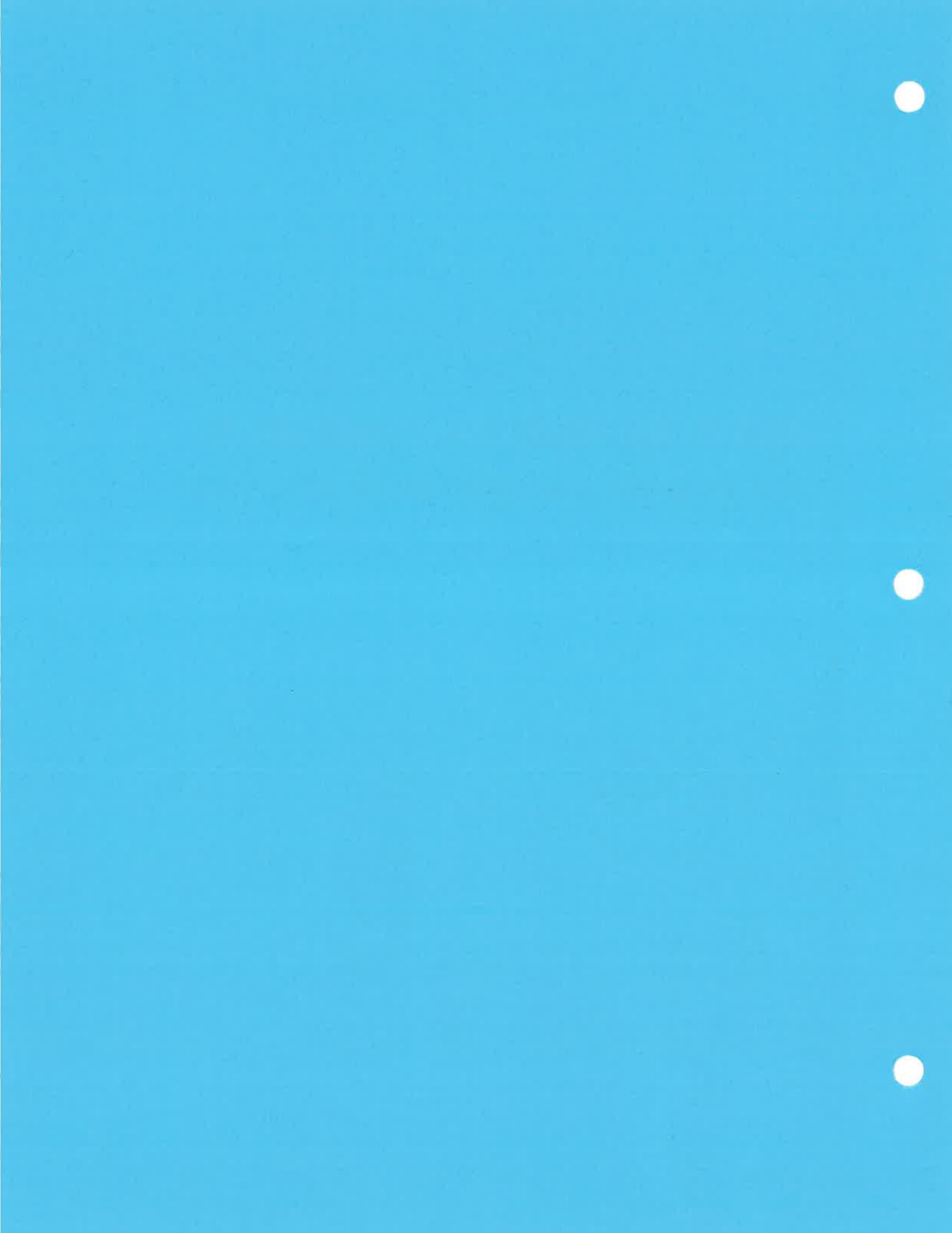


VILLAGE OF ELMSFORD POLICE REFORM GUIDE

SECTION 2: NYS UNCONSOLIDATED LAW 5711-Q



**§ 5711-q. Employment of village policemen and establishment, organization and operation of police departments in the villages of Westchester county; applicability of laws**

1. Notwithstanding any other provisions of law, the employment of village policemen and the establishment, organization and operation and all matters concerning police or police departments in all villages in the county of Westchester shall be governed solely by the provisions of this article [FN1] except that nothing herein shall be construed to prohibit the establishment of police pension funds in such villages in accordance with the provisions of this chapter. The employment of such policemen shall continue to be in accordance with the rules of the state civil service commission as heretofore extended by it to the employment of policemen in the villages of Westchester county.

2. Definitions. Whenever the term "municipal board" is used in this section it shall be construed as referring to a municipal board, acting as police commissioners of a village, created as provided by section 4-412 of the village law.

3. Village policemen. The mayor, each trustee, street commissioner and the superintendent of public works are ex-officio members of the police department, and have all the powers conferred upon policemen by this article. In any village in said county, the board of trustees, or if a municipal board now acts as police commissioner, such board may appoint and fix the terms not extending beyond the current official year, of one or more village policemen, one of whom may be designated as chief of police. No person shall be eligible to appointment or reappointment on such police force, or continue as a member thereof, who shall not be a citizen of the United States, who has been or shall have been convicted of a felony, who shall be unable to read and write understandingly the English language, or who shall not have resided within the state of New York one year, and within any village or town in Westchester county six months next preceding his appointment. No person shall be appointed a member of such police force unless he shall have passed an examination held by the state civil service commission, and unless at the time of his appointment his name shall be on the eligible list of the state civil service commission. No person shall be eligible for appointment on such village police force who is over the age of thirty-five years, unless he shall have been previously appointed a member of a village or town police force in Westchester county.

4. Police departments. The board of trustees or municipal board acting as police commissioners of each village shall, and of any other village may, instead of appointing policemen for fixed terms, by resolution, establish a police department in such village and appoint a chief of police, and such lieutenants of police, sergeants of police, and patrolmen as may be needed, and fix their compensation. The board of trustees may submit to the qualified voters of the village at a general or special election a proposition to abolish a police department established pursuant to this section and upon the adoption thereof by a majority of the qualified voters of the village voting upon the proposition, the department shall be deemed abolished.

5. Qualifications. No person shall be eligible to appointment or reappointment on such police force

of a village, or continue as a member thereof, who shall not be a citizen of the United States, who has been or shall have been convicted of a felony, who shall be unable to read and write understandingly the English language or who shall not have resided within the state of New York one year, and within any village or town in Westchester county six months next preceding the date of filing his application to take the examination or who shall not have continued to reside in a village or town in Westchester county up to and including the time of his appointment. Except in the case of a transfer, no person shall be appointed a member of such police force who is over the age of thirty-five years. In the case of a village establishing a police department by resolution, village policemen who are over the age of thirty-five years and who are at that time serving as policemen in the village establishing the department shall be eligible for appointment as members of such village police department at the time of the organization of said police department only. Except in the case of a transfer as in this article [FN1] provided, no person shall be appointed a member of such police force unless he shall have passed an examination held by the state civil service commission, and unless at the time of his appointment his name shall be on the eligible list of the state civil service commission. The civil service commission shall certify for appointment names from the eligible list in the order in which the names appear on such list according to their rating irrespective of the residence of the applicants. Any village requesting the civil service commission to certify names for appointment may request the civil service commission to first certify the names of residents of the village in which the appointment is to be made and in such case, the residents so certified shall have preference in appointment over all names on said list. In all other instances, the civil service commission shall certify names from the general list in the order in which they appear. The residence of an applicant shall be the place of residence given by such applicant in his application to take the examination of the civil service commission during the period of the existence of such list and shall receive preference therein so long as he actually resides in the municipality given in his application.

6. Promotions. Promotions of officers and members of such police forces shall be made by the board of trustees or municipal board on the basis of seniority, meritorious police service and superior capacity, as shown by competitive examination, such examination to be conducted by the state civil service commission. Individual acts of personal bravery may be treated as an element of meritorious service in such examination by the commission or board holding the examination. The board of trustees or municipal board shall keep a complete service record of each member of such police force, in accordance with the rules and regulations of the state civil service commission and shall transmit the record of each candidate for promotion to the state civil service commission in advance of such examination. Notwithstanding any other special or general laws to the contrary such promotion examinations shall be competitive examinations held by the state civil service commission regardless of the number of candidates eligible for such promotion, and if the number of candidates is restricted to less than four by the action of the board of trustees or municipal board and if the names of one or more candidates are certified as having passed such examination such name or names shall constitute an eligible list under the civil service law. No patrolman shall be eligible to take a promotion examination until he has become a patrolman of the first grade. No person shall be eligible to take such promotion examination for positions on the police force of villages in Westchester county unless he is serving as a policeman on the police force of a town or village in Westchester county.

7. Transfers. Transfers from one village police department to another village or town police department in Westchester county may be made upon the mutual consent of the appointing officers of the departments affected. Any member of such police force who has been or who shall hereafter be so transferred shall receive credit with the village department to which he is transferred for time served on the police force of any village or town within Westchester county, as though the full time was served with the department to which he has been transferred, for the purpose of seniority, promotions, pensions and general administration.

8. Administration. The board of trustees or municipal board acting as police commissioners of any village, may make, adopt and enforce rules, orders and regulations for the government, discipline, administration and disposition of the police department of such village, and the members thereof. Any such rules and regulations or any amendment thereto shall be in written form and a copy of the same distributed to each member of the police department and posted in a conspicuous place in the police headquarters.

9. Discipline and charges. Except as otherwise provided by law, a member of such police force shall continue in office unless suspended or dismissed. The board of trustees or municipal board shall have power and is authorized to adopt and make rules and regulations for the examination, hearing, investigation and determination of charges, made or preferred against any member or members of such police force, but no member or members of such police force shall be fined, reprimanded, removed or dismissed until written charges shall have been made and preferred against him or them, nor until such charges have been investigated, examined, heard and determined by such board of trustees or municipal board in such manner, procedure, practice, examination and investigation as such board may by such rules and regulations from time to time prescribe, except that the trial of such charges shall not be delegated and must be heard before the full board of trustees or full municipal board, or a majority of the members of either of such boards, and the affirmative vote of a majority of such members shall be necessary to a conviction on any such charges. Such charges shall not be brought more than ninety days after the time when the facts upon which such charges are based are known to such board of trustees or municipal board. Any member of such police force at the time of the hearing or trial of such charges before such board of trustees or municipal board shall have the right to a public hearing and trial and to be represented by counsel at any such hearing or trial, and any person who shall have preferred such charges or any part of the same shall not sit as a member of such board of trustees or municipal board upon such hearing or trial. Any and all witnesses produced upon the trial shall testify under oath. Any member of such force found guilty upon charges, after five days' written notice and an opportunity to be heard in his defense, of neglect or dereliction in the performance of official duty, or violation of rules and regulations, or disobedience, or incompetency to perform official duty, or an act of delinquency seriously affecting his general character or fitness for office, may be punished by such board of trustees or municipal board before which such charges are tried, by reprimand, forfeiture and the withholding of salary or compensation for a specified time not exceeding twenty days and the withholding of salary or compensation during such suspension, or by dismissal from the department. Such board of trustees or municipal board shall have the power to suspend without pay, pending the trial of changes, any member of such police force. If any member of such police force so suspended shall not be

convicted by such board of the charges so preferred, or if on review his conviction shall be reversed, then, notwithstanding such charges and suspension, he shall be entitled to receive full pay from the date of suspension to the date of reimbursement less the amount of compensation, if any, received by him from any other employment or occupation during the period beginning with such date of suspension to the date of his reinstatement and he shall be entitled to an order as provided in article seventy-eight of the civil practice act [FN2] to enforce the payment thereof.

10. Review of convictions. The conviction of any member of such police force shall be subject to review, as provided in article seventy-eight of the civil practice law and rules by the supreme court in the judicial district in which such village is located on the ground that said conviction is illegal provided the proceeding is commenced within sixty days after the conviction.

11. Reinstatement after dismissal. Any member of such police force who shall have been so dismissed or who is hereafter dismissed, may be reinstated as a member of such police force, whether he has made application for a review, as authorized in the preceding section [FN3] or not, provided he shall within twelve months of his dismissal file with such board a written application for a rehearing of the charges upon which he was dismissed. Such board shall have the power to rehear such charges and in its discretion, reinstate a member of the force after he has filed such written application therefor.

12. Reinstatement after resignation. Any member of such force, who shall resign, shall not be reinstated by such board unless he shall make written application, within twelve months of his resignation, to such board for reappointment as a member of such force.

13. Absentee leave. Every member of such police department shall be entitled, in addition to any vacation or absentee leave now prescribed by law, to one day of rest in seven, and the chief or acting chief of the police department shall keep a time book showing the name and shield number of each member of the department and the hours worked by each of such policemen in each day. In case of public emergency the board of trustees may make a variation from the above hours of vacation, provided the member shall receive during each year the actual number of days' absentee leave to which he is entitled. The determination of the board as to the number of days' leave to which a member is entitled during any given period shall be subject to review as provided in article seventy-eight of the civil practice act. [FN2]

14. Hours of duty and vacations. In all such police departments, no lieutenant of police, sergeant of police or partolman [FN4] shall be required to work more than eight hours in any day, or more than forty hours in any seven consecutive day period, except in cases of fire, riot, flood, or other cases of emergency endangering life or property, or for the purpose of changing tours of duty, or on a day on which an election authorized by law shall be held, in all of which cases the foregoing members of such police departments may be continued on duty for such hours as may be necessary. Every member of such police department shall be allowed an annual vacation of not less than fourteen

police department of the rank of the retiring member for the year immediately preceding such retirement. If any policeman so retired shall die leaving a widow surviving him who was his lawful wedded wife and cohabiting with him at the time of such retirement and at the time of his death, such widow shall be paid the sum of six hundred dollars per annum during her lifetime, but such payment shall cease in the event of her remarriage. Such payment in the case of a policeman so retired shall in no case exceed one thousand dollars per annum and such payments to a policeman so retired or to the widow of a policeman so retired shall be paid out of moneys provided by such board of trustees to be levied and collected in the same manner as other village funds are levied and collected and shall not be subject to claims of creditors.

19. Grades of policemen. The annual salary and compensation of the members of such police force shall be uniform in accordance with their rank and grade except as provided by section thirty-seven [FN7] of this chapter and a copy of such salary scale and any changes made therein shall be filed with the state civil service commission. All patrolmen who shall have served four years or upwards on such police force shall be patrolmen of the first grade. All patrolmen who shall have served for less than four years and more than three years shall be patrolmen of the second grade. All patrolmen who shall have served for less than three years and more than two years shall be patrolmen of the third grade. All patrolmen who shall have served for less than two years and more than one year shall be patrolmen of the fourth grade. All patrolmen who shall have served for less than one year shall be patrolmen of the fifth grade. Whenever any patrolman of the fifth grade shall have served therein for one year, he shall be advanced to the fourth grade and whenever any patrolman of the fourth grade shall have served therein for one year, he shall be advanced to the third grade and whenever any patrolman of the third grade shall have served therein for one year, he shall be advanced to the second grade and whenever any patrolman of the second grade shall have served therein for one year, he shall be advanced to the first grade.

20. Detective service. The chief of police may, from time to time, detail to detective duty as many members of the force as he may deem necessary to make the service efficient, and he may at any time revoke such detail. Any policeman who may be so assigned by the chief of police to detective duty may be paid a salary in excess of that paid a member of his rank and grade. Any policeman detailed to detective duty, while so detailed, shall retain his rank and shall be eligible for promotion, the same as if serving in the uniformed force and the time during which he serves in detective duty shall be counted for all purposes as if served in his rank or grade in the uniformed force. None of the provisions of section one hundred ninety-nine-w of this chapter [FN8] shall apply to or govern the hours or tours of duty of policemen detailed to detective duty.

21. Composition of police force; duties and powers. Until otherwise provided by law, the police force in the police department of such village, shall consist of a chief of police and such lieutenants of police, sergeants of police and patrolmen as may be needed. The chief of police of such village shall be the executive officer of the police force. He shall be chargeable with and responsible for the execution of all laws and the rules and regulations of the department. He shall assign to duty the officers and members of the police force, and shall have power to change such assignments from time to time whenever in his judgment the exigencies of the service may require such change,

consecutive days without diminution of salary or compensation as fixed by or pursuant to law, except in case of public emergency. In the event of a public emergency during which the vacation or portion of a vacation of a member shall have been withheld, upon the cessation of such emergency, such member shall then receive with pay the number of days of such vacation withheld.

15. Assignment to desk duty. In the police department of any such village, no person shall be assigned to desk duty or act as a desk officer except a member of the police department, except in a case of a public emergency, and if a patrolman shall be so assigned, he shall have the full power and authority of an acting sergeant of such department and shall be governed by the regulations and orders affecting the rank during such assignment. The rank and grade of desk officer in the police department of any such village is hereby abolished; desk officers serving in that capacity when this article takes effect, [FN5] providing they have been appointed to such position pursuant to civil service rules and regulations, and their names have been approved and certified by the civil service commission, shall become and have all the rights and privileges of patrolmen of such department and the time so served as desk officers shall for all purposes be counted as if served as patrolmen of such department.

16. Powers and duties of policemen. The policemen so appointed shall have all the powers and be subject to the duties and liabilities of constables of towns in serving process in any civil action or proceeding. Said policemen shall have power to execute any warrant or process issued by justices of the peace of Westchester county.

17. Fees, salaries and expenses of policemen. The board of trustees shall fix the amount of the salary of each village police officer and may, at its option, determine that the village shall pay all or part of the cost of the uniforms and necessary equipment of its police officers. All fees collected or received by such officer belong to the village and he must account therefor to the village, except those fees received for the execution of all process, civil or criminal, outside of the corporate limits of the said village, and for the execution of all civil process within the village while not on duty as a police officer. A village policemen [FN6] shall not receive any present or reward for his services other than his fees or salary, except by the consent of the board of trustees or municipal board. Every village policeman shall keep a book in which shall be entered all services performed by him which are a town or county charge, and shall present claims therefor against the town or county to which chargeable. All orders or warrants for such claims, except those hereinabove specified, shall be made payable to the village treasurer, who shall collect the amount thereof.

18. Retirement of policemen in certain villages. In any village in Westchester county, a member of the police force, who is not a member of any pension fund or retirement system and whose compensation is a fixed salary, who shall have served a continuous term of employment as such of twenty years in one or more police departments in such county, or whose employment in two or more such terms shall in the aggregate amount to a total period of employment of twenty years, may if unable to perform his regular duties in a manner satisfactory to the board of trustees of such village, be retired. A policeman so retired shall be paid one-half of the salary paid a member of such



provided, however, that officers and members of the police force only hereafter shall be assigned to police duty. He shall, with the consent of the board of trustees or municipal board, have power to relieve from active duty on patrol any member of the police force who, whilst in the actual performance of duty and without fault or misconduct on his part, shall have become disabled physically as a result of injuries or illness attributable thereto, so as to be unfit to perform full police duty, and such disability having been certified to by so many of the police surgeons as the board may require, and assign such member to the performance of such light duties as he may be qualified to perform. He shall have the power to suspend without pay, pending investigation of charges by the board, any member of the police force. If any member of the police force so suspended shall not be convicted by the municipal board of the charges so preferred, he shall be entitled to full pay from the date of suspension, notwithstanding such charges and suspensions.

22. Special patrolmen. The board of trustees or municipal board may appoint as many citizens as they deem advisable to serve as special patrolmen, without pay, in the case of riot, pestilence or invasion, on election day, or a day of public celebration. Such appointment shall be made only for a specified time. Such special patrolmen shall be vested with all the powers and privileges and perform all the duties of patrolmen in the regular police force of the village. Each such special patrolman shall wear a badge, to be furnished by the board. In making the appointments as special patrolmen preference shall be given those on the civil service list for patrolmen available.

CREDIT(S)

(L.1972, c. 891, § 2 [§ 18].

[FN1] McK. Unconsol. Laws §§ 5711 to 5711r.

[FN2] So in original. Probably should read "Civil Practice Law and Rules".

[FN3] Subd. 10 of this section.

[FN4] So in original. ("partolman" should be "patrolman").

[FN5] Sept. 1, 1973.

[FN6] So in original. Probably should read "policeman".

[FN7] So in original. Probably should read "subd. 20 of this section".

[FN8] So in original. Probably should read "section one hundred ninety- nine-w of the Village Law", which is now subd. 14 of this section.

<General Materials (GM) - References, Annotations, or Tables>

## HISTORICAL AND STATUTORY NOTES

### 2000 Main Volume

#### Derivation

Subds. 1 to 22. Village Law of 1909, c. 64, §§ 199-j to 199-ee, respectively, added L.1939, c. 300, § 1, and repealed by L.1972, c. 891, § 1. Several of the Village Law of 1909 sections were amended as follows: § 199-k by L.1940, c. 81, § 1; § 199-o by L.1947, c. 599, § 1; § 199-s by L.1962, c. 310, § 480; § 199-w by L.1958, c. 613, § 1; § 199-z by L.1959, c. 560, § 1. Said §§ 199-j, 199-l to 199-s, 199-u to 199-aa, were from L.1936, c. 103, §§ 1 to 16, respectively; repealed by L.1939, c. 300, § 7.

## CROSS REFERENCES

Westchester county parkway police, retirement of members, see Retirement and Social Security Law § 386.

## RESEARCH REFERENCES

### 2003 Electronic Update

#### Encyclopedias

NY Jur., 2d, Counties § 910, Generally.

NY Jur., 2d, Counties § 911, Establishment, operation, and abolition of police department.

NY Jur., 2d, Counties § 912, Rules, orders, and regulations.

NY Jur., 2d, Counties § 913, Composition of police force; powers and duties of chief of police.

NY Jur., 2d, Counties § 914, Employment of policemen.

NY Jur., 2d, Counties § 915, Powers and duties of policemen.

NY Jur., 2d, Counties § 916, Qualifications for appointment to police force; civil service examination.

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### 1. Chief of police

Under Const. Art. 5, § 6, and Civil Service Law §§ 51, 52, 70, requiring selection in civil service by competitive examination, where practicable, action of village of Bronxville in filling vacancy of chief of police by transfer from neighboring village instead of by competitive examination was not erroneous, where personnel officer of Westchester county and village authorities determined that it was not practicable to fill such vacancy by promotional examination. Feeney v. Village of Bronxville, 1945, 135 Misc. 1, 55 N.Y.S.2d 562, affirmed 269 A.D. 1040, 58 N.Y.S.2d 732, affirmed 295 N.Y. 904, 63 N.E.2d 24. Municipal Corporations 182

A municipality is authorized to establish a term for a chief of police serving as the executive head of a municipality's police department as long as that position is classified as competitive. Op.Atty.Gen. (Inf.) 95-48.

### 2. Permanent appointments

One placed on eligible list for appointment as village police patrolman could not compel his permanent appointment to such position by village board of trustees before declaration of vacancy in position by board. Application of Murtagh, 1946, 60 N.Y.S.2d 158. Mandamus 76

Where village board of trustees made only one permanent appointment of highest person on eligible list to fill one of four vacancies in positions of village police patrolmen, subsequent temporary appointments, made by board to fill remaining vacancies did not prejudice rights of second person on such list or deprive him of permanent appointment to such position. Application of Murtagh, 1946, 60 N.Y.S.2d 158. Municipal Corporations 184(2)

One placing second on eligible list for positions of village police patrolmen had no vested right to permanent appointment to such a position. Application of Murtagh, 1946, 60 N.Y.S.2d 158. Constitutional Law 102(1)

### 3. Temporary appointments

Temporary appointments to fill three or four vacancies in positions of village police patrolmen by

NY Jur., 2d, Counties § 917, Salaries, fees, and expenses of policemen.

NY Jur., 2d, Counties § 918, Grades of policemen; uniformity of salary in accordance with rank and grade.

NY Jur., 2d, Counties § 919, Promotions; civil service examination.

NY Jur., 2d, Counties § 920, Transfers.

NY Jur., 2d, Counties § 921, Days of rest and other absentee leave; effect of emergency.

NY Jur., 2d, Counties § 922, Hours of duty and vacations; effect of emergency.

NY Jur., 2d, Counties § 923, Discipline and disciplinary proceedings.

NY Jur., 2d, Counties § 924, Rehearing and reinstatement.

NY Jur., 2d, Counties § 925, Judicial review.

NY Jur., 2d, Counties § 926, Reinstatement after resignation.

NY Jur., 2d, Counties § 927, Assignment to desk duty.

NY Jur., 2d, Counties § 928, Assignment to detective duty.

NY Jur., 2d, Counties § 929, Special patrolmen.

Treatises and Practice Aids

Carmody-Wait, 2d § 64:25, Application of exemption laws outside state.

Carmody-Wait, 2d § 64:68, Members of town or village police forces.

Carmody-Wait, 2d § 145:500, To Supreme Court.

Carmody-Wait, 2d § 145:550, Conviction of police department officials.

Carmody-Wait, 2d § 145:556, Limitations period for review of conviction of police.

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village board of trustees in conformity with applicable provisions of Constitution, Military Law, and Civil Service Law and Rules, were not illegal because of failure to comply with procedure outlined in State War Emergency Act, L.1943, c. 47, § 34-b. Application of Murtagh, 1946, 60 N.Y.S.2d 158. Municipal Corporations 184(2)

#### 4. Transfers

Former Village Law § 199-p providing for transfers from one village police department to another village or town police department in Westchester county [now covered by subd. 7 of this section] was constitutional. Feeney v. Village of Bronxville, 1945, 269 A.D. 1040, 58 N.Y.S.2d 732, affirmed 295 N.Y. 904, 68 N.E.2d 24.

A village local law, the effect of which would be to supersede this section, depriving transferred policemen of certain employment contract rights conferred thereby, would appear to be unconstitutional. 24 Op.State Compt. 629, 1968.

#### 5. Vacancies

Declaration of vacancy in position of village police patrolman rests within sole province of village board of trustees, who have discretion to declare number of vacancies, if any are required, in such positions, but are under no compulsion to declare vacancy if no replacement is required in their discretion. Application of Murtagh, 1946, 60 N.Y.S.2d 158. Municipal Corporations 184(3)

#### 6. Hours of duty

Laws of 1956, c. 764, which provides for a forty-hour work week for policemen in certain cities, counties, towns, and villages does not apply to police departments in villages of Westchester county. 12 Op.State Compt. 477, 1956.

#### 7. Desk duty

A local law to allow persons who are not members of such a police department to act as a desk officer of the police department is a delegation of the command function, inappropriate and contrary to public policy, it would apply to or affect the courts contrary to constitutional and statutory mandate, and would unlawfully deprive some persons the right of bail. 1969, Op.Atty.Gen. (Inf.) 163.

#### 8. Salaries

Section 199-bb of former Village Law which provided that annual salary and compensation of members of police force shall be "uniform" in accordance with their rank and grade [see subd. 19 of this section] did not mandate identical salaries for all police officers in the same rank and grade. Village of Ossining Police Ass'n. By Brideau v. Village of Ossining (2 Dept. 1975) 47 A.D.2d 223, 365 N.Y.S.2d 889. Municipal Corporations 186(5)

Section of collective bargaining agreement between village and police association providing for

salary increment of \$10 per year per credit point retroactively up to maximum of 50 credit points for courses completed by police officers in police science, of administration did not violate former Village Law § 199-bb which provided that the annual salary and compensation of the members of such police force shall be uniform in accordance with their rank and grade [now covered by subd. 19 of this section], in that each police officer in village had equal opportunity to obtain salary increments based upon successful completion of courses. Village of Ossining Police Ass'n, By Brideau v. Village of Ossining (2 Dept. 1975) 47 A.D.2d 223, 365 N.Y.S.2d 829. Labor Relations 249

## 9. Expenses of policemen

A village in Westchester County may appropriate moneys for the payment of all or part of the cost of uniforms for members of the village police force. 19 Op.State Compt. 355, 1963, 2nd case.

A village in Westchester County may not appropriate moneys for village policemen's uniforms. 13 Op.State Compt. 359, 1957, 1st case.

## 10. Fees

Fees received by a village police department for dog enumeration may not be distributed to the individual policemen, but their salaries may be raised to compensate them for such services. 6 Op.State Compt. 340, 1950.

## 11. Retirement

A village may require a policeman to give a notice of his intention to retire if he is covered under a pension plan established under former Village Law §§ 192 and 199-aa [now covered by § 5711-b and subd. 18 of this section], and if the policeman is covered under the New York State Employees' Retirement System, his notice to the System will be transmitted to the village and this will serve as the desired notice. 23 Op.State Compt. 203, 1967.

## 12. Suspensions

Under former Village Law § 199-dd authorizing police department throughout the villages of Westchester County to suspend a police officer without pay pending investigation of charges by the board [see subd. 9 of this section], serving of written charges is not a condition precedent to a temporary suspension of a police officer pending a hearing and determination of such charges provided such a hearing is had within a reasonable time. McElroy v. Trojak, 1959, 21 Misc.2d 145, 189 N.Y.S.2d 324. Municipal Corporations 185(5)

Where in neither instance of suspension of a village police officer did the officer urge that the charges ultimately preferred were not made within a reasonable time following his preliminary suspension and no factual showing was made that the second suspension might be for more than 30 days' duration, temporary suspensions were properly made by the police chief prior to the service of formal charges. McElroy v. Trojak, 1959, 21 Misc.2d 145, 189 N.Y.S.2d 824. Municipal Corporations 185(5)

### 13. Hearings

Language in New York statute forbidding imposition of fine upon or reprimand or dismissal of police officer without written charges, investigation and hearing creates protected liberty interest in hearing before being reprimanded. Verri v. Nanna, 1997, 972 F.Supp. 773. Constitutional Law 278.4(5)

New York statute requiring that hearing be afforded public employee with respect to formal reprimand was not source of "legal right or status" affording village police officer constitutionally protectable liberty interest in not having deficiency notices placed in his personnel file without prior hearing; statute was not intended to apply to written warnings on minor infractions intended more as instruction than as formal punishment. Verri v. Nanna, 1997, 972 F.Supp. 773. Constitutional Law 278.4(5); Municipal Corporations 180(1)

Laws of 1903, c. 285, as amended organizing and establishing police department in village of Port Chester and former Village Law § 199-r providing for hearing and determination of charges against members of village police force by village board of trustees [see subd. 9 of this section] impose no duty on board to entertain all charges against such policemen. Seabrook v. Carlucci, 1948, 81 N.Y.S.2d 624. Municipal Corporations 135(5)

Mandamus does not lie to compel board of trustees of village of Port Chester to hear charges against village police officers, as other remedies are available to redress board's alleged wrong in refusing to hear such charges. Seabrook v. Carlucci, 1948, 81 N.Y.S.2d 624. Mandamus 3(4)

### 14. Recusal

A member of the Board of Trustees of the Village/Town of Mount Kisco should recuse herself in all respects from participating in a disciplinary proceeding brought by the Mount Kisco Police Department in which her son may be called as a witness. Op.Atty.Gen. (Inf.) 99-21.

### 15. Local laws

Village in Westchester County may amend by local law Unconsolidated Laws provisions governing discipline of police officers to transfer responsibility for making disciplinary determinations from the board of trustees to some other officer, subject to mandatory referendum under the Municipal Home Rule Law. Op.Atty.Gen. (Inf.) 98-7.

The village of Port Chester in Westchester County may by local law establish the position of commissioner of police in place of the police chief, and thereby supersede the special State act (McKinney's Unconsol.Laws § 5711-q) governing police departments in Westchester county. Op.Atty.Gen. (Inf.) 85- 60.

McKinney's Unconsolidated Laws § 5711-q, NY UNCON LAWS § 5711-q

Current through L.2003, chs. 1 to 663 (except for chs. 2, 3, 282, 443, 459, 463, 477, 480, 495, 499, 515, 522, 528, 565, 584, 587, 595, 598, 603, 609, 628, 636, 642, 643)

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