

VERMILION CIVIL SERVICE COMMISSION MEETING

Minutes of May 22, 2020

8:00 AM ❖ City Hall – 5511 Liberty Avenue, Vermilion, Ohio

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ROLL CALL: Kenneth Lieux; Charles Adams; Norman Hendrickson

GUESTS: Mayor Forthofer

K. Lieux called the Friday, May 22, 2020 meeting to order.

Approval of Minutes:

N. Hendrickson MOVED; C. Adams seconded to approve the meeting minutes of May 15, 2020. Roll Call Vote 3 YEAS. MOTION CARRIED.

Old Business:

K. Lieux said they are meeting to address the decision of the Erie County Court of Common Pleas of Judge Tone dated May 11, 2020, relative to the appeal of the applicants Chandler and Davis to the Civil Service Commission's determination that they were not eligible for promotional testing. He conveyed the Commission entered this order into the record of the Civil Service Commission on May 15, 2020 pursuant to statute. He said the Commission is gathered today pursuant to Rule 1 (2.) of the Civil Service rules in that the Commission shall administer and enforce the Civil Service Laws of the State of Ohio, and the rules and regulations hereby prescribed relative to the Civil Service in the City of Vermilion. He stated the issue before the Commission today is a decision relative to the Judgment Entry issued by Judge Tone as to whether the Commission desires to appeal this order or to forego an appeal and proceed to carry out the decision set forth by Judge Tone.

N. Hendrickson MOVED; C. Adams seconded to adjourn into Executive Session to discuss the appeal as noted above. Vote 3 YEAS. MOTION CARRIED.

K. Lieux called the regular meeting of the Civil Service Commission back into session at 8:41 a.m.

N. Hendrickson MOVED; C. Adams seconded to proceed with an appeal of the decision of Judge Tone dated May 11, 2020. Roll Call Vote 3 YEAS. MOTION CARRIED.

K. Lieux said in addition he prepared a memo that outlines the discussion of the relative issues, which was circulated to the commission members and if they are in agreement he would ask that they attach this memo as part of the official record of proceedings as defined as Exhibit A. He said the memo spells out the Commission's interpretation of the Civil Service Rules relative to this promotional issue that was addressed by Judge Tone and why they feel Judge Tone's decision is in error. He asked for the Commission to sign this memo and to make it a part of the official minutes dated May 22, 2020.

N. Hendrickson MOVED; C. Adams seconded to attach the signed memo (Attachment - Exhibit A) as part of the official record of proceedings dated May 22, 2020. MOTION CARRIED.

N. Hendrickson MOVED; C. Adams seconded to adjourn the meeting upon no further discussion. Vote 3 YEAS. MOTION CARRIED.

Transcribed by Gwen Fisher, Certified Municipal Clerk

Re: Judgment Entry dated May 11, 2020,

Erie County Court of Common Pleas Case Nos. 19CV0491; 19CV0492

The Vermilion Civil Service Commission convenes for the purposes of ACTION required following receipt and entry of the above mentioned Judgment Entry, which reverses the decision of the VCSC pertaining to the eligibility of candidates Leo Chandler and Stephen Davis II, for the Sergeants Promotional Exam.

It is the unanimous determination/ruling of the VCSC that the decision of Judge Tone is in error, and should be appealed to the Sixth District Court of Appeals.

This decision is based on the following:

I. CIVIL SERVICE

The City of Vermilion, through its' Charter, has adopted the Civil Service Laws of the State of Ohio, set forth in the Ohio Constitution.

**O Const XV Sec. 10 Civil Service**

Appointments and promotions in the civil service of the state, the several counties, and cities, shall be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations. Laws shall be pass providing for the enforcement of this provision.

Merit and fitness, are to be determined by competitive exams, conducted in accord with established rules and procedures. Appointments, hiring, and promotions done outside of these established norms are specifically prohibited. What sometimes is called "cronyism" or "nepotism" is prevented.



By the Court's interpretation, a part-time officer, (who was not hired through the Normal Civil Service Testing Requirements) could accumulate three years part-time experience and be eligible for the promotional exam. This result wholly defeats the purpose of the Civil Service Rules.

The Civil Service Commission has been cognizant of past and current practices in the Vermilion Police Department to hire part-time officers, which effectively circumvent the Civil Service Rules.

It is worth noting that at least five (5) applicants for the recent promotional test met the clearly established rules for promotional eligibility. To advance a select few who do not meet the requirements, not only defeats the purpose of the Civil Service Rules, but does a disservice to the other applicants who have complied with the eligibility requirements.

## **II. PART-TIME VERMILION POLICE OFFICERS ARE NOT CLASSIFIED CIVIL SERVICE EMPLOYEES**

Judge Tone made the following statement:

"The Court finds two discrepancies between the criteria of the notice and the rule. First, the notice adds the criterion that the employment must be "full time". But Rule 5(c)(iv) makes no such mention, which means that the service could have been as a part-time officer or a full-time officer." (emphasis added)

The Court erroneously concluded that part-time police officers are classified, civil service employees.



The Vermilion Charter Provides:

2. Classification of Service.

The civil service of the Municipality shall be divided into the classified and unclassified service. The classified service shall include full-time regular members of the Police and Fire Departments, and such other positions in the service of the Municipality as Council shall determine from time to time shall be within the classified service. The unclassified service shall include all positions in the service of the Municipality not included in the classified service.

The Vermilion Civil Service Rules provide:

RULE III  
POSITION CLASSIFICATION

Positions in the Civil Service of the City shall be classified in accordance with an established plan which shall provide that any and all positions whose duties, responsibilities, and necessary qualifications are sufficiently alike to so warrant shall be allocated to the same class with title which shall be descriptive of the duties performed and with a salary range which will compensate each employee assigned to the class on a like basis.

2. **"Classified Civil Service" refers to and includes all full-time regular members of the Police Department and such other positions in the service of the City of Vermilion as Council shall determine from time to time, in accordance with Article VII, Section 2 of the Charter.**

3. **The "Unclassified Service" refers to and includes all elected officials, members of boards and commissions, directors of departments, and unskilled labor, as well as all positions not specifically included in the municipal civil service, in accordance with Article VII, Section 2 of the Charter.**

POSITIONS IN THE UNCLASSIFIED SERVICE SHALL BE EXEMPT FROM ALL EXAMINATIONS BY THE VERMILION CIVIL SERVICE COMMISSION.

**III. PROMOTIONS**

The Rules further provide that promotions above the rank of patrolman in the Police Department Rule IV (5)(c)(iv):

- iv.) Members of the Vermilion Police Department shall not be eligible to compete in a promotional examination until they have served a minimum of at least thirty-six (36) months (1,095 days) in the next lower rank in the department. (Amended as of March 6, 2002)

In addition, Rule IV (5)(d) states:

Seniority rating credit. Applicants taking promotions examinations who receive a passing grade, shall receive credit for seniority, which shall be determined as follows:

One percent of the total grade attainable in such examination for each of the first four years of regular full-time service, and six tenths percent of such total grade for each of the fifth through fourteen years of regular full-time service.

The Commission interpreted these Rules as requiring applicants to have served a minimum of thirty-six (36) months of full-time service as a patrol officer, in the Vermilion Police Department, in order to be eligible to take the promotion examination for police sergeant. The Vermilion Charter, Section VII-2 states that the classified service shall include full-time regular members of the Police and Fire Departments. In that regard, part-time patrol officers are not members of the classified service of the City and are exempt from all examinations given by the Commission.

Furthermore, the Commission's interpretation was in accord with "the plain language of the rule itself." i.e.: ... served a minimum of at least thirty-six (36) months ... in the next lower rank in the department.

The "next lower rank", by rule and classification, is Full Time Patrolman. "In the department" is unambiguous, it means the Vermilion Police Department.

Part time officers, who were hired outside of the normal civil service process, are not classified Civil Servants, and are exempt from promotional testing.

The Rules also do not consider previous employment in some other department.

Both Officers Chandler and Davis II did not meet the express qualifications necessary to be eligible for the Promotional Exam.



IV. THE COURT IMPROPERLY SUBSTITUTED ITS' OWN INTERPRETATION FOR THAT OF THE PRESENT, SITTING COMMISSIONERS:

The Vermilion Charter provides:

The commission shall provide by rule for ascertainment of merit and fitness as the basis for appointment and promotion in the classified service of the Municipality, as required by the constitution of the State of Ohio. (Section 3 - Duties)

The Vermilion Civil Service Rules Provide:

The Commission shall administer and enforce the Civil Service Laws of the State Of Ohio, and the rules and regulations herein prescribed relative to the Civil Service in the City of Vermilion. Rule I (2).

The Ohio Supreme Court has stated: "courts should give due deference to administrative interpretations since the legislature has delegated the responsibility of implementing certain statutes to the agency and the agency has accumulated substantial expertise on its subject." *State e rel. Saunders v. Industrial Commn.* It is well settled that a reviewing court should give "considerable deference ... to an agency's interpretation of rules the agency is required to administer." *Warren v. Warren Mun. Civ. Serv. Comm.* The agency's interpretation of its rules and regulations must be consistent with statutory law and *the plain language of the rule itself.*

The same rationale applies here. It is the Commission itself that is solely charged with administering, interpreting, and enforcing its Rules. The Commission also clearly communicated through the Notice how it was interpreting its Rules with respect to promotional eligibility.

Judge Tone improperly substituted others interpretation of the rules.



V. CONCLUSION

It is the considered opinion, and unanimous vote of the Vermilion Civil Service Commission that the decision of the Erie County Common Pleas Court dated May 11, 2020, be appealed.

Respectfully,

5-22-2020  
Date

Kenneth Lieux  
Kenneth Lieux  
Chairman

Charles F. Adams  
Charles Adams

Norman Hendrickson  
Norm Hendrickson