

OPINION NO. 72-064

Syllabus:

1. The procedure for handling a voluntary reduction or demotion of an employee who is subject to the jurisdiction of the municipal civil service commission of a municipality operating under the general laws of the State, must be determined by reference to the rules of said commission prescribed pursuant to Section 143.30, Revised Code.

2. In a municipal corporation operating under the general laws of the State, if a vacancy occurs in the position of deputy fire chief, and an assistant fire chief who was promoted to that rank from the rank of deputy fire chief by competitive promotional examination is requesting a voluntary reduction to the rank of deputy fire chief, and at the same time there is an existing list of eligibles for this position, the municipal civil service commission has the power, pursuant to Section 143.30, Revised Code, to fill such a vacancy by reduction or demotion rather than promotion.

To: Paul A. Corey, Director, Department of State Personnel, Columbus, Ohio

By: William J. Brown, Attorney General, August 8, 1972

I have your request for my opinion relating to the application of the civil service laws to a situation involving a member of a fire department in a municipality operating under the general laws of the State.

You state that, in descending order, the pertinent fire department positions and the number of employees in those positions are: (1) fire chief, one; (2) assistant fire chiefs, one; (3) deputy fire chiefs, five; and (4) fire captains, six.

You further indicate that the assistant fire chief is asking for a voluntary demotion to the position of deputy fire chief, that a vacancy is anticipated in the position of deputy fire chief in the near future, and that in the event the requested demotion takes place, the position of assistant fire chief will be abolished for various reasons.

You also advise that the assistant fire chief was appointed to that position from an appropriate eligible list resulting from an examination in which only deputy fire chiefs were permitted to compete and that at the present time there is an existing list of eligibles for the position of deputy fire chief.

Your questions are:

1. How is such a request for demotion handled under civil service laws?

2. Does the assistant fire chief, if voluntarily reduced in rank to deputy fire chief, have preference to the appointment to the position of deputy fire chief over the person appearing highest on an existing eligibility list for this position?

Your request being framed without regard to any specific city, I must assume you wish me to answer your questions under the civil service laws and regulations of the State of Ohio. I must make this assumption because each city does have the right to establish a municipal civil service commission, under Section 143.30, Revised Code, which gives it power, as follows:

"* * *[to] prescribe, amend, and enforce rules not inconsistent with sections 143.01 to 143.48, inclusive, of the Revised Code, for the classification of positions in the civil service of such city and city school district, and all the positions in the city health district; for examinations and resignations therefor; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements therein; and for standardizing positions and maintaining efficiency therein. * * *"

(Emphasis added.)

As such, each city may have special rules regarding voluntary demotions, which, while they could not be in conflict with the State law, would prescribe the steps to be followed.

The State civil service law regarding promotions and reductions of employees in the civil service is prescribed in Sections 143.01 to 143.38, inclusive, of the Revised Code. None of these Sections sets forth any specific procedure for voluntary reduction or demotion. Section 143.28, Revised Code, does set forth procedure dealing with involuntary demotions. It states, in part, as follows:

"When a position above the rank of patrolman in the police department and above the rank of regular fireman in the fire department is abolished, and the incumbent has been permanently appointed, he shall be demoted to the next lower rank and the youngest officer in point of service in the next lower rank shall be demoted, and so on down until the youngest person in point of service has been reached, who shall be laid off."

While this Section does not apply in your case, since the abolition of the assistant's position is not the cause of the demotion, nevertheless, the pattern of rank restrictions seems as applicable in a voluntary demotion situation as in an involuntary one. Rule PL-25-04, Administrative Rules of the Director of State Personnel, referring to reductions and demotions, permits voluntary demotions. It does not, however, set forth any guidelines or rules as to them, other than to provide that an employee may, by voluntary written agreement, consent thereto. It would seem, therefore, that any request for reduction should be in writing, and processed the same way as an involuntary demotion.

Concerning your second question, the facts you have given me indicate that this is not a situation where the position of assistant fire chief has been abolished; rather, it is a case where the assistant fire chief has requested a reduction to the next lower rank for which there is also an existing list of persons eligible for promotion from the next lower rank of fire captain.

Section 143.03, Revised Code, provides, in part, as follows:

"(B) The classified service shall comprise all persons in the employ of the state and the several counties, cities, city health districts, general health districts, and city school districts thereof, not specifically included in the unclassified service, to be designated as the competitive class and the unskilled labor class.

"(1) The competitive class shall include all positions and employments in the state and the counties, cities, city health districts, general health districts, and city school districts thereof, for which it is practicable to determine the merit and fitness of applicants by competitive examinations. Appointments shall be made to, or employment shall be given in, all positions in the competitive class that are not filled by the promotion, reinstatement, transfer, or reduction, as provided in sections 143.01 to 143.48, inclusive, of the Revised Code, and the rules of the director of state personnel, by appointment from those certified to the appointing officer in accordance with such sections." (Emphasis added.)

A careful reading of this Section suggests that a municipal appointing authority may fill a vacancy by reduction as well as by promotion, transfer, or original appointment from a certified list of eligibles; subject, of course, to any other appropriate statutes and the rules of the municipal civil service commission having jurisdiction over the appointing authority.

Section 143.24, Revised Code, provides, in part, as follows:

"* * * The director of state personnel shall provide * * * that vacancies shall be filled by promotion in all cases where, in the judgment of the director, it is for the best interest of the service. * * *"

(Emphasis added.)

Since Section 143.30 provides that all the powers and authority conferred upon the Director of State Personnel shall be exercised by a municipal civil service commission with respect to service under its jurisdiction, such a commission has discretionary authority to decide that the best interest of the service requires that a vacancy not be filled by promotion but rather by voluntary reduction.

My research does not disclose any restrictions relating to voluntary reduction, and it would appear that the municipal appointing authority has complete discretion in filling a vacancy by reduction, subject only to the rules of the municipal civil service commission.

However, the special statutes relating to firemen, must also be considered. Section 143.341, Revised Code, provides, in part, as follows:

"Vacancies in positions above the rank of regular fireman in a fire department shall be filled by competitive promotional examinations, and promotion shall be by successive ranks as provided in this section and sections 143.342 to 143.345, inclusive, of the Revised Code. Positions in which such vacancies occur shall be called promoted ranks. * * *" (Emphasis added.)

And, Section 143.342, Revised Code, pertaining to eligible lists for firemen, provides, in part, as follows:

"The names of the examinees shall be placed on the eligible list in accordance with their grades; the one receiving the highest grade shall be placed first on the list. * * * The person having the highest position on the list shall be appointed in the case of a vacancy. * * *" (Emphasis added.)

Section 143.344, Revised Code, further provides, in part, as follows:

"When an eligible list is in existence and a vacancy occurs in a position for which the list was established, the appointing authority shall certify the fact to the civil service commission. The person standing highest on such list shall be certified to the appointing authority, and such person shall be appointed within ten days."

These statutes were enacted to protect the integrity of the system involved, and to provide for upward mobility from within a department wherever appropriate. They describe the usual method of filling a vacancy from an eligible list established after a competitive promotional examination among the appropriate eligible persons of lower rank. But they do not prevent the filling of a vacancy by one who has requested a reduction in rank.

In State, ex rel. Elliott Co. v. Connar, 123 Ohio St. 310 (1931), the Syllabus reads as follows:

"Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions."

The obvious intent of the special provisions relating to firemen, Sections 143.341 to 143.345, Revised Code, are to ensure that vacancies in promoted ranks are filled by persons from within the ranks of the particular fire department who have taken and passed a competitive promotional examination rather than by persons who have taken an open competitive examination for a promotional or original appointment, who may or may not be from within the ranks of the department. The idea of these statutes seems clearly to ensure the filling of vacancies from within the department rather than from without.

Since these statutes are special statutes relating only to promotion of municipal firemen, it is my opinion that they apply

only to cases where a vacancy is to be filled by promotion rather than reduction. My reading of the general statutes, Sections 143.20, 143.24 and 143.30, Revised Code, leads me to conclude that a civil service commission has the power to fill a vacancy by reduction, in all cases where, in the judgment of such a commission, it is in the best interest of the service. Where a voluntary reduction does not create a vacancy, Section 143.28, Revised Code, establishes a proper pattern of reductions in rank, and eventual layoffs that should be followed.

Your attention is directed to paragraph four of the Syllabus of Canton v. Imperial Bowling Lanes, Inc., 16 Ohio St. 2d 47 (1968), where the Court held:

"The General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences. It is the duty of the courts, if the language of a statute fairly permits or unless restrained by the clear language thereof, so to construe the statute as to avoid such a result. * * *"

Indeed, it would be absurd for a fire department officer seeking a voluntary reduction to the next lower rank to be required to take a promotional examination to qualify for the reduced rank, particularly, where he has previously served in that reduced rank and had been promoted by competitive promotional examination. Certainly, the legislature could not have intended such an unreasonable result.

Although the relevant statutes require the filling of vacancies by promotion in most cases, they also provide for the filling of vacancies by reduction where it would be in the best interest of the service. The facts you have related to me would appear to constitute a case where the best interest of the service would be served by filling the vacancy by reduction.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. The procedure for handling a voluntary reduction or demotion of an employee who is subject to the jurisdiction of the municipal civil service commission of a municipality operating under the general laws of the State, must be determined by reference to the rules of said commission prescribed pursuant to Section 143.30, Revised Code.

2. In a municipal corporation operating under the general laws of the State, if a vacancy occurs in the position of deputy fire chief, and an assistant fire chief who was promoted to that rank from the rank of deputy fire chief by competitive promotional examination is requesting a voluntary reduction to the rank of deputy fire chief, and at the same time there is an existing list of eligibles for this position, the municipal civil service commission has the power, pursuant to Section 143.30, Revised Code, to fill such a vacancy by reduction or demotion rather than promotion.