

LEGISLATIVE BILL 222

Approved by the Governor March 20, 2003

Introduced by Bourne, 8

AN ACT relating to county sheriffs; to amend sections 23-1721, 23-1723, 23-1723.01, 23-1725 to 23-1727, 23-1729 to 23-1732, 23-1734, and 23-1736, Reissue Revised Statutes of Nebraska; to restate purposes of and change provisions for sheriff's office merit commissions; to provide procedures for grievances as prescribed; to change provisions relating to prohibitions on political activity; to eliminate certain conditions of employment; to harmonize provisions; to repeal the original sections; and to outright repeal section 23-1737, Reissue Revised Statutes of Nebraska.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 23-1721, Reissue Revised Statutes of Nebraska, is amended to read:

23-1721. ~~The purpose of sections 23-1721 to 23-1737 is purposes of sections 23-1721 to 23-1736~~ are to guarantee to all citizens a fair and equal opportunity for public service in the office of the county sheriff in counties having a population of twenty-five thousand inhabitants or more, to establish and review conditions of service which will attract officers and employees of character and capacity, and to increase the efficiency of the county sheriff's office by the establishment of a merit system.

Sec. 2. Section 23-1723, Reissue Revised Statutes of Nebraska, is amended to read:

23-1723. The sheriff's office merit commission in counties having a population of three hundred thousand inhabitants or more shall consist of five members. One member shall be a duly elected county official, appointed by the ~~board of county commissioners~~ county board. One member shall be a deputy sheriff, elected by the deputy sheriffs. Three members shall be selected by the presiding judge of the judicial district encompassing such county and shall be public representatives who are residents of the county. The terms of office of members initially appointed or elected shall expire on January 1 of the first, second, and third years following their appointment or election, as designated by the ~~board of county commissioners~~ county board. As the terms of initial members expire, their successors shall be appointed or elected for three-year terms in the same manner as the initial members. The additional public representative provided for in this section shall serve until January 1, 1984, and thereafter his or her successors shall be appointed or elected for three-year terms. ~~The member of the division of corrections serving on the commission on August 26, 1983, shall continue to serve on the commission until the additional public representative member is appointed.~~ Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Sec. 3. Section 23-1723.01, Reissue Revised Statutes of Nebraska, is amended to read:

23-1723.01. In counties having a population of not less than twenty-five thousand inhabitants ~~not more~~ and less than three hundred thousand inhabitants, the sheriff's office merit commission shall consist of three members. One member shall be a duly elected county official, appointed by the ~~board of county commissioners~~ county board. One member shall be a deputy sheriff, elected by the deputy sheriffs. The third member shall be selected by the presiding judge of the judicial district encompassing such county and shall be a public representative who is a resident of the county and neither an official nor employee of the county. The terms of office of members initially appointed or elected before March 20, 1982, shall expire on January 1 of the years 1978, 1979, and 1980, as designated by the ~~board of county commissioners~~ county board. The terms of office of members initially appointed or elected after March 20, 1982, shall expire on January 1 of the years 1983, 1984, and 1985, as designated by the ~~board of county commissioners~~ county board. As the terms of initial members expire, their successors shall be appointed or elected for three-year terms in the same manner as the initial members. Any vacancy shall be filled by appointment or election in the same manner as appointment or election of initial members. The commission shall have the power to declare vacant the position of any member who no longer meets the qualifications for election or appointment set out in this section.

Sec. 4. Section 23-1725, Reissue Revised Statutes of Nebraska, is amended to read:

23-1725. The sheriff's office merit commission shall hold meetings regularly, at least once every three months, and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall keep a record of its proceedings. All meetings and records of the commission shall be public, except as otherwise provided in sections 23-1721 to ~~23-1737~~ 23-1736.

Sec. 5. Section 23-1726, Reissue Revised Statutes of Nebraska, is amended to read:

23-1726. For ~~the purpose of sections 23-1721 to 23-1737~~ the term purposes of sections 23-1721 to 23-1736, classified service ~~shall include~~ includes all deputy sheriffs including the jailer and matrons but ~~shall does~~ not include the civilian employees of the office. The ~~and the~~ deputy sheriff designated by the sheriff as chief deputy is specifically excluded from sections 23-1721 to ~~23-1737~~ 23-1736.

Sec. 6. Section 23-1727, Reissue Revised Statutes of Nebraska, is amended to read:

23-1727. The powers and duties of the sheriff's office merit commission shall be as follows:

(1) To adopt rules not inconsistent with ~~the provisions of~~ sections 23-1721 to ~~23-1737~~, 23-1736 for the examination and selection of persons to fill the offices and positions in the classified service which are required to be filled by appointment, and for the selection of such persons to be employed in the classified service of the office of the sheriff;

(2) To supervise the administration of the merit system rules, hold examinations ~~thereunder~~ from time to time, after giving notice thereof, prepare and keep an eligibility list of persons passing such examinations, and certify the names of persons thereon to the sheriff;

(3) To investigate, by itself or otherwise, the enforcement of ~~the provisions of~~ sections 23-1721 to ~~23-1737~~, 23-1736 and of its own rules and the action of appointees in the classified service. In the course of such investigation, the commission, or its authorized representative, shall have the power to administer oaths, and the commission shall have power, by subpoena, to secure both the attendance and testimony of witnesses and the production of books and papers relevant to such investigation;

(4) To provide, through the purchasing department of the county, all needed supplies for the use of the commission;

(5) To classify deputy sheriffs and subdivide them into groups according to rank and grade ~~which shall be~~ based upon the duties and responsibilities of such positions. The commission shall recommend to the county board salaries which ~~shall be~~ are uniform for each group of the classified service and ~~shall be~~ comparable to those of comparable counties in this section of the United States; and

(6) To perform such other duties as may be necessary to carry out ~~the provisions of~~ sections 23-1721 to ~~23-1737~~ 23-1736.

Sec. 7. Section 23-1729, Reissue Revised Statutes of Nebraska, is amended to read:

23-1729. The sheriff of each county under sections 23-1721 to ~~23-1737~~ 23-1736 shall be the personnel director of the merit system. The personnel director shall act as secretary of the sheriff's office merit commission, and shall advise the commission in all matters pertaining to the merit system established by sections 23-1721 to ~~23-1737~~ 23-1736.

Sec. 8. Section 23-1730, Reissue Revised Statutes of Nebraska, is amended to read:

23-1730. For ~~the purposes of sections 23-1721 to 23-1737~~ purposes of sections 23-1721 to 23-1736, all deputy sheriffs actually serving as such shall comprise the classified service. The chief deputy sheriff shall not be within the classified service, but a deputy sheriff serving with permanent rank under sections 23-1721 to ~~23-1737~~ 23-1736 may be designated chief deputy sheriff and retain such rank during the period of his or her service as chief deputy sheriff and shall upon termination of his or her duties as chief deputy sheriff revert to his or her permanent rank.

Sec. 9. Section 23-1731, Reissue Revised Statutes of Nebraska, is amended to read:

23-1731. Whenever a position in the classified service is to be filled, the sheriff shall notify the sheriff's office merit commission of that fact, and the commission shall certify the names and addresses of the three candidates standing highest on the eligibility list for the class or grade for the position to be filled, and the sheriff shall forthwith appoint to such position one of the three persons so certified. Such appointment shall be for a probationary period to be fixed by the rules, but not to exceed one year.

On or before the expiration of the probationary period, the sheriff may, by presenting specific reasons for such action in writing, discharge a probationary appointee, or, with the approval of the commission, transfer him or her to another department within the sheriff's office. If not discharged prior to the expiration of the period of probation, and if no complaint has been made about the service rendered, the appointment shall be deemed permanent. To prevent the stoppage of business or to meet extraordinary conditions or emergencies, the sheriff may, with the approval of the commission, make a temporary appointment to remain in force for not to exceed sixty days, and only until regular appointment can be made under ~~the provisions of sections 23-1721 to 23-1737~~ 23-1736.

Sec. 10. Section 23-1732, Reissue Revised Statutes of Nebraska, is amended to read:

23-1732. (1) All deputy sheriffs in active employment on January 1, 1970, in counties of three hundred thousand inhabitants or more and on January 1, 1973, in counties having a population of more than one hundred fifty thousand but less than three hundred thousand inhabitants, and who ~~shall~~ have been such for more than two years immediately prior thereto, shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with ~~the provisions of sections 23-1721 to 23-1737~~ 23-1736.

(2) All deputy sheriffs in active employment on January 1, 1975, in counties having a population of more than sixty thousand but not more than one hundred fifty thousand inhabitants, and who ~~shall~~ have been deputy sheriffs for more than two years immediately prior thereto, or who ~~shall~~ have been certified by the Nebraska Law Enforcement Training Center and who ~~shall~~ have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with ~~the provisions of sections 23-1721 to 23-1737~~ 23-1736.

(3) All deputy sheriffs in active employment on January 1, 1977, in counties having a population of more than forty thousand but not more than sixty thousand inhabitants, and who ~~shall~~ have been deputy sheriffs for more than two years immediately prior thereto, or who ~~shall~~ have been certified by the Nebraska Law Enforcement Training Center and who ~~shall~~ have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with ~~the provisions of sections 23-1721 to 23-1737~~ 23-1736.

(4) All deputy sheriffs in active employment on January 1, 1982, in counties having a population of twenty-five thousand or more but not more than forty thousand inhabitants, and who ~~shall~~ have been deputy sheriffs for more than two years immediately prior thereto, or who ~~shall~~ have been certified by the Nebraska Law Enforcement Training Center, and who ~~shall~~ have received a certificate of completion shall hold their positions without examinations until discharged, reduced, promoted, or transferred in accordance with ~~the provisions of sections 23-1721 to 23-1737~~ 23-1736.

(5) All deputy sheriffs who ~~shall~~ have been so employed for more than six months and less than two years on such date, shall be required to take qualifying examinations, and all such deputy sheriffs who ~~shall~~ have been so employed for less than six months on such date, shall be required to take competitive examinations.

Sec. 11. Section 23-1734, Reissue Revised Statutes of Nebraska, is amended to read:

23-1734. (1) Any deputy sheriff may be removed, suspended, or reduced in either rank or grade or both rank and grade by the sheriff, after appointment or promotion is complete, by an order in writing, stating specifically the reasons therefor. Such order shall be filed with the sheriff's office merit commission and a copy thereof shall be furnished to the person so removed, suspended, or reduced. Any person so removed, suspended, or reduced in either rank or grade or both rank and grade may, within ten days after presentation to him or her of the order of removal, suspension, or reduction, appeal to the commission from such order. The commission shall, within two weeks from the filing of such appeal, hold a hearing thereon, and thereupon fully hear and determine the matter, and either affirm, modify, or revoke such order. The appellant shall be entitled to appear personally, produce evidence, and ~~to~~ have counsel and a public hearing. The finding and decision of the commission shall be certified to the sheriff, and shall forthwith be enforced and followed, by him, but under no condition shall the employee who has appealed to the commission be permanently removed, suspended, or reduced in rank until such finding and decision of the commission ~~shall~~ is so certified to the sheriff.

(2) Any deputy sheriff may grieve a violation of an employment contract, a personnel rule, a state or local law, or a written departmental

policy or procedure to the commission. The commission shall hear the grievance at the next regularly scheduled meeting, or the commission may, at its discretion, set a special meeting to hear the grievance. If the deputy sheriff is subject to a labor agreement, all applicable procedures in the agreement shall be followed prior to the matter being heard by the commission. In all other cases, the matter shall be grieved, in writing, to the commission within fifteen calendar days after the date the deputy became aware of the occurrence giving rise to the grievance. After hearing or reviewing the grievance, the commission shall issue a written order either affirming or denying the grievance. Such order shall be delivered to the parties to the grievance or their counsel within seven calendar days after the date of the hearing or the submission of the written grievance.

Sec. 12. Section 23-1736, Reissue Revised Statutes of Nebraska, is amended to read:

23-1736. No person serving in the classified service under sections 23-1721 to ~~23-1737~~ 23-1736 shall actively participate in any campaign conducted by any candidate for public office while on duty or while in uniform.

Sec. 13. Original sections 23-1721, 23-1723, 23-1723.01, 23-1725 to 23-1727, 23-1729 to 23-1732, 23-1734, and 23-1736, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 14. The following section is outright repealed: Section 23-1737, Reissue Revised Statutes of Nebraska.