

May 21, 2019

Platteville Police Department
165 N. 4th Street
Platteville, WI 53818

If you believe a police officer, employed by the City of Platteville, has violated a department rule, city ordinance, state or federal law or standards of acceptable conduct, you may file a complaint with the Platteville Police Department. Enclosed is a complaint form that can be used for this purpose.

A complaint you file can be based on your personal knowledge of a matter or on information obtained from other sources; you must provide the name and address of each source, or otherwise identify the source of your information, such as a document that has information supporting the complaint.

If your complaint is made under oath, in the presence of a notary public, the complaint will be treated as a formal complaint; if the complaint form is not notarized, it will be treated as an informal complaint. In either case, the Chief of Police will fully investigate your complaint. You should be aware that under the provisions of section 946.32, Wisconsin Statutes, making a false statement under oath or affirmation may be treated as a felony.

If you choose not to use the enclosed form, but wish to make the Chief of Police aware of a complaint you have about the actions of a police officer, you may write a letter to the Chief of Police detailing your concerns; please cite the rule, ordinance, law or standard of conduct you believe the individual violated. However be advised that the Police and Fire Commission cannot initiate a disciplinary action in the absence of charges filed with the Commission.

If you file a complaint with the Police Department, you may ask that your identity, information you provide, or both be kept confidential. To the extent permitted by state law, the Police Department will respect your request. However, the Police Department cannot promise unlimited confidentiality; the news media or any person may ask to see a copy of your complaint and related documents; the Police Department may be legally required to honor such a request.

Complaints filed with the Chief of Police will be fully investigated and you will be advised of the results of the investigation and its disposition. If you are not satisfied with the disposition you may then file charges with the Commission. If you are filing a complaint against the Chief of Police, you may use this same form and it will be forwarded to the City Manager who will then investigate the complaint and determine the disposition. The City Manager will advise you of the results of the investigation and the disposition.

Sincerely,

Doug McKinley
Chief of Police

Citizen Complaint Form
165 N. 4th Street
P.O. Box 780
Platteville, WI 53818-0780
608-348-2313

Complainant's Name _____

Complete Address _____

Birth Date _____ Phone Number _____

Accused Police Officer(s) _____

Witnesses: (Names, Addresses and Phone Numbers)-list additional witnesses on the back

1. _____
2. _____
3. _____
4. _____

Alleged Misconduct-provide specific details including the date, time and location of the incident; attach additional pages if necessary.

State of Wisconsin

City of Platteville

I, _____ being first duly sworn on oath, depose and say that I am the complainant in the above entitled action; that I have read the foregoing complaint consisting of _____ page(s) and know the contents thereof; that the same is true of my own knowledge, except as to those matters stated therein on information and belief and as to those matters I believe them to be true.

Complainant's Signature

Parent or Guardian's Signature
(If the Complainant is a Juvenile)

Subscribed and Sworn to before me
this _____ day of _____, 20____

Notary Public, Grant Co. Wisconsin

My Commission expires on _____

Notice: Please be aware that under the provisions of Section 946.32, *Wisconsin Statutes*,
making a false statement under oath or affirmation may be treated as a felony.

Police & Fire Commission
Charging Document
165 N. 4th Street
P.O. Box 780
Platteville, WI 53818-0780
608-348-2313

Note: This form is to be used to file charges with the Police & Fire Commission against a sworn officer of the Platteville Police Department. Complainants must have first filed a complaint with the Chief of Police or the City Manager if the complaint is against the Chief of Police.

Complainant's Name _____

Complete Address _____

Birth Date _____ Phone Number _____

Accused Police Officer(s) _____

Witnesses: (Names, Addresses and Phone Numbers)-list additional witnesses on the back

1. _____
2. _____
3. _____
4. _____

Alleged Misconduct-provide specific details including the date, time and location of the incident; attach additional pages if necessary. Sufficient facts must be stated to allow the accused to know and understand the factual allegations and to be able to prepare his or her defense. If any portion of the charge is made upon information and belief, the source of such information and belief shall be stated including the name and addresses of witnesses having such knowledge. State the specific Rules of Conduct of the Platteville Police Department, City Work Rules and/or any local, state or federal law which the accused is charged with violating.

State of Wisconsin
City of Platteville

I, _____ being first duly sworn on oath, depose and say that I am the complainant in the above entitled action; that I have read the foregoing complaint consisting of _____ page(s) and know the contents thereof; that the same is true of my own knowledge, except as to those matters stated therein on information and belief and as to those matters I believe them to be true.

Complainant's Signature

Parent or Guardian's Signature
(If the Complainant is a Juvenile)

Subscribed and Sworn to before me
this _____ day of _____, 20____

Notary Public, Grant Co. Wisconsin

My Commission expires on _____

Notice: Please be aware that under the provisions of Section 946.32, *Wisconsin Statutes*, making a false statement under oath or affirmation may be treated as a felony.

Standards of Conduct

318.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of this department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning member conduct.

In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisor.

318.2 POLICY

The continued employment or appointment of every member of the Platteville Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

318.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor or person in a position of authority, absent a reasonable and bona fide justification.

318.3.1 SUPERVISOR RESPONSIBILITIES

Supervisors and managers are required to follow all policies and procedures and may be subject to discipline for:

- (a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.
- (b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.
- (c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.
- (d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

318.3.2 UNLAWFUL OR CONFLICTING ORDERS

Supervisors shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Supervisors should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

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No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing supervisor of the conflict. The issuing supervisor is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

318.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and Wisconsin Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

318.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service.

318.5.1 LAWS, RULES AND ORDERS

- (a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.
- (b) Disobedience of any legal directive or order issued by any department member of a higher rank.

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- (c) Violation of federal, state, local or administrative laws, rules or regulations.

318.5.2 ETHICS

- (a) Using or disclosing one's status as a member of the Platteville Police Department in any way that could reasonably be perceived as an attempt to gain influence or authority for non- department business or activity.
- (b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.
- (c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties (lawful subpoena fees and authorized work permits excepted).
- (d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.
- (e) Offer or acceptance of a bribe or gratuity.
- (f) Misappropriation or misuse of public funds, property, personnel or services.
- (g) Any other failure to abide by the standards of ethical conduct.

318.5.3 DISCRIMINATION, OPPRESSION OR FAVORITISM

Discriminating against, oppressing or providing favoritism to any person because of age, race, color, creed, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power or immunity, knowing the conduct is unlawful.

318.5.4 RELATIONSHIPS

- (a) Unwelcome solicitation of a personal or sexual relationship while on--duty or through the use of one's official capacity.
- (b) Engaging in on--duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact.
- (c) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.
- (d) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity or enterprise, except as specifically directed and authorized by this department.
- (e) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except as specifically directed and authorized by this department.

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318.5.5 ATTENDANCE

- (a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.
- (b) Unexcused or unauthorized absence or tardiness.
- (c) Excessive absenteeism or abuse of leave privileges.
- (d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.

318.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

- (a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member's position with this department.
- (b) Disclosing to any unauthorized person any active investigation information.
- (c) The use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal or financial gain or without the express authorization of the Chief of Police or the authorized designee.
- (d) Loaning, selling, allowing unauthorized use, giving away or appropriating any Platteville Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.
- (e) Using department resources in association with any portion of an independent civil action. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

318.5.7 EFFICIENCY

- (a) Neglect of duty.
- (b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.
- (c) Concealing, attempting to conceal, removing or destroying defective or incompetent work.
- (d) Unauthorized sleeping during on-duty time or assignments.
- (e) Failure to notify the Department within 24 hours of any change in residence address, contact telephone numbers or marital status.

318.5.8 PERFORMANCE

- (a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work--related investigation.

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- (b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.
- (c) Failure to participate in, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any department--related business.
- (d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members.
- (e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.
- (f) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:
 - 1. While on department premises.
 - 2. At any work site, while on--duty or while in uniform, or while using any department equipment or system.
 - 3. Gambling activity undertaken as part of an officer's official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.
- (g) Improper political activity including:
 - 1. Unauthorized attendance while on--duty at official legislative or political sessions.
 - 2. Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on--duty, on department property or while in any way representing him/herself as a member of this department, except as expressly authorized by City policy, the collective bargaining agreement, or the Chief of Police.
- (h) Engaging in political activities during assigned working hours except as expressly authorized by City policy, the collective bargaining agreement, or the Chief of Police.
- (i) Any act on-- or off--duty that brings discredit to this department.

318.5.9 CONDUCT

- (a) Failure of any member to promptly and fully report activities on his/her part or the part of any other member where such activities resulted in contact with any other law enforcement agency or that may result in criminal prosecution or discipline under this policy.

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- (b) Unreasonable and unwarranted force to a person encountered or a person under arrest.
- (c) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.
- (d) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.
- (e) Engaging in horseplay that reasonably could result in injury or property damage.
- (f) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.
- (g) Use of obscene, indecent, profane or derogatory language while on--duty or in uniform.
- (h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.
- (i) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.
- (j) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.
- (k) Activity that is incompatible with a member's conditions of employment or appointment as established by law or that violates a provision of any collective bargaining agreement to include fraud in securing the appointment or hire.
- (l) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.
- (m) Any other on- or off--duty conduct which any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

318.5.10 SAFETY

- (a) Failure to observe or violating department safety standards or safe working practices.
- (b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver license, first aid).
- (c) Failure to maintain good physical condition sufficient to adequately and safely perform law enforcement duties.
- (d) Unsafe firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off-duty.
- (e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the member's appointing authority, except as permitted under Wis. Stat. § 175.60(15m)(b).
- (f) Unsafe or improper driving habits or actions in the course of employment or appointment.

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- (g) Any personal action contributing to a preventable traffic crash.
- (h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable.

318.5.11 INTOXICANTS

- (a) Reporting for work or being at work while intoxicated or when the member's ability to perform assigned duties is impaired due to the use of alcohol, medication or drugs, whether legal, prescribed or illegal.
- (b) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-duty performance.
- (c) Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site.

1997 Assembly Bill 208

Date of enactment: April 27, 1998
Date of publication*: May 11, 1998

1997 WISCONSIN ACT 176

AN ACT to amend 66.312 (3); and to create 946.66 of the statutes; relating to: false complaints of police misconduct and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 66.312 (3) of the statutes is amended to read:

66.312 (3) CITIZEN COMPLAINT PROCEDURE. Each person in charge of a law enforcement agency shall prepare in writing and make available for public scrutiny a specific procedure for processing and resolving a complaint by any person regarding the conduct of a law enforcement officer employed by the agency. The writing prepared

under this subsection shall include a conspicuous notification of the prohibition and penalty under s. 946.66.

SECTION 2. 946.66 of the statutes is created to read:
946.66 False complaints of police misconduct. (1)

In this section:

(a) "Complaint" means a complaint that is filed as part of a procedure established under s. 66.312 (3).

(b) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(2) Whoever knowingly makes a false complaint regarding the conduct of a law enforcement officer is subject to a Class A forfeiture.

* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

1. Funds appropriated by law to a special purpose except for that purpose;
2. Funds for any purpose not authorized by the statutes; nor
3. Funds from any fund in excess of the moneys therein.

(c) No debt shall be contracted against the city nor evidence thereof given unless authorized by a majority vote of all the members of the council.

(7) CITY DEPOSITORIES. The council shall designate the public depository or depositories within this state with which city funds shall be deposited, and when the money is deposited in such depository in the name of the city, the treasurer and bondsmen shall not be liable for such losses as are defined by s. 34.01 (2). The interest arising therefrom shall be paid into the city treasury.

(8) CLAIMS. (a) All claims and demands against the city shall be itemized and filed with the clerk; who shall deliver the same to the comptroller for examination. The comptroller shall within 30 days thereafter examine such claim or demand and return the same to the clerk with the comptroller's report thereon in writing, who shall place the same before the council for action at its next meeting.

(b) Payment of regular wages or salary pursuant to the budget and salary schedule adopted by the council may be by payroll, verified by the proper official, and filed in time for payment on the regular pay day.

(9) LOANS. The council may loan money to any school district located within the city, or within which the city is wholly or partially located, in such sums as are needed by such district to meet the immediate expenses of operating the schools thereof, and the board of the district may borrow money from such city accordingly and give its note therefor. No such loan shall be made to extend beyond August 30 next following the making thereof or in an amount exceeding one-half of the estimated receipts for such district as certified by the department of education and the local school clerk. The rate of interest on any such loan shall be determined by the city council.

NOTE: Sub. (9) is shown as amended eff. 1-1-96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95-2168-OA. Prior to Act 27 it read:

(9) LOANS. The council may loan money to any school district located within the city, or within which the city is wholly or partially located, in such sums as are needed by such district to meet the immediate expenses of operating the schools thereof, and the board of the district may borrow money from such city accordingly and give its note therefor. No such loan shall be made to extend beyond August 30 next following the making thereof or in an amount exceeding one-half of the estimated receipts for such district as certified by the state superintendent of public instruction and the local school clerk. The rate of interest on any such loan shall be determined by the city council.

History: 1973 c. 90, 333; 1975 c. 39, 80, 180, 224, 353, 421; 1977 c. 113 ss. 3, 6; 1977 c. 142; 1977 c. 203 s. 101; 1977 c. 272, 418; 1979 c. 34; 1979 c. 175 s. 51; 1981 c. 20, 61, 93; 1983 a. 27; 1983 a. 189 s. 329 (17), (21); 1985 a. 29, 225; 1991 a. 316; 1995 a. 27, 225.

Cross-references: For action upon claims, see ss. 62.25 and 893.80.

For an alternative system of approving claims, see s. 66.044.

See note to Art. XI, sec. 3, citing 63 Atty. Gen. 465.

62.13 Police and fire departments. (1) COMMISSIONERS. Except as provided in sub. (2m), each city shall have a board of police and fire commissioners consisting of 5 citizens, 3 of whom shall constitute a quorum. The mayor shall annually, between the last Monday of April and the first Monday of May, appoint in writing to be filed with the secretary of the board, one member for a term of 5 years. No appointment shall be made which will result in more than 3 members of the board belonging to the same political party. The board shall keep a record of its proceedings.

(2) EXCEPTION. (a) Except as provided under sub. (6m), subs. (1) to (6) shall not apply to cities of less than 4,000 population except by ordinance adopted by a majority of all the members of the council. A repealing ordinance may be adopted by a like vote.

(b) A city that creates a joint police or fire department with a village under s. 61.65 is not required to create a separate board of police and fire commissioners under this section. The city shall create a joint board of commissioners to govern the joint department, as required in s. 61.65. If the city also creates one separate

protective services department in addition to the joint protective services department, the city shall create a separate board of commissioners to govern that department. A city's joint board of commissioners is subject to s. 61.65 (3g) (d). A city's separate board of commissioners is subject to this section.

(2m) JOINT DEPARTMENTS, CONTRACT SERVICES. (a) A city may create a joint police department or a joint fire department, or both, with another city.

(b) A city that creates a joint police department or a joint fire department, or both, with another city under par. (a) is not required to create a separate board of police and fire commissioners under this section. The cities shall create a joint board of commissioners to govern the joint department. If only one joint department is created, each city shall retain its existing board of police and fire commissioners to govern the separate department. The cities may jointly determine the number of commissioners to be appointed to the joint board by each city and the length of the commissioners' terms. A majority of the commissioners is a quorum. A joint board of commissioners that is created under this paragraph to govern a joint police department is subject to the provisions of subs. (3) to (7n), a joint board of commissioners that is created under this paragraph to govern a joint fire department is subject to the provisions of subs. (8) to (12) and a joint board of commissioners that is created under this paragraph to govern a joint police and fire department is subject to the provisions of subs. (2) to (12).

(3) CHIEFS. The board shall appoint the chief of police and the chief of the fire department, who shall hold their offices during good behavior, subject to suspension or removal by the board for cause.

(4) SUBORDINATES. (a) The chiefs shall appoint subordinates subject to approval by the board. Such appointments shall be made by promotion when this can be done with advantage, otherwise from an eligible list provided by examination and approval by the board and kept on file with the clerk.

(b) Any person who, on June 23, 1943 has served and acted as a full-time city police patrolman, patrolwoman or police officer performing the services by virtue of regular assignment therefor under the orders and supervision of the chief of police of said city, and receiving his or her salary on the regular official payroll of said police department for a continuous period of more than 10 years, although not regularly appointed from an eligible list, is deemed to have been regularly appointed, as of the time of the commencement of his or her service.

(c) For the choosing of such list the board shall adopt, and may repeal or modify, rules calculated to secure the best service in the departments. These rules shall provide for examination of physical and educational qualifications and experience, and may provide such competitive examinations as the board shall determine, and for the classification of positions with special examination for each class. The board shall print and distribute the rules and all changes in them, at city expense.

(d) The examination shall be free for all U.S. citizens over 18 and under 55 years of age, with proper limitations as to residence, health and, subject to ss. 111.321, 111.322 and 111.335, arrest and conviction record. The examination, including minimum training and experience requirements, shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the board and may include tests of manual skill and physical strength. All relevant experience, whether paid or unpaid, shall satisfy experience requirements. The board shall control examinations and may designate and change examiners, who may or may not be otherwise in the official service of the city, and whose compensation shall be fixed by the board and paid by the city. Veterans and their spouses shall be given preference points in accordance with s. 230.16 (7).

(e) The council of any city of the 2nd, 3rd or 4th class may provide that members of the police force shall be of both sexes. The fire and police commission shall select each police officer from an eligible list.

(5) **DISCIPLINARY ACTIONS AGAINST SUBORDINATES.** (a) A subordinate may be suspended as hereinafter provided as a penalty. The subordinate may also be suspended by the commission pending the disposition of charges filed against the subordinate.

(b) Charges may be filed against a subordinate by the chief, by a member of the board, by the board as a body, or by any aggrieved person. Such charges shall be in writing and shall be filed with the president of the board. Pending disposition of such charges, the board or chief may suspend such subordinate.

(c) A subordinate may be suspended for just cause, as described in par. (em), by the chief or the board as a penalty. The chief shall file a report of such suspension with the commission immediately upon issuing the suspension. No hearing on such suspension shall be held unless requested by the suspended subordinate. If the subordinate suspended by the chief requests a hearing before the board, the chief shall be required to file charges with the board upon which such suspension was based.

(d) Following the filing of charges in any case, a copy thereof shall be served upon the person charged. The board shall set date for hearing not less than 10 days nor more than 30 days following service of charges. The hearing on the charges shall be public, and both the accused and the complainant may be represented by an attorney and may compel the attendance of witnesses by subpoenas which shall be issued by the president of the board on request and be served as are subpoenas under ch. 885.

(e) If the board determines that the charges are not sustained, the accused, if suspended, shall be immediately reinstated and all lost pay restored. If the board determines that the charges are sustained, the accused, by order of the board, may be suspended or reduced in rank, or suspended and reduced in rank, or removed, as the good of the service may require.

(em) No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board under par. (e), based on charges filed by the board, members of the board, an aggrieved person or the chief under par. (b), unless the board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

(f) Findings and determinations hereunder and orders of suspension, reduction, suspension and reduction, or removal, shall be in writing and, if they follow a hearing, shall be filed within 3 days thereof with the secretary of the board.

(g) Further rules for the administration of this subsection may be made by the board.

(h) No person shall be deprived of compensation while suspended pending disposition of charges.

(i) Any person suspended, reduced, suspended and reduced, or removed by the board may appeal from the order of the board to the circuit court by serving written notice of the appeal on the secretary of the board within 10 days after the order is filed. Within

5 days after receiving written notice of the appeal, the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board fix a date of trial, which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board, except that the court may require further return or the taking and return of further evidence by the board. The question to be determined by the court shall be: Upon the evidence is there just cause, as described under par. (em), to sustain the charges against the accused? No costs shall be allowed either party and the clerk's fees shall be paid by the city. If the order of the board is reversed, the accused shall be forthwith reinstated and entitled to pay as though in continuous service. If the order of the board is sustained it shall be final and conclusive.

(j) The provisions of pars. (a) to (i) shall apply to disciplinary actions against the chiefs where applicable. In addition thereto, the board may suspend a chief pending disposition of charges filed by the board or by the mayor of the city.

(5m) DISMISSALS AND REEMPLOYMENT. (a) When it becomes necessary, because of need for economy, lack of work or funds, or for other just causes, to reduce the number of subordinates, the emergency, special, temporary, part-time, or provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the shortest length of service in the department, provided that, in cities where a record of service rating has been established prior to January 1, 1933, for the said subordinates, the emergency, special, temporary, part-time provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the least efficient as shown by the said service rating.

(b) When it becomes necessary for such reasons to reduce the number of subordinates in the higher positions or offices, or to abolish any higher positions or offices in the department, the subordinate or subordinates affected thereby shall be placed in a position or office in the department less responsible according to the subordinate's efficiency and length of service in the department.

(c) The name of a subordinate dismissed for any just cause set forth in this section shall be left on an eligible reemployment list for a period of 2 years after the date of dismissal, except that if the dismissal was for disciplinary reasons the subordinate may not be left on an eligible reemployment list. If any vacancy occurs, or if the number of subordinates is increased, in the department, the vacancy or new positions shall be filled by persons on the eligible reemployment list in the inverse order of the dismissal of the persons on the list.

(6) OPTIONAL POWERS OF BOARD. (a) The board of fire and police commissioners shall have the further power:

1. To organize and supervise the fire and police departments and to prescribe rules and regulations for their control and management.
2. To contract for and purchase all necessary apparatus and supplies for the use of the departments under their supervision, exclusive of the erection and control of the police and fire station buildings.
3. To audit all bills, claims and expenses of the fire and police departments before the same are paid by the city treasurer.

(b) The provisions of this subsection shall apply only if adopted by the electors. Whenever not less than 30 days prior to a regular city election a petition therefor, conforming to the requirements of s. 8.40 and signed by electors equal in number to not less than 20% of the total vote cast in the city for governor at the last general election, shall be filed with the clerk, the clerk shall give notice in the manner of notice of the regular city election of a referendum on the adoption of this subsection. Such referendum election shall be held with the regular city election, and the ballots

shall conform with the provisions of ss. 5.64 (2) and 10.02, and the question shall be "Shall s. 62.13 (6) of the statutes be adopted?"

(6m) If a city of less than 4,000 population has not by ordinance applied subs. (1) to (6) to the city, the city may not suspend, reduce, suspend and reduce, or remove any police chief or other law enforcement officer who is not probationary, and for whom there is no valid and enforceable contract of employment or collective bargaining agreement which provides for a fair review prior to that suspension, reduction, suspension and reduction or removal, unless the city does one of the following:

(a) Establishes a committee of not less than 3 members, none of whom may be an elected or appointed official of the city or be employed by the city. The committee shall act under sub. (5) in place of the board of police and fire commissioners. The city council may provide for some payment to each member for the member's cost of serving on the committee at a rate established by the city council.

(b) Appoint a person who is not an elected or appointed official of the city and who is not employed by the city. The person shall act under sub. (5) in place of the board. The city council may provide for some payment to that person for serving under this paragraph at a rate established by the city council.

(7) COMPENSATION. The salaries of chiefs and subordinates shall be fixed by the council. Unless the council otherwise provides, in cities of the 4th class rewards for the apprehension of criminals may be retained by the person entitled thereto. Such salaries when so fixed may be increased but not decreased by the council without a previous recommendation of the board. The council may provide that the salaries shall increase with length of service.

(7m) REST DAY. (a) The council of every city of the fourth class shall provide for, and the chief of the police department shall assign to, each police officer in the service of such city one full rest day of 24 consecutive hours during each 192 hours, except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such day of rest not be given at such time. Arrangements shall be made so that each full rest day may be had at such time or times as will not impair the efficiency of the department.

(b) The council of every city of the second or third class shall provide for, and the chief of the police department shall assign to, each police officer in the service of such city 2 full rest days of 24 consecutive hours each during each 192 hours, except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that any such day of rest not be given at such time. Arrangements shall be made so that each full rest day may be had at such time or times as will not impair the efficiency of the department. This section shall not apply to villages to which s. 61.65 is applicable.

(7n) HOURS OF LABOR. Except when a labor agreement under subch. IV of ch. 111 that governs hours of employment exists, the council of every 2nd, 3rd or 4th class city shall provide for a working day of not more than 8 hours in each 24 except in cases of positive necessity by some sudden and serious emergency, which, in the judgment of the chief of police, demands that such workday shall be extended beyond the 8-hour period at such time; and, when such emergency ceases to exist, all overtime given during such emergency shall be placed to the credit of such police officer, and compensatory time under s. 103.025 given therefor.

(8) FIRE DEPARTMENT. The council may provide by ordinance for either a paid or a volunteer fire department and for the management and equipment of either insofar as not otherwise provided for by law. In the case where a combination of paid and volunteer fire department is provided for, such city shall be reimbursed by the department of transportation, not to exceed \$500 for any fire calls on a state trunk highway or on any highway that is a part of the national system of interstate highways and is maintained by the department of transportation.

(10m) RULES GOVERNING LEAVING CITY. Subject to approval of the common council the fire chief may establish rules requiring fire fighters to obtain permission before leaving the city.

(11) FIRE FIGHTERS, REST DAY. The common council of every 4th class city, having a population of 5,000 or more and a fire department shall provide for, and the chief of the fire department shall assign to each full paid member thereof, a period of 24 consecutive hours off duty during each 72 hours, except in cases of positive necessity by some sudden and serious fire, accident or other peril, which, in the judgment of the chief engineer or other officer in charge demands that the day of rest not be given at that time. The provisions of this section shall not apply to cities having a 2-platoon or double shift system.

(11a) FIRE DEPARTMENT PLATOONS. (a) The common council, or other governing body of every city of the first, second and third class, whether organized under a general or special charter, having a paid fire department, shall provide for, and the governing power of the fire department shall divide the full paid fire fighting force in the fire department into 2 or more bodies or platoons. Each platoon shall work, or be on duty, alternately an equal number of hours or as nearly so as the governing power of the fire department of each such city decides, but no member of said platoon shall be on duty for a longer continuous period of time than the governing power of the fire department designates, except in cases of positive necessity by some sudden and serious fire, accident, or other peril, which in the judgment of the chief engineer or other officer in charge demands.

(b) The hours of duty of each member of the fire fighting force of the fire department in every city of the first class shall be limited to 72 hours in any one week. If any such department shall be on a platoon system of hours of duty, 12 hours may be added to one of 2 successive weeks and such period of time deducted from the previous or succeeding week, as the case may be.

(12) LEGISLATIVE INTENT. Section 62.13 and chapter 589, laws of 1921, chapter 423, laws of 1923, and chapter 586, laws of 1911, shall be construed as an enactment of statewide concern for the purpose of providing a uniform regulation of police and fire departments.

History: 1971 c. 41 s. 12; 1971 c. 213 s. 5; 1975 c. 94 ss. 26, 91 (5); 1975 c. 199; 1977 c. 20; 1977 c. 29 s. 1654(8) (c); 1977 c. 151, 182, 196; 1981 c. 171, 380; 1981 c. 390 s. 252; 1981 c. 391 s. 211; 1985 a. 135 s. 83 (3), (5); 1985 a. 166; 1987 a. 27; 1989 a. 31, 192; 1991 a. 32, 101, 189; 1993 a. 16, 53, 144, 213; 1995 a. 225, 270.

An amnesty agreement by a city not to prosecute a fireman for striking, made as part of the settlement of the strike, does not bar a complaint by a citizen alleging violation because of the strike. *Durkin v. Board of Police & Fire Comm.* 48 W (2d) 112, 180 NW (2d) 1.

A written charge of conduct unbecoming an officer filed by the chief is sufficiently specific where the officer does not object at the hearing. The fact that one member of the board prejudged the case is immaterial where the decision was unanimous. *State ex rel. Richey v. Neenah Police & F. Comm.* 48 W (2d) 575, 180 NW (2d) 743.

In 2nd and 3rd class cities, monthly compensation for purposes of computing a pension do not include employer contributions to the pension fund and health and life insurance. These items cannot be included by a collective bargaining agreement. *State ex rel. Manitowoc v. Police Pension Bd.* 56 W (2d) 602, 203 NW (2d) 74.

Standby time required of municipal police by the issuance of a "yellow alert" under which officers were required to leave their names, phone numbers and locations with the station house, were forbidden to leave the city without permission, did not constitute work or overtime under (7n), since the officers were not confined at the police station and, although restricted in some senses, were basically free to spend the standby time for their own purposes. *Theune v. Sheboygan*, 67 W (2d) 33, 226 NW (2d) 396.

Legislatively created agencies or boards such as city police and fire commissions have the capacity to sue or be sued where such authority is necessary to carry out an express power or to perform an express duty, or where the action arises out of the performance of statutory powers or obligations. *Racine Fire and Police Comm. v. Stanfield*, 70 W (2d) 395, 234 NW (2d) 307.

Review of determinations of fire and police commission may be had only by writ of certiorari or by appeal procedure provided by legislature since such procedure under (5) (i) is exclusive and conclusive. Party failing to commence certiorari proceeding within 6 months of decision is guilty of laches. *State ex rel. Enk v. Mentkowski*, 76 W (2d) 565, 252 NW (2d) 28.

A labor contract under 111.70 may limit the scope of the police chief's discretion under 62.13 (4) (a). *Glendale Prof. Policemen's Assn. v. Glendale*, 83 W (2d) 90, 264 NW (2d) 594 (1978).

By imposing arbitrary and capricious penalty, board exceeded its jurisdiction. *State ex rel. Smits v. City of De Pere*, 104 W (2d) 26, 310 NW (2d) 607 (1981).

Probationary officer had neither constitutional nor statutory right to statement of specifications and hearing on city's decision not to retain him. *Kaiser v. Bd. of Police & Fire Commrs.* 104 W (2d) 498, 311 NW (2d) 646 (1981).

Service under (5) (i) must be personal. *Gibson v. Racine Police & Fire Comm.* 123 W (2d) 150, 366 NW (2d) 144 (Ct. App. 1985).

Because s. 62.13 protects police officers against wrongful discipline or discharge, a police officer cannot state a cause of action by invoking the public policy exception to the employment-at-will doctrine. *Larson v. City of Tomah*, 193 W (2d) 225, 532 NW (2d) 726 (1995).

A collective bargaining agreement cannot provide for the right to seek arbitration of a discipline decision rather than to seek a hearing before the police and fire commission under this section. *City of Janesville v. WERC*, 193 W (2d) 492, 535 NW (2d) 34 (Ct. App. 1995).

Citizenship requirement for peace officers is constitutional. 65 Atty. Gen. 273 is withdrawn. 68 Atty. Gen. 61.

A mayor in a city with a police and fire commission does not have the authority to order a police chief to reinstate a discharged probationary police officer. 81 Atty. Gen. 1.

Fire fighter's dismissal violated due process. *Schulz v. Baumgart*, 738 F (2d) 231 (1984).

Police accountability in Wisconsin. 1974 WLR 1131.

62.133 Ambulance service. The common council may purchase, equip, operate and maintain ambulances and contract for ambulance service with one or more providers for conveyance of the sick or injured. The common council may determine and charge a reasonable fee for ambulance service provided under this section.

History: 1991 a. 39.

62.135 Highway safety coordinator. In cities with a population of 150,000 and more, the mayor may appoint a city highway safety coordinator who shall be a member of the city agency or commission responsible for traffic accident analysis and traffic safety related matters. The commission or agency shall meet at least quarterly to review city traffic accident data and other traffic safety related matters.

History: 1983 a. 291.

62.14 Board of public works. (1) **HOW CONSTITUTED; TERMS.** There shall be a department known as the "Board of Public Works" to consist of 3 commissioners. In cities of the 2nd class the commissioners shall be appointed by the mayor and confirmed by the council at their first regular meeting or as soon thereafter as may be. The members of the first board shall hold their offices, 1, 2 and 3 years, respectively, and thereafter for 3 years or until their successors are qualified. In all other cities the board shall consist of the city attorney, city comptroller and city engineer. The council, by a two-thirds vote, may determine that the board of public works shall consist of other public officers or persons and provide for the election or appointment of the members thereof, or it may, by a like vote, dispense with such board, in which case its duties and powers shall be exercised by the council or a committee thereof, or by such officer, officers or boards as the council designates. The words "board of public works" wherever used in this subchapter shall include such officer, officers, or boards as shall be designated to discharge its duties.

(2) **ORGANIZATION.** The members of the board of public works shall, on the first Tuesday in May of each year, choose a president of the board from their number, and in cities of the first class a secretary; in other cities the city clerk shall be the secretary of the board.

(3) **COMPENSATION.** The commissioners of public works in cities of the second class shall receive a salary, but in all other cities the salaries of the attorney, comptroller and engineer respectively shall be in full for their services as members of such board.

(4) **RULES FOR, BY COUNCIL.** The council may make such rules as the council deems proper, not contravening this subchapter, for the government of the board of public works and the manner in which the business of said board shall be conducted.

(5) **QUORUM; RECORD; REPORT.** A majority of the board shall constitute a quorum for doing business. They shall keep a record of all their proceedings, which shall be open at all reasonable times to the inspection of any elector of such city, and shall make

a report to the council on or before the first day of March in each year, and oftener if required.

(6) **DUTIES AND POWERS.** (a) *In general.* It shall be the duty of the board, under the direction of the council, to superintend all public works and keep the streets, alleys, sewers and public works and places in repair.

(b) *Unusual use of streets.* No building shall be moved through the streets without a written permit therefor granted by the board of public works, except in cities where the council shall, by ordinance authorize some other officer or officers to issue a permit therefor; said board shall determine the time and manner of using the streets for laying or changing water or gas pipes, or placing and maintaining electric light, telegraph and telephone poles therein; provided, that its decision in this regard may be reviewed by the council.

(c) *Restoring streets.* In case any corporation or individual shall neglect to repair or restore to its former condition any street, alley or sidewalk excavated, altered or taken up, within the time and in the manner directed by the board, said board shall cause the same to be done at the expense of said corporation or individual. The expense thereof, when chargeable to a lot owner, shall be certified to the city clerk by the board, and if not paid shall be carried into the tax roll as a special tax against the lot.

(7) **RECORDS OF CITY ENGINEER.** The city engineer shall keep on file in the engineer's office, in the office of the city clerk, a record of all the engineer's official acts and doings and also a copy of all plats of lots, blocks and sewers embraced within the city limits, all profiles of streets, alleys and sewers and of the grades thereof, and of all drafts and plans relating to bridges and harbors and of any buildings belonging to the city; and shall at the same place keep a record of the location of all bench marks and permanent corner stakes from which subsequent surveys shall be started; which said records and documents shall be the property of the city and open to the inspection of parties interested, and shall be delivered over by said engineer to the engineer's successor or to the board of public works. Whenever requested, the engineer shall make a report of all doings of the engineer's department to the board of public works.

History: 1977 c. 151; 1991 a. 316.

62.15 Public works. (1) **CONTRACTS; HOW LET.** All public construction, the estimated cost of which exceeds \$10,000, shall be let by contract to the lowest responsible bidder; all other public construction shall be let as the council may direct. If the estimated cost of any public construction exceeds \$5,000 but is not greater than \$10,000, the board of public works shall give a class 1 notice, under ch. 985, of the proposed construction before the contract for the construction is executed. The council may also by a vote of three-fourths of all the members-elect provide by ordinance that any class of public construction or any part thereof may be done directly by the city without submitting the same for bids.

(1a) **ESCALATOR CLAUSES.** Contracts may include escalator clauses providing for additional charges for labor and materials if as a result of general inflation the rates and prices of the same to the contractor increase during performance of the contract. Such escalator provision shall be applicable to all bidders and shall not exceed 15 per cent of the amount of the firm bid nor the amount of the increase paid by the contractor. Each bid on a contract which is to include an escalator provision shall be accompanied by a schedule enumerating the estimated rates and prices of items of labor and materials used in arriving at the bid. Only as to such items as are enumerated shall an increased charge be allowed the contractor.

(1b) **EXCEPTION AS TO PUBLIC EMERGENCY.** The provisions of sub. (1) and s. 281.41 are not mandatory for the repair and reconstruction of public facilities when damage or threatened damage thereto creates an emergency, as determined by resolution of the board of public works or board of public utility commissioners, in which the public health or welfare of the city is endangered.

CHAPTER 164

LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

164.01 Definition.
164.015 Engaging in political activity.
164.02 Interrogation.
164.03 Recrimination.

164.04 Rights not to be diminished.
164.05 Applicability.
164.06 Officers may be candidates.

164.01 Definition. In this chapter, except in s. 164.06, "law enforcement officer" means any person employed by the state or by a city, village, town or county for the purpose of detecting and preventing crime and enforcing laws or ordinances, who is authorized to make arrests for violations of the laws or ordinances which he or she is employed to enforce.

History: 1979 c. 351; Stats. 1979 s. 166.01; 1979 c. 361 s. 71; Stats. 1979 s. 164.01; 1987 a. 350; 1993 a. 53.

164.015 Engaging in political activity. No law enforcement officer may be prohibited from engaging in political activity when not on duty or not otherwise acting in an official capacity, or be denied the right to refrain from engaging in political activity.

History: 1979 c. 351; Stats. 1979 s. 166.015; 1979 c. 361 s. 71; Stats. 1979 s. 164.015.

164.02 Interrogation. (1) If a law enforcement officer is under investigation and is subjected to interrogation for any reason which could lead to disciplinary action, demotion, dismissal or criminal charges, the interrogation shall comply with the following requirements:

(a) The law enforcement officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(b) At the request of any law enforcement officer under interrogation, he or she may be represented by a representative of his or her choice who, at the discretion of the officer, may be present at all times during the interrogation.

(2) Evidence obtained during the course of any interrogation not conducted in accordance with sub. (1) may not be utilized in any subsequent disciplinary proceeding against the law enforcement officer.

History: 1979 c. 351; Stats. 1979 s. 166.02; 1979 c. 361 s. 71; Stats. 1979 s. 164.02.

164.03 Recrimination. No law enforcement officer may be discharged, disciplined, demoted or denied promotion, transfer or reassignment, or otherwise discriminated against in regard to

employment, or threatened with any such treatment, by reason of the exercise of the rights under this chapter.

History: 1979 c. 351; Stats. 1979 s. 166.03; 1979 c. 361 s. 71; Stats. 1979 s. 164.03.

164.04 Rights not to be diminished. The rights under this chapter shall not be diminished or abridged by any ordinance or provision of any collective bargaining agreement. These rights may be supplemented and expanded by ordinance or collective bargaining agreement in any manner not inconsistent with this chapter.

History: 1979 c. 351; Stats. 1979 s. 166.04; 1979 c. 361 s. 71; Stats. 1979 s. 164.04.

164.05 Applicability. Sections 164.01 to 164.04 apply only to law enforcement officers employed by a city, village, town or county.

History: 1979 c. 351; Stats. 1979 s. 166.05; 1979 c. 361 s. 71; Stats. 1979 s. 164.05; 1985 a. 148; 1987 a. 350; 1993 a. 53.

164.06 Officers may be candidates. (1) In this section, "law enforcement officer" means any person employed by a city, village, town or county, other than a 1st class city or a county having a population of 500,000 or more, for the purpose of detecting and preventing crime and enforcing laws or ordinances, who is authorized to make arrests for violations of the laws or ordinances which he or she is employed to enforce.

(2) No city, village, town or county may prohibit a law enforcement officer from being a candidate for any elective public office, if that law enforcement officer is otherwise qualified to be a candidate. No law enforcement officer may be required, as a condition of being a candidate for any elective public office, to take a leave of absence during his or her candidacy. This section does not affect the authority of a city, village, town or county to regulate the conduct of a law enforcement officer while the law enforcement officer is on duty or otherwise acting in an official capacity.

History: 1987 a. 350.