

A Meeting of the Civil Service Commission (Act 78) was held Thursday, February 26, 2004, at Troy City Hall, 500 W. Big Beaver Road in the Council Boardroom. Chairman McGinnis called the meeting to order at 7:05 PM.

ROLL CALL

PRESENT: Chairman Donald E. McGinnis, Jr.
Commissioner Patrick Daugherty
Commissioner David Cannon

ALSO PRESENT: Lori Bluhm - City Attorney, Peggy Clifton - Human Resources Director, Police Chief Charles Craft, Captain Edward Murphy, Barbara A. Holmes - Deputy City Clerk, Jeanette Menig - Human Resources Specialist, Police Officer Mark F. Livingston, Roxanne Ostrowski, Lieutenant Stephen M. Zavislak (retired), Craig Lange – Lange & Cholack, P.C., Christine Felts – Court Reporter – Christine Felts & Associates

Approval of Minutes of January 22, 2004

Resolution #CSC-2004-02-005
Moved by Cannon
Seconded by Daugherty

RESOLVED, That the Minutes of the meeting of January 22, 2004 be **APPROVED** as presented.

Yes: All-3

Petitions and Communications

It was the consensus of the Commission to move forward Petitions and Communications Items (c) Approval of Eligible List – Police Officer and (b) Request for an Act 78 Appeal Hearing – Police Officer – Mark F. Livingston.

(c) Approval of Eligible List – Police Officer

Resolution #CSC-2004-02-006
Moved by Cannon
Seconded by Daugherty

RESOLVED, That the Eligible List for Classification: Police Officer established on Thursday, January 22, 2004 and **APPROVED** (Resolution #CSC-2004-01-002) as presented on Thursday, January 22, 2004 be hereby **AMENDED** with the **REVISED** Eligible List for Classification: Police Officer established on Tuesday, February 24, 2004.

Yes: All-3

(c) Request for an Act 78 Appeal Hearing – Police Officer Mark F. Livingston

Chair McGinnis noted that Police Officer Livingston does not have legal counsel and advised him that it is within his right to seek counsel.

Police Officer Mark F. Livingston's request for an Act 78 appeal hearing challenges the rejection of his application for the rank of Lieutenant within the Troy Police Department. Police Officer Livingston maintains that he meets the requirements because the posting does not specify that the two years of lower rank must be served with the City of Troy. Officer Livingston advised that as a sergeant for the City of Detroit, he tested for lieutenant prior to coming to Troy and would have been promoted to lieutenant in the City of Detroit in July 1998.

Mr. Lange advised that Section 12.2 of the State Statute clearly states that two years in the next lower rank in the police department is required, and 5 years service in the police department is required, and that the petitioner's request should be rejected based on this section.

Chair McGinnis asked the petitioner whether he believes he qualifies under the act or the posting.

Police Officer Livingston believes he qualifies based upon the posting.

Mr. Lange noted that the posting includes language stating "pursuant to Act 78".

Commissioner Daugherty asked Police Officer Livingston when he believes he became eligible.

Police Officer Livingston responded that he has two years as police sergeant with the City of Detroit and five years as a police officer with Troy.

Mr. Lange restated that state statute requires two years in a lower rank and that a candidate cannot jump from police officer to sergeant.

Chair McGinnis believes the statute should be interpreted to mean that the rank of sergeant is in the City of Troy.

Commissioner Cannon agreed that the law is clear and asked whether there is any case law that interprets this section differently.

Mr. Lange replied that there is no case law and restated that the language is clear in this matter. However, he noted that the petitioner does not disagree with the statute and that his appeal is based upon the posting.

Commissioner Daugherty asked whether an exception has ever been made within the Troy Police Department.

Chief Craft replied that this appeal is the first encountered by Troy's Police Department.

Commissioner Cannon sees ambiguity in the statute posting and asked whether any exceptions have been made in other jurisdictions.

Chief Craft responded that there are none that he is aware of, but understands that some jurisdictions hire laterally.

Commissioner Cannon understands that they are bound by state statute and that there is no case law available at this time to support Officer Livingston's appeal.

Chair McGinnis noted that Chief Craft has already indicated that there has never been a case in Troy, but asked whether or not Police Officer Livingston can provide evidence that there has been a situation where a posting supersedes the state statute.

City Attorney Bluhm advised that she has done some research and would do further, but was unable to discover any case law in her initial research.

Chair McGinnis believes the petition is legitimate and asked that future postings be less ambiguous and more reflective of the statute.

Resolution #CSC-2004-02-007

Moved by Cannon

Seconded by Daugherty

RESOLVED, That the petition requesting an Act 78 Appeal Hearing by Police Officer Mark F. Livingston be **DENIED** without prejudice due to the State Statute clearly defining the two (2) year requirement of serving lower rank within the police department that the petitioner is currently serving; and

BE IT FURTHER RESOLVED, That the petitioner can resubmit a request for an appeal hearing if he is able to bring forward practical evidence stipulating that this requirement has been waived.

Yes: All-3

(a) Request for an Act 78 Appeal Hearing – Roxanne Ostrowski

Chair McGinnis noted that Ms. Ostrowski does not have legal counsel and advised her that it is within her right to seek counsel

Ms. Ostrowski replied that she is aware that she can have counsel, but does not believe it is necessary at this time. She proceeded to state that she is before the Commission because she was previously employed as a Service Aide with the City of Troy for four years and received the same background and psychological testing then that she received when she applied more recently with Troy for a police officer position. She continued by stating that she is appealing the decision of the withdrawal of her application because she believed that everything went well and since the information on her application had been unchanged since she applied as a Service Aide and was hired. Chair McGinnis noted for the record Ms. Ostrowski's waiver of right to Counsel.

Chair McGinnis believes the Commission should have a copy of the police officer rejection correspondence in hand.

Mr. Lange provided the rejection and psychological background information to the Commission.

Chair McGinnis asked whether or not Ms. Ostrowski waived her right to keep the information confidential.

Ms. Ostrowski advised that she did not receive the documents.

Mr. Lange understands that the petitioner filed a Freedom of Information request and that it was denied.

City Attorney Bluhm advised that the petitioner was not provided with a copy; she was provided with a summary however.

Chair McGinnis believes that due process would require that the petitioner should have been provided with the documentation.

City Attorney Blum replied that this type of information is not released and added that she did not realize that it would be submitted as evidence.

Chair McGinnis asked that a formal request be made to the Act 78 Commission authorizing the release of the psychological analysis and background information to the petitioner.

Mr. Lange agrees that the petitioner needs to review the documents to assess her appeal.

Chair McGinnis believes the petitioner has a right to privacy and that she should review the documents before they are released to the Commission.

Mr. Lange informed the Commission that because the documents are official police documents that they should not be released to the petitioner. He then requested that the documents be made available to the petitioner in-camera.

City Attorney Bluhm believes in-camera viewing of the documents is the perfect solution.

Ms. Ostrowski made a formal request to the Act 78 Commission to view her background check and psychological evaluation.

Commissioner Cannon asked whether the petitioner is waiving her right to privacy.

Ms. Ostrowski replied that she would like to first review the documents prior to moving forward with her appeal request.

Chair McGinnis acknowledged that the petitioner has made a formal request to the Act 78 Commission for discovery purposes and that the psychological evaluation and background check be made available to her.

Mr. Lange noted that there are attachments to the background check and that the Commission will have to determine whether or not the attachments should be made available to the petitioner.

Chair McGinnis replied that if the attachments are used as evidence, then they are to be made available to the petitioner.

Mr. Lange noted that Lieutenant Zavislak's report is very comprehensive and that it will not be necessary to offer the attachments as evidence. He continued by stating that the petitioner can contact the Human Resources Department to arrange to view the documents.

Chair McGinnis asked whether or not the petitioner would seek counsel.

Ms. Ostrowski replied that she would determine whether or not she would seek counsel if she felt it was necessary after reviewing the documents.

Chair McGinnis asked when would the petitioner view the documents.

Ms. Ostrowski advised that she would make an appointment within one week.

Chair McGinnis understands that the petitioner would withdraw or pursue her appeal based upon her review of the documents.

Ms. Ostrowski agreed.

There was a consensus of the Commission to return the unviewed evidence to Mr. Lange until the petitioner makes a decision regarding her appeal hearing.

Commissioner Cannon advised that he would be out of the country from March 12, 2004 through April 3, 2004.

Chair McGinnis advised that he will be out of the area from March 10, 2004 through March 24, 2004, and then unavailable until April 9, 2004.

Chair McGinnis advised that the Commission would not be available again until the latter part of April should the petitioner wish to pursue her appeal.

Chair McGinnis confirmed that the petitioner would be provided with the documentation regarding her background check and psychological evaluation and added that if any other documents are to be put forward in regard to this Act 78 ruling, that she would be provided with those documents as well.

New Business: None presented

Old Business: None presented

Adjournment: The meeting was adjourned at 8:00 PM.



Donald E. McGinnis, Jr., Chairman



Barbara A. Holmes, CMC - Deputy City Clerk