodge an unfounded com-

plaint against Officer Froshour or resist arrest.

The order found that the police department's decision to discharge Froshour was supported by the facts.

The Commission rejected Froshour's contention that the police department's requirement that he submit to a polygraph violated his constitution rights, but found in any event that his admission to the polygraph examiner was made prior to the examination.

The Commission did not rule on Froshour's contention that his Fourteenth Amendment rights had been violated by the police department's using the polygraph results in terminating his employment, because the Commission found there was no evidence the department had used the examination's results in deciding to terminate him. The Commission found, moreover, that there was substantial evidence supporting the department's decision regardless of the polygraph results.

The order concluded:

IT IS THEREFORE, the opinion of this Commission that the City of Jackson has convincing evidence to support the dismissal of Officer Froshour and that he was not dismissed for political or religious reasons. The Commission therefore affirms the findings of the appointing authority of the City of Jackson.

Froshour appealed to the circuit court of the First Judicial District of Hinds County, claiming:

1. The verdict of the commission was manifestly wrong, or that the city had filed to establish its case by conclusive evidence.
2. That the city had violated his constitutional rights by threatening to discharge him if he refused to execute a waiver of his Fifth Amendment rights preliminary to taking a polygraph examination.
3. That his Fourteenth Amendment due process rights had been violated.

The circuit judge on September 29, 1986, by a memorandum opinion reversed the Commission's order, and a judgment directed that Froshour be reinstated was entered October 8, 1986.

The circuit judge's opinion quoted the above sentence from the Commission that Fike had no motivation to lodge an unfounded charge, and found:

This finding is erroneous. By even a cursory review, the record is replete with evidence that Fike was untruthful and that he had a propensity to be violent; certainly a mere indication of such motivation exists within the record.

It is well-established that the Commission may consider and then reject the controverted evidence offered by Froshour, but for the Commission to make a finding that evidence does not exist within the record when, in fact, such evidence does exist is a blatant failure to the Commission to provide a good faith review

The circuit judge's opinion further stated:
The Commission's Order further states:

Evidence presented at the hearing convincingly indicates that the police department's decision to dismiss Officer Froshour was supported by the facts and leaves us with no alternative but to affirm the City's decision.

There is no indication by the Commission's Order as to what the additional facts are which compelled it to affirm Froshour's dismissal.

The City in turn has appealed the circuit court judgment directing that Froshour be reinstated.

LAW

Miss.Code Ann. § 21-31-21 provides:

§ 21-31-21. Tenure of office and grounds for discipline.

The tenure of everyone holding an office, place, position or employment under *1353 the provisions of sections 21-31-1 to 21-31-27 shall be only during good behavior. Any such person may be removed or discharged, suspended without pay, demoted or reduced in rank, or deprived of vacation privileges or other special privileges, or any combination thereof, for any of the following reasons:

Incompetency, inefficiency, or inattention of duty; dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public or a fellow employee, or any other act of omission or commission tending to injure the public service.

Miss.Code Ann. § 21-31-23 is a lengthy statute setting forth the procedure for disciplinary action against an employee. In pertinent part it provides:

§ 21-31-23. Removal, suspension, demotion, and discharge.

No person in the classified civil service ... shall be removed, suspended, demoted or discharged, or any combination thereof, except for cause, and only upon the written accusation of the appointing power or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. The chiefs of the fire and/or police department may suspend a member pending the confirmation of the suspension by the regular appointing power, which shall be within three (3) days.

In the absence of extraordinary circumstances or situations, before any such employee may be removed or discharged, he shall be given written notice of the intended termination, which notice shall state the reasons for termination and inform the employee that he has the right to respond in writing to the reasons given for termination within a reasonable time and respond orally before the official charged with the responsibility of making the termination decision. Such official may, in his discretion, provide for a pretermination hearing and examination of witnesses, and if a hearing is to be held, the notice to the employee shall also set the time and place of such hearing. A duplicate of such notice shall be filed with the commission. After the employee has responded or has failed to respond within a reasonable time, the official charged with the responsibility of making the termination decision shall determine the appropriate disciplinary action, and shall notify the employee of his decision in writing at the earliest practicable date.

Any person so removed, suspended, demoted, discharged or combination thereof may, within ten (10) days from the time of such disciplinary action, file with the commission a written demand for an inves-

tigation, whereupon the commission shall conduct such investigation. *The investigation shall be confined to the determination of the question of whether such disciplinary action was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may, if in its estimation the evidence is conclusive, affirm the disciplinary action, or if it shall find that the disciplinary action was made for political or religious reasons, or was not made in good faith for cause shall order the immediate reinstatement or reemployment of such person in the office, place, position, or employment from which such person was removed, suspended, demoted, discharged or combination thereof, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such disciplinary action....* [Emphasis added]

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable written notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. The findings of the commission shall be conclusive and binding unless either the accused or the municipality*1354 shall ... appeal to the circuit court of the county within which the municipality is located. Any appeal of the judgment or order of the commission shall not act as a supersedeas of such judgment or order, but the judgment or order shall remain in effect pending a final determination of the matter on appeal. Such appeal shall be taken by serving the commission and the appellee, within thirty (30) days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within thirty (30) days after the filing of such notice, make, certify and file such transcript with such court. *The said circuit court shall thereupon proceed to hear and determine such appeal. However, such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion,, suspension or combination thereof made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.* [Emphasis added]

This Court has had several occasions to interpret the above sections and their predecessors. We briefly recapitulate.

This Act removes from municipalities the unrestricted power to discharge employees covered by it, and creates in such employees a valuable property right. Little v. City of Jackson, 375 So.2d 1031 (Miss.1979); City of Meridian v. Davidson, 211 Miss. 683, 53 So.2d 48 (Miss.1951).

The due process clause of the Fourteenth Amendment requires that "risk reducing procedures" be accorded a covered municipal civil service employee to afford him ample opportunity prior to discharge to know the reasons he is being discharged and that he be given an effective opportunity to rebut them. Little v. City of Jackson, *supra*. The present statute sets forth such a procedure, and no contention is made on this appeal that Froshour was not given an ample opportunity to protect such rights.

The function of the civil service commission is to investigate and determine whether the disciplinary action taken by the city "was or was not made for political or religious reasons *and* was or was not made in good faith for cause." If the commission finds the evidence is conclusive that the disciplinary action was not for political or religious reason and was made in good faith for cause, it is required to affirm the city's action. Miss.Code Ann. § 21-31-23; Scott v. Lowe, 223 Miss. 312, 78 So.2d 452 (1955).

Either the city or the employee may appeal the commission's decision to the circuit court. Such an appeal is the exclusive remedy. City of Jackson v. Thomas, 331 So.2d 926 (Miss.1976); Scott v. Lowe, *supra*; and the circuit court sits as an appellate court. City of Gulfport v. Saxton, 437 So.2d 1215 (Miss.1983). The appeal must be based upon a transcribed record of the proceedings before the commission. Stegall v. City of Meridian, 230 Miss. 176, 92 So.2d 331 (1957); City of Meridian v. Davidson, *supra*.

Upon appeal, the circuit court is confined to a determination of whether the action taken by the commission "was or was not made in good faith for cause." Miss.Code Ann. § 21-31-23. In City of Meridian v. Davidson, *supra*, we analyzed the circuit court's function and held:

That is to say, the circuit court would not be permitted to determine the guilt or innocence of the employee of the charge or charges against him, since the fact that the circuit court may disagree with the commission as to the guilt or innocence of the employee would no more necessitate a finding that the commission had not acted in good faith and on the basis of what reasonable men could deem a sufficient cause than our disagreement with the conclusion of a chancellor on an issue of fact would impute bad faith to him. The fact that we may think the weight of the evidence is contrary to his *1355 finding does not even require a reversal unless he is manifestly wrong and furnishes no basis in itself alone for an inference of bad faith on the part of the trier of the facts, whether an executive or administrative agency, a jury or a trial judge.

... And it was further stated that the only sound, practicable or workable rule that can be announced is to hold that the court to which the appeal is taken from an administrative agency shall only inquire into whether or not the judgment appealed from is reasonable and proper *according to the facts disclosed before the board* that is to say whether or not its decision is supported by substantial evidence or is arbitrary or capricious, etc. or in other words whether or not it was made in good faith for cause. [Emphasis original]

211 Miss. at 693, 695, 53 So.2d at 52, 53.

In *City of Meridian v. Hill*, 447 So.2d 641 (Miss.1984), we quoted the above language from *Davidson* (447 So.2d at 643-644) and also stated:

On appeal here, the question before us is whether or not the action of the Civil Service Commission was in good faith for cause. Intertwined with this question is whether or not there was substantial evidence before the Civil Service Commission to support its order and whether it is arbitrary, unreasonable, confiscatory, and capricious.

447 So.2d at 643. Also, *Eidt v. City of Natchez*, 421 So.2d 1225, 1231 (Miss.1982); *City of Jackson Police Dept. v. Ruddick*; 243 So.2d 566 (Miss.1971); *City of Hattiesburg v. Jackson*, 235 Miss. 109, 108 So.2d 596 (1959).

[1] It is thus clear that the scope of review of the circuit court, and of this Court, is limited, and we must ever bear in mind that it is not what the court, had it been a member of the governing authority, might have done in a particular instance, or indeed whether or not the court thinks a mistake may have been made, but instead the criterion is whether or not from an examination of the record there exists credible evidence substantiating the action taken by the city. It is upon this basis that the court determines whether or not the decision was in "good faith for cause." Courts are not empowered to supervise the intelligence, wisdom or fairness of the governing authorities, and no resources are available to a court to exercise such a function even if granted, in this extremely difficult task of determining the fitness of a particular person for a particular job. The task must be left to the governing authorities of the city. It is only when the record makes it clear that there is no "substantial evidence" supporting the governing authorities' determination that a court can act, and in such case it must.

[2] From this record we must accord full faith and credit to the action taken by the Jackson Police Department and the Commission. The Commission's order affirming the city's action was supported by substantial evidence.

[3] We agree with the circuit judge that a Commission is under a duty to set forth with sufficient clarity and specificity the reason it is upholding the action taken by the city, as well as it is the duty of the city to set forth clearly the reasons for its disciplinary action. In this case this Court may or may not have been more specific than was the Commission, but the Commission gave a sufficiently clear analysis and reason it was affirming the action of the city. *City of Jackson v. Little, supra*.

We therefore reverse and render and judgment of the circuit court and reinstate the order of the Commission.

JUDGMENT OF THE CIRCUIT COURT REVERSED AND RENDERED; ORDER OF THE COMMISSION REINSTATED.

ROY NOBLE LEE, C.J., DAN M. LEE, P.J., and PRATHER, ROBERTSON, SULLIVAN, ANDERSON, GRIFFIN and ZUCCARO, JJ., concur.
Miss., 1988.

Miss. Code Ann. § 21-31-23

CWest's Annotated Mississippi Code Currentness

Title 21. Municipalities

▣ Chapter 31. Civil Service

▣ General Provisions (Refs & Annos)

→ § 21-31-23. Disciplinary process

No person in the classified civil service who shall have been permanently appointed or inducted into civil service under the provisions of sections 21-31-1 to 21-31-27, except for such persons as may be employed to fill a vacancy caused by the absence of a fireman or policeman while in service as a member of the armed forces of the United States, shall be removed, suspended, demoted or discharged, or any combination thereof, except for cause, and only upon the written accusation of the appointing power or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. The chiefs of the fire and/or police department may suspend a member pending the confirmation of the suspension by the regular appointing power, which shall be within three (3) days.

In the absence of extraordinary circumstances or situations, before any such employee may be removed or discharged, he shall be given written notice of the intended termination, which notice shall state the reasons for termination and inform the employee that he has the right to respond in writing to the reasons given for termination within a reasonable time and respond orally before the official charged with the responsibility of making the termination decision. Such official may, in his discretion, provide for a pretermination hearing and examination of witnesses, and if a hearing is to be held, the notice to the employee shall also set the time and place of such hearing. A duplicate of such notice shall be filed with the commission. After the employee has responded or has failed to respond within a reasonable time, the official charged with the responsibility of making the termination decision shall determine the appropriate disciplinary action, and shall notify the employee of his decision in writing at the earliest practicable date.

Where there are extraordinary circumstances or situations which require the immediate discharge or removal of an employee, such employee may be terminated without a pretermination hearing as required by this section, but such employee shall be given written notice of the specific reasons for termination within twenty-four (24) hours after the termination, and shall be given an opportunity for a hearing similar to the pretermination hearing provided in this section within twenty (20) days after the date of termination. For the purposes of this section, extraordinary situations or circumstances include, but are not limited to, circumstances where retention of the employee would result in damage to municipal property, would be detrimental to the interest of municipal government or would result in injury to the employee, to a fellow employee or to the general public.

Any person so removed, suspended, demoted, discharged or combination thereof may, within ten (10) days from the time of such disciplinary action, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such disciplinary action was or was not made for political or religious reasons and was or was not made in good faith for cause. After such investigation the commission may, if in its estimation the evidence is conclusive, affirm the disciplinary action, or if it shall find that the disciplinary action was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position, or employment from which such person was removed, suspended, demoted, discharged or combination thereof, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such disciplinary action. The commission upon such investigation may, in lieu of affirming the disciplinary action, modify the order of removal, suspension, demotion,

Miss. Code Ann. § 21-31-23

discharge or combination thereof by directing a suspension, without pay, for a given period and subsequent restoration of duty, or by directing a demotion in classification, grade or pay, or by any combination thereof. The findings of the commission shall be certified in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable written notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. The findings of the commission shall be conclusive and binding unless either the accused or the municipality shall, within thirty (30) days from the date of the entry of such judgment or order on the minutes of the commission and notification to the accused and the municipality, appeal to the circuit court of the county within which the municipality is located. Any appeal of the judgment or order of the commission shall not act as a supersedeas of such judgment or order, but the judgment or order shall remain in effect pending a final determination of the matter on appeal. Such appeal shall be taken by serving the commission and the appellee, within thirty (30) days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within thirty (30) days after the filing of such notice, make, certify and file such transcript with such court. The said circuit court shall thereupon proceed to hear and determine such appeal. However, such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion, suspension or combination thereof made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds.

CREDIT(S)

Laws 1944, Ch. 208, § 10; Laws 1984, Ch. 521, § 2, eff. July 1, 1984.

HISTORICAL AND STATUTORY NOTES

Derivation:

Code 1942, § 3825-11.

Miss. Code Ann. § 21-31-23, MS ST § 21-31-23

Current through all 2008 Sessions and HB Nos. 197, 699, 636 and 1027 of the 2009 Regular Session

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Miss. Code Ann. § 21-31-13

CWest's Annotated Mississippi Code Currentness

Title 21. Municipalities

▣ Chapter 31. Civil Service

▣ General Provisions (Refs & Annos)

→ § 21-31-13. Application

The provisions of sections 21-31-1 to 21-31-27 shall include all full paid employees of the fire and/or police departments of each municipality coming within its purview, including the chiefs of those departments. All appointments to and promotions in said departments shall be made solely on merit, efficiency, and fitness, which may be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in, or transferred, suspended, or discharged from any place, position or employment contrary to the provisions of sections 21-31-1 to 21-31-27. The governing authorities of the municipality may, with the approval of the civil service commission, extend the benefits of sections 21-31-1 to 21-31-27 to other full time employees of the municipality.

All incumbents and future appointees shall be subject to civil service, except, however, those appointees now and hereafter serving as extra members.

CREDIT(S)

Laws 1944, Ch. 208, § 2; Laws 1962, Ch. 547, § 2, eff. from and after passage (approved April 30, 1962).

HISTORICAL AND STATUTORY NOTES

Derivation:

Code 1942, §§ 3825-03, 3825-04.

Miss. Code Ann. § 21-31-13, MS ST § 21-31-13

Current through all 2008 Sessions and HB Nos. 197, 699, 636 and 1027 of the 2009 Regular Session

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