Chapter 242

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Civil Service for City or School District Employees and Firefighters

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CIVIL SERVICE FOR EMPLOYEES OF DISTRICT ANNEXED BY CITY

242.050 Civil service for employees of certain districts after annexation. Whenever any rural fire protection, water or sanitary district becomes partially or wholly absorbed into a city which operates under a system of civil service for its employees, notwithstanding the civil service provisions of law or such city's charter, the governing body of the city may, at its option, provide for inclusion of any or all the employees of the district as employees of the city under its civil service system with or without civil service examinations, in a manner determined by the exercise of the sound discretion of the governing body.

CIVIL SERVICE FOR CUSTODIANS IN SCHOOL DISTRICTS OF 300,000 OR MORE

242.310 Short title. ORS 242.310 to 242.640 and 242.990 (1) shall be known as the Custodians' Civil Service Law.

242.320 Definitions for ORS 242.310 to 242.640. As used in ORS 242.310 to 242.640, unless the context requires otherwise:

(1) "Assistant custodian" means any employee who works under the supervision of a custodian except those who:

(a) Work less than eight hours per day; or

(b) Work less than 12 months per year; or

(c) Receive an hourly rate of pay.

(2) "Board" means a civil service board created pursuant to ORS 242.330.

(3) "Custodian" means an employee of the school district who has supervision of property, keeping it in sanitary condition and tending to the cleaning and operation of heating plants and other necessary work by way of care and labor to keep the physical plants of the school board in maintenance and operation. [Amended by 1969 c.262 §1]

242.330 Civil service board. (1) In all school districts having a population of 300,000 or more persons according to the last federal census, there is created a civil service board with jurisdiction over the appointment, employment, classification and discharge of custodians and assistant custodians in the employ of the school district.

(2) The board shall be composed of three commissioners. An alternate for each commissioner may be appointed to serve in the commissioner's absence. The commissioners and alternates shall be appointed by the school board of the district. [Amended by 1969 c.262 §2; 1975 c.770 §42; 1979 c.738 §1]

242.340 Qualifications of commissioners. To be eligible for appointment to the board, a commissioner shall:

(1) Be an elector of the school district.

(2) Be a resident of the school district for at least five years immediately preceding appointment.

(3) Be known to be devoted to the principles of civil service.

(4) Not be a member or employee of the school board.

242.350 Terms and compensation of commissioners. (1) Initial appointments of the commissioners shall be as follows: One for two years, one for four years and one for six years. Thereafter each appointment shall be for a term of six years.

(2) The commissioners shall serve without compensation.

242.360 Removal and vacancies. (1) The school board may remove any commissioner for just cause at any time.

(2) In the event of removal or of a vacancy caused by death or resignation, the vacancy shall be filled by the school board within 10 days from the time of the vacancy. Such appointment shall be for the unexpired term of the commissioner whose place is vacated.

242.370 Secretary; duties; salary. The civil service board shall appoint a secretary, who shall keep a record of its proceedings, preserve all reports made to it, superintend and keep a record of all examinations held under its direction and perform such other duties as it may prescribe. The secretary shall hold office during the pleasure of the board, and shall receive a salary of not less than $50 per month, to be paid by the school district.

242.380 Offices and clerical help. The school board shall provide the civil service board with suitable and convenient rooms and accommodations and cause the same to be furnished, heated, lighted and supplied with all office supplies and equipment necessary to carry on the business of the board. The school board also shall provide the civil service board with such other clerical assistance as may be necessary.

242.390 Rules. The civil service board may make appropriate rules and regulations to carry out the provisions of the Custodians' Civil Service Law. The rules shall provide in detail the manner in which examinations are

to be held and appointments and removals made. The board may, from time to time, change its rules. Any rules or regulations shall be printed for distribution by the board, and 10 days' notice of same must be given by publication in a daily newspaper printed in the district not less than 10 days before the rules or regulations go into effect.

242.400 Annual report; roster of employees. The board shall, on or before January 1 of each year, make a report to the school board of the district, showing its rules in force and the practical effect thereof, and any suggestions it may have for a more effective accomplishment of classified civil service. The board shall also provide a roster for all employees under the Custodians' Civil Service Law and make such other reports and recommendations as it deems advisable.

242.410 Records preserved; open to public. The board shall keep on file all examination papers and markings thereof for a period of at least five years and all other papers and documents and communications received by it. All records shall be public and, as such, accessible at convenient times.

242.420 Investigations; oaths; subpoenas; examination of books, papers and records. The board may make any appropriate investigation to carry out the purposes of the Custodians' Civil Service Law. In connection therewith, any member of the board may administer oaths, issue subpoenas to witnesses and compel their attendance at examinations, and examine books, papers and records and compel their production by witnesses in the same manner as if the subpoenas had been issued from a court of record in this state.

242.510 Classified service. The civil service board shall classify, with relation to the character of work and the compensation attached thereto, all positions in the service of the school board within the district including those under the supervision of a custodian except those described in ORS 242.320 (1)(a), (b) or (c). The positions so classified shall constitute the classified civil service of the school district. [Amended by 1979 c.738 §2]

242.520 Merit system to be observed. (1) No appointment or promotion to any position shall be made except as provided in the Custodians' Civil Service Law. All appointments to beginning employment positions in the classified civil service shall be made according to fitness, to be ascertained by open competitive examinations. All promotions in the classified civil service shall be made according to merit in service, fidelity in service and seniority in service.

(2) No person shall be appointed or employed by a school board under any title not appropriate to the duties to be performed.

(3) The appointing authority shall immediately notify the board of any appointment or discharge. [Amended by 1969 c.262 §3]

242.530 Competitive examinations; examiners. The board shall, from time to time, hold public competitive examinations to ascertain the fitness of applicants for beginning employment positions of the classified civil service. The board shall control those examinations and may designate any person to act as examiner without compensation. [Amended by 1969 c.262 §4]

242.540 Character of examinations. Examinations shall be practical in character and relate only to those matters which test the relative fitness of the persons examined to discharge the duties for the respective positions for which they are applicants. The examinations shall include a test for physical qualifications, health and manual or professional skill. Nothing relating to an applicant's political or religious opinion or affiliation shall be asked or given.

242.550 Fitness for appointment; board approval. The civil service board may require an applicant for a custodial position to furnish evidence satisfactory to the board of good character, mental and physical health, and such other evidence as it may deem necessary to establish the applicant's fitness, including any information concerning a criminal conviction for a crime involving the possession, use, sale or distribution of a controlled substance, sexual misconduct listed in ORS 342.143 (3), theft or a crime of violence. The board shall not approve the employment of any applicant unless the board is satisfied that the applicant poses no danger to school children. [Amended by 1969 c.262 §5; 1979 c.738 §3; 1979 c.744 §11]

242.560 Register of eligible candidates; ranking. (1) The board shall prepare and keep a register for each grade or class of positions of the persons whose average standing, upon examination for such grade or class, is not less than the minimum fixed by the rules of the board, and who otherwise are eligible. Such persons shall take rank upon the register as candidates for beginning employment positions in order of their relative excellence, as determined by the examination. Candidates of equal standing shall take rank upon the register according to the order in which their applications are filed. The board may, by rule, provide for striking candidates from the register, after they have remained thereon for a specified time.

(2) The board shall prepare and keep a register for each grade or class of positions of the persons eligible for promotion. Such

register shall contain information concerning merit in service, fidelity in service and seniority in service. Such persons shall take rank upon the register as candidates for promotion in order of their relative excellence, as determined by merit in service, fidelity in service and seniority in service. Candidates of equal standing shall take rank upon the register according to the order in which their applications are filed. [Amended by 1969 c.262 §6]

242.570 Certification of candidates for vacancies. (1) Whenever there is a vacancy in any position in the classified civil service, the school board, or its designated representative, immediately shall notify the civil service board thereof.

(2) The civil service board thereupon shall certify to the appointing authority the names and addresses of the three eligible candidates standing highest upon the register for the class or grade to which such position belongs. If there are less than three, the board shall certify all remaining candidates upon the register. When vacancies exist in two or more positions of the same class in the same department at the same time, the board may certify a smaller number than three candidates for each position, but those certified must be eligible candidates standing highest upon the register.

(3) The board may, by rule, limit the number of times the same candidate is certified to the appointing authorities.

(4) The appointing authority may require the candidates certified to come before the appointing authority for interview. When the candidates are applicants for beginning employment the appointing authority shall be entitled to inspect their examination papers. [Amended by 1969 c.262 §7]

242.580 Probation. Each person appointed to a vacant position shall be on probation for a period of one year from the date of hire. Within that time the person may be discharged and another candidate appointed in like manner. [Amended by 1979 c.738 §4]

242.590 Permanent appointments. (1) The appointing authority must make a permanent appointment from the list of candidates certified by the board, unless, upon reasons signed in writing by the appointing authority, the board consents to and certifies a new list of candidates. If a person on probation is not dismissed during the probationary period the appointment is deemed permanent.

(2) All persons employed as custodians and assistant custodians in a school district on the date the Custodians' Civil Service Law becomes effective as to such school district shall be permanent employees without examination and shall be so appointed by the board.

242.600 Emergency appointments. In cases of emergency, to prevent delay or injury to the property of the school district or of the public business, the appointing authority may fill any position temporarily but not for longer than 30 days.

242.610 Suspension; reappointment. Any appointing authority of the school district may suspend any person within the classified service for any cause for a period of not exceeding 30 days. If any employee in the classified service is suspended by reason of the closing of a school or lack of work to be done, the employee again shall be placed on the eligible list of the civil service board and shall have the first preference in the filling of any vacancy and shall be appointed according to seniority. If the school board opens any closed school, the employees employed in the building shall have first preference to their previous place of appointment.

242.620 Dismissal. No employee in the classified civil service who has been permanently appointed, shall be dismissed except for cause. A written statement of the cause of dismissal, in general terms, shall be served upon the dismissed employee and a duplicate filed with the board. A dismissal may be made without any hearing but any employee so removed may, within 10 days thereafter, file with the board a written demand for investigation. If the demand alleges, or it otherwise appears to the board, that the discharge or removal was for political or religious reasons, or for reasons of age as described in ORS chapter 659A, or was because of personal favoritism or was not in good faith nor for the purpose of improving the public service, an investigation shall be held by the board or by persons appointed by them and under their direction. [Amended by 1959 c.689 §11; 1977 c.770 §10; 2001 c.621 §75]

242.630 Investigation; findings; appeal. (1) The investigation pursuant to ORS 242.620 shall be confined to determining whether the dismissal was or was not for political or religious reasons, or because of reasons of age as described in ORS chapter 659A, or was not made in good faith for the purpose of improving public service.

(2) If the board finds that the employee is entitled to reinstatement, it shall report its findings in writing to the school board, whereupon the employee shall be reinstated.

(3) If the board finds that the employee was properly discharged, the employee shall have a right of appeal from the board's decision to the circuit court for the county in which the district lies. Appeals shall be per-

fected by service of notice of appeal upon the secretaries of the civil service board and school board, together with a copy of the decision of the civil service board certified to be a correct copy by the secretary thereof, whereupon the same shall be filed with the clerk of the court. [Amended by 1959 c.689 §12; 1977 c.400 §3; 1977 c.770 §11; 1993 c.778 §26; 2001 c.621 §76]

242.635 Board approval necessary for eligibility after dismissal; requirements for approval. An employee in the classified civil service who has been duly dismissed for cause shall not be eligible for examination for appointment without the approval of the civil service board. Approval shall not be granted unless the board on evidence presented by applicant finds that the condition resulting in dismissal has been corrected and is unlikely to recur. [1979 c.738 §6]

242.640 Prohibited conduct. No person shall:

(1) Willfully or corruptly or in cooperation with one or more persons, defeat, deceive or obstruct any person with respect to the right of the individual to examination or registration according to the regulations prescribed by the civil service board pursuant to the Custodians' Civil Service Law.

(2) Willfully or corruptly falsely mark, grade, estimate or report on an examination the proper standing of any person examined, registered or certified according to any regulation prescribed pursuant to the Custodians' Civil Service Law, or aid in so doing.

(3) Willfully or corruptly make any false representations concerning the examination, certification and registration or concerning the persons examined, registered or certified.

(4) Willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified.

(5) Permit any other person or permit or aid in any other manner, any other person to impersonate the individual in connection with any examination, registration or application, or request to be examined or registered.

(6) Make an appointment to any position contrary to the Custodians' Civil Service Law, or refuse or neglect to comply therewith.

CIVIL SERVICE FOR FIREFIGHTERS

(Generally)

242.702 Definitions for ORS 242.702 to 242.824. As used in ORS 242.702 to 242.824, unless the context requires otherwise:

(1) "Appointing power" includes every person or group of persons who, acting singly or as a board, council or commission, are vested with authority to select, appoint or employ any person to hold any position subject to civil service under ORS 242.702 to 242.824.

(2) "Appointment" includes all means of selecting or employing any person to hold any position subject to civil service under ORS 242.702 to 242.824.

(3) "Civil service" means the civil service system established under ORS 242.702 to 242.824.

(4) "Commission" means a civil service commission created under ORS 242.702 to 242.824.

(5) "Commissioner" means a member of the civil service commission created under ORS 242.702 to 242.824.

(6) "Employees" means persons whose principal duties consist of preventing or combating fire or preventing the loss of life or property from fire.

(7) "Fire department" means any organization maintained by any political subdivision for the purpose of preventing or combating fire.

(8) "Governing body" means the council or city commissioners of a city, the county court or board of county commissioners of a county, the board of directors of a rural fire protection district, the board of commissioners of a domestic water supply corporation and the county court or board of county commissioners acting under ORS 476.310 to 476.340 for the purposes of preventing and controlling fire on zone 2 rural lands.

(9) "Political subdivision" means any city, county, municipal corporation, rural fire protection district, domestic water supply corporation or organization authorized under ORS 476.310 to 476.340 to combat fire on zone 2 rural lands which employs four or more full-time firefighters, not including the chief of the fire department.

(10) "Position" includes any office, place or employment. [1959 c.252 §1]

242.704 Political subdivisions and positions to which ORS 242.702 to 242.824 apply. (1) ORS 242.702 to 242.824 do not apply to any political subdivision which under its charter, ordinances or regulations has a civil service system covering the employees of its fire department which substantially accomplishes the general purposes of ORS 242.702 to 242.824. However, such political subdivision shall retain such exemption only so long as the civil service system upon which the exemption is based remains in effect.

(2) The civil service shall include all employees of the fire department of a political subdivision which employs four or more firefighters on a full-time basis, not including the chief. The governing body of the political subdivision shall decide whether the chief may be a member of the civil service. [1959 c.252 §§2,19; 1981 c.494 §1]

(Civil Service Commission)

242.706 Civil service commission; members; term of office; compensation. (1) There hereby is created in each political subdivision subject to ORS 242.702 to 242.824 a civil service commission composed of three members appointed or confirmed by the governing body of the political subdivision according to its charter, ordinances or regulations. If the political subdivision has an elected fire commission, the members of the civil service commission shall be appointed by the fire commission subject to confirmation by the governing body of the political subdivision.

(2) The term of office of a member of the civil service commission is four years, and each shall serve without compensation. [1959 c.252 §3]

242.708 Qualifications of commissioners. No member of the commission shall be a member of the governing body or an employee of the political subdivision subject to ORS 242.702 to 242.824, except that any commissioner may serve as a member of any other civil service commission. The persons appointed shall be known to believe in the principles of civil service. [1959 c.252 §5]

242.710 Removal of commissioners. The governing body or fire commission which appoints commissioners may remove any commissioner for incompetency, dereliction of duty or other good cause, after giving due notice in writing of the charges against the commissioner and an opportunity to be heard publicly on such charges before the body which appointed the commissioner. A copy of the charges and a transcript of the record of the hearing shall be filed with the governing body of the political subdivision. [1959 c.252 §6]

242.712 Chairperson of commission; meetings; quorum. (1) Immediately after the appointment of all of its members the commission shall elect a chairperson. The commission shall hold such meetings as may be required for the proper discharge of its duties with a meeting at least once every 90 days and such additional meetings as are requested by any commission member. Any person subject to civil service may request a special meeting of the commission, which request shall be granted when good cause is shown therefor.

(2) Two members of the commission shall constitute a quorum, and the votes of any two commissioners concurring shall be sufficient for decision in all matters and transactions under ORS 242.702 to 242.824. [1959 c.252 §§7,8]

242.714 Preparation of budget; appropriations. (1) The commission shall prepare and submit a budget to the governing body of the political subdivision prior to each fiscal year for which an appropriation is needed to carry out the provisions of ORS 242.702 to 242.824.

(2) The governing body of each political subdivision shall appropriate sufficient funds to carry out the provisions of ORS 242.702 to 242.824. [1959 c.252 §43]

242.716 Chief examiner and secretary of commission. (1) In accordance with the requirements of subsection (2) of this section, the commission shall appoint a chief examiner who may act as the commission's secretary. The chief examiner, or any other person appointed as secretary, shall keep records of the commission's proceedings, preserve all reports made to it, keep a record of all examinations and investigations held or made under the direction of the commission, and perform such other duties as it may prescribe.

(2) Except as provided in subsection (3) of this section, the chief examiner shall be subject to the civil service system established under ORS 242.702 to 242.824 and shall be appointed as a result of a competitive examination open to all properly qualified citizens of the political subdivision.

(3) Any existing civil service secretary or examiner of any political subdivision within this state may be designated as examiner and retained by the commission, if the person holds the position by reason of a competitive civil service examination.

(4) The commission may enter into contracts with any civil service commission or board in this state for the purpose of having such board or commission conduct the examinations required or authorized by ORS 242.702 to 242.824. [1959 c.252 §9]

242.718 Offices and clerical help for commission. The governing body of every political subdivision subject to ORS 242.702 to 242.824 shall:

(1) Supply the commission with all office supplies, equipment and space necessary to carry on the business of the commission.

(2) Provide the commission with such clerical assistance as the commission may consider necessary. [1959 c.252 §10]

242.720 Officers of political subdivision to assist commission. All officers of the political subdivision shall:

(1) Aid in all proper ways in carrying out the provisions of ORS 242.702 to 242.824 and such rules and regulations as may, from time to time, be prescribed by the commission.

(2) Afford the commission, its members and employees, all reasonable facilities and assistance in inspecting books, papers, documents and accounts relating to positions subject to civil service.

(3) Produce such books, papers, documents and accounts and testify, whenever required to do so by the commission or any commissioner. [1959 c.252 §11]

242.722 Preservation of records and examinations; public records. (1) The commission shall keep on file all examination papers and their markings, records in commission hearings and all other papers, documents and communications received by it. Except for examination papers all such reports and files of the commission shall be public records and accessible at reasonable and convenient times. Examination papers shall be accessible only to the commissioners and members of the governing body; provided, that a person who takes an examination under the provisions of ORS 242.702 to 242.824 shall have access to the examination papers of the person.

(2) The commission shall retain and may destroy the public records described in subsection (1) of this section as follows:

(a) Original examination papers and their markings and original records in commission hearings shall be retained for at least four years and thereafter may be destroyed if microfilmed copies are retained.

(b) Original or microfilmed copies of all other papers, documents and communications shall be retained for at least four years and thereafter may be destroyed. [1959 c.252 §13]

242.724 Rules of commission; examinations. (1) The commission shall make suitable regulations not inconsistent with ORS 242.702 to 242.824 to carry out the provisions thereof. The regulations shall provide in detail the manner in which examinations shall be held, and appointments, promotions, demotions, transfers, reinstatements, suspensions and discharges shall be made. The rules and regulations together with all amendments thereto shall be posted in the fire department and shall be available for inspection in the secretary's office for public inspection. The rules and regulations shall not limit the personal citizenship rights of any members of the fire department.

(2) The chief examiner or the agency designated by the commission shall conduct such examinations as necessary. The commission shall assess such weights on examinations as they deem necessary. [1959 c.252 §14; 1997 c.359 §2]

(Investigations; Hearings; Actions)

242.726 Investigation by commission of abuses; report of investigation. (1) When any resident of the political subdivision or any person subject to civil service alleges in a verified petition that an abuse or abuses of the provisions of ORS 242.702 to 242.824 exist, the commission shall:

(a) Investigate the enforcement and effect of the provisions of and the regulations prescribed under ORS 242.702 to 242.824.

(b) Inspect all positions affected by ORS 242.702 to 242.824, cited by the petition.

(c) Ascertain whether ORS 242.702 to 242.824 and the regulations are being obeyed.

(d) Make a public report upon all matters investigated under ORS 242.702 to 242.824.

(2) The commission may, upon its own initiative, make any investigation which it deems advisable. [1959 c.252 §15; 1989 c.171 §33]

242.728 Administering oaths; compelling attendance of witnesses and production of documents; depositions of witnesses. (1) In the course of an investigation, the commission may administer oaths, subpoena witnesses and compel the production of books, papers, documents and accounts pertinent to the investigation. Attendance of witnesses, either with or without books, papers, documents or accounts, may not be compelled unless such witnesses are personally served with subpoena.

(2) The commission may cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil suits and actions.

(3) If a person refuses to attend to give testimony or produce books, papers, documents or accounts, pursuant to a subpoena issued under this section, the circuit court of the county in which the political subdivision is located, upon petition of the commission, shall compel obedience to the subpoena and shall punish refusal to obey or to testify in the same manner as a refusal to obey a subpoena or to testify pursuant to a subpoena issued from the circuit court. [1959 c.252 §16]

242.730 Witness fees. Every person served with a subpoena requiring attendance before the commission shall be entitled to the fees and mileage as are allowed by law to witnesses in ORS 44.415 (2), except that

no person shall be entitled to any fees or mileage who is employed in the public service of the political subdivision in which the person is called as a witness. The fees and mileage allowed by this section need not be prepaid, but the governing body of the political subdivision shall provide for payment thereof when certified by the commission. [1959 c.252 §17; 1989 c.980 §10d]

242.732 Procedure in hearings before commission; rules of evidence. (1) All hearings and investigations before the commission are governed by ORS 242.702 to 242.824 and by the rules and practice of procedure adopted by the commission; and in the conduct thereof, the commission is not bound by the rules of evidence.

(2) No informality in any hearing or investigation, or in the manner of taking testimony, shall invalidate any order, decision, rule or regulation made, approved, or confirmed by the commission. [1959 c.252 §18]

242.734 Action to secure compliance with ORS 242.702 to 242.824. The commission may conduct any civil suit or action which may be necessary for the proper enforcement of ORS 242.702 to 242.824 and the rules of the commission. The commission shall be represented in such proceedings by the chief legal officer of the political subdivision. If the chief legal officer is absent or unable to act, or a vacancy exists in the office, or no such office exists in the political subdivision, the commission may in any case be represented by special counsel appointed and retained by it. [1959 c.252 §12]

(Payroll)

242.736 Commission certification of payroll required. (1) The commission shall certify in writing to the payroll officer of the political subdivision:

(a) The name of each person appointed or employed in the civil service, stating in each case the title or character of the position held by such person, the salary or compensation assigned, and the date of the beginning of the person's service.

(b) Every change occurring in any position held by any person in the civil service.

(2) The certifications shall be made by the civil service commission annually.

(3) The commission shall notify any officer or employee of the political subdivision authorizing, drawing, signing, countersigning, issuing or honoring any warrant or order for the payment of salary or compensation to an employee subject to civil service of the names of any persons employed in violation of ORS 242.702 to 242.824 or the regulations established under ORS 242.702 to 242.824. [1959 c.252 §22]

242.738 Payments to persons not certified by commission prohibited. (1) No officer or employee of the political subdivision shall authorize, draw, sign, countersign, issue or honor any warrant or order for the payment of, or pay, any salary or compensation to any person in a position subject to civil service who is not certified by the commission as provided in ORS 242.736. Any person entitled to be certified may maintain a proceeding by mandamus to compel the issuance of such certificate.

(2) Any sums willfully paid contrary to the provisions of this section may be recovered in an action in the name of the political subdivision from any officer authorizing, drawing, signing, countersigning, issuing or honoring any warrant or order for the payment thereof, and from the sureties on the official bond of the officer. The expenses of the action may be paid from the amounts recovered therein. [1959 c.252 §23]

(Civil Service Positions)

242.752 Basis of appointment and promotion; creation of positions; fixing compensation. (1) Except as otherwise expressly provided in ORS 242.702 to 242.824, the appointment and promotion of all persons to all civil service positions shall be made solely upon merit, efficiency, and fitness, which shall be ascertained by open competitive examination and investigation among qualified personnel.

(2) All civil service positions in the political subdivision shall be created by the governing body of the political subdivision, and the governing body shall fix the compensation of all employees employed in civil service positions. In the creation of each civil service position, and in determining the amount of compensation thereof, the governing body shall give due consideration to the recommendation of the civil service commission and the appointing power. [1959 c.252 §25]

242.754 Classification of positions. (1) The commission shall classify, with reference to the examinations provided for in ORS 242.702 to 242.824, all positions in the civil service. The classifications shall be based upon the functions of the positions and the compensation attached thereto.

(2) The classifications and grades may, from time to time, be amended, added to, consolidated or abolished by the commission, but no person holding any position under any established classification or grade shall be affected by such change so as to deprive the person of any of the benefits attached to the classification or grade applicable to the position then held by the person. No person shall be promoted or advanced to a higher classification by such change without being eligi-

ble for appointment to such higher classification by reason of the position of the person on the promotion register. [1959 c.252 §26]

242.756 Effect on incumbent when position first becomes subject to civil service. (1) All persons employed in positions subject to civil service at the time such position first becomes subject to civil service, and who have been employed by the political subdivision continuously for a period of at least six months preceding the date when that position became subject to civil service, and who are citizens of the United States hereby are inducted permanently into civil service in the positions then held as if such persons had been permanently appointed under civil service after examination and investigation.

(2) All persons who hold positions subject to civil service in any political subdivision at the time such position first becomes subject to civil service but who are not eligible for induction into civil service as provided for in subsection (1) of this section shall continue to hold their positions until replaced by persons appointed under civil service.

(3) Within 10 days after a position first becomes subject to civil service, the appointing power for that position shall file with the treasurer, auditor, comptroller or similar officer of the political subdivision a statement giving the names, residence, occupation, length of continuous service and compensation of each person holding that position, declaring whether each person is or is not eligible for induction into civil service as provided in subsections (1) and (2) of this section, and certifying as to the citizenship status of each such person.

(4) Within 60 days after any position first becomes subject to civil service, the commission shall classify such position. Within 90 days after a position first becomes subject to civil service, the commission shall hold an examination to fill any positions not filled by persons inducted into civil service as provided in subsection (1) of this section. [1959 c.252 §24]

(Examinations)

242.758 Examinations. (1) The commission shall hold public competitive examinations to ascertain the fitness of applicants for all positions in the civil service. Entrance examinations shall be given at least every 30 months. Promotional examinations shall be given as provided in ORS 242.762 (2). Notice of time, place and general scope of every examination shall be given by the commission once a week for two consecutive weeks by publication in a newspaper of general circulation in the political subdivision. Notices shall be posted in at least three public places in the political subdivision, one of which shall be the office of the commission, for not less than two weeks before the examination.

(2) Except where other arrangements are made under ORS 242.716 (4), the chief examiner shall supervise all examinations and shall designate the persons who shall act as examiners at any examination. No person subject to the civil service system established under ORS 242.702 to 242.824, other than the chief examiner, shall be designated as an examiner in the political subdivision by which the person is employed. When a person in the public service of the political subdivision is designated as examiner, the person shall act as such without extra compensation.

(3) All examinations shall be practical in character and shall relate only to those matters which fairly test the relative fitness of persons examined to discharge the duties of the positions for which they are applicants. Tests of physical fitness and manual skill shall be included in the entrance examination.

(4) No question in any examination shall relate to political or religious preference, affiliation, opinion or services. [1959 c.252 §27]

242.760 Qualifications for admission to examination. Examinations shall be given only to persons who possess such qualifications as to residence, age, health, education, citizenship, habits and moral character as are prescribed by the rules of the commission. [1959 c.252 §28]

242.762 Promotional examinations. (1) Promotional examinations shall be given to those who desire to offer themselves for such examination and are in the qualified classifications or grades as determined by the commission. The regulations adopted for examination of applicants for promotion shall, as nearly as may be, follow the regulations governing the examination of applicants for original appointment.

(2) When there are four or more positions in a promotive grade or classification, promotional examinations for each such grade or classification in the civil service shall be given at least every 30 months and at such other times when there are no candidates eligible for promotion on the eligible register.

(3) When there are less than four positions in a promotive grade or classification, promotional examinations for each such grade or classification in the civil service shall be given at such times as it is necessary to establish an eligible register to carry out the provisions of ORS 242.702 to 242.824

as it applies to such grade or classification. [1959 c.252 §29]

(Appointment of Candidates)

242.764 Entrance and promotion register. (1) The commission shall prepare and keep a register for each grade and classification in the civil service of all persons whose general average standing upon examination for such grade or classification is not less than the minimum fixed by the rules of the commission, and who are otherwise eligible. Such persons shall take rank upon the register, as candidates, in the order of their relative standing as determined by examination and investigation. Candidates of equal standing shall take rank upon the register according to the order in which their applications were filed. No entrance or promotion register shall be kept in effect for longer than 30 months from the effective date thereof.

(2) The current entrance register shall be headed by the names of persons who have been regular employees and who were laid off from their positions for reasons other than fault or delinquency on their part. The current promotion register shall be headed by the names of persons who have been regular promoted employees and who were demoted from their positions for reasons other than fault or delinquency on their part. The order of the names of such persons shall be such that the name of the person who was last laid off or demoted is first on the register.

(3) Only one entrance register and one promotion register shall exist at any time for each grade and classification in the civil service. No promotion register shall be canceled unless it has been exhausted or has been in existence for at least 30 months. The entrance register shall not be canceled unless it has been exhausted or has been in existence for at least 12 months. [1959 c.252 §30]

242.766 Appointment or rejection of certified candidates by appointing power; probation; discharge; demotion. (1) The appointing power shall appoint one of the certified candidates to the vacant position, on probation for a period of 12 months. If the appointing power considers the certified candidates unqualified for the vacant position it may reject the names of the certified candidates for appointment by submitting a written statement of the reasons for the rejection to the commission. The commission shall investigate and decide on the validity of the reasons submitted. Religious, racial and political reasons shall not be considered as valid reasons for rejection.

(2) If the rejection of the appointing power is approved by the commission, the commission shall immediately certify to the appointing power the name and address of the next eligible candidate standing highest upon the register for the classification and grade to which the position belongs, and return the name of the rejected candidate to the same position on the eligible register from which the candidate was certified. The appointing power and the commission shall proceed in this manner for all rejected candidates until a qualified candidate is found for the vacant position.

(3) If the rejection of the appointing power is not approved by the commission, the commission shall immediately notify the appointing power, in writing, that the reasons for rejection of the certified candidate or candidates are not sufficient for rejection, and upon receipt of this notice from the commission, the appointing power shall immediately appoint the certified candidate in question to the position for which the candidate was originally certified.

(4) If the person on probation is a new appointee, the appointing power may discharge that person without regard to ORS 242.798 to 242.804 and in a like manner appoint another certified candidate and so continue until a qualified candidate has been found.

(5) If the person on probation has been promoted, the appointing power may demote such person only for cause specified in ORS 242.796, and in the manner provided in ORS 242.798 to 242.804. If the reasons for such demotion are deemed insufficient by the commission, the demoted candidate shall, notwithstanding such demotion, be restored to the promoted position upon such conditions or terms as may be imposed by the commission.

(6) If a person who has taken a promotional examination and been appointed to a position in a higher classification or grade on probation, fails to qualify for the position in the higher classification or grade within the probationary period, the person shall not lose seniority in the lower classification or grade from which such promotion was made, but shall return to employment and be reinstated in the position held in such lower classification or grade. [1959 c.252 §32]

242.768 Permanent and temporary appointments. (1) The appointing power shall make permanent appointments from the list of candidates certified. If any probationer is not discharged during the period of probation, the appointment is permanent.

(2) When there is no candidate upon the entrance register from which a position may

be filled, the appointing power may, with the consent of the commission, fill such position by temporary appointment. A temporary appointment shall not continue for more than three months. No classified position shall be filled by a temporary appointment for more than three months in any calendar year.

(3) The commission shall establish rules and regulations under which temporary appointments may be made. Temporary appointments shall be valid only until there are available candidates on the register. No temporary appointment shall be made to fill any position for which a promotional examination is given and an eligible register maintained. [1959 c.252 §33]

242.770 Vacancies. Whenever there is a vacancy in any position in the civil service, the appointing power shall immediately notify the commission of the vacancy. The commission shall thereupon certify to the appointing power:

(1) If the vacancy be in an entrance position, the names and addresses of the three candidates standing highest upon the entrance register. When more than one vacancy is to be filled, the number of names submitted shall equal the number of vacancies plus two.

(2) If the vacancy be in a promotive position, the names and addresses of the two candidates standing highest upon the register for the classification or grade to which the position belongs. When more than one vacancy is to be filled the number of names submitted shall equal the number of vacancies plus one. [1959 c.252 §31]

242.772 Report of appointing power to commission. Each appointing power shall:

(1) Report to the commission forthwith upon each appointment the name of the appointee, the title or character of the position to which the appointment is made, the date of beginning of service and the salary or compensation therefor.

(2) Report to the commission, on the date of official action or knowledge of each case, every change in the position of any person covered by ORS 242.702 to 242.824.

(3) Furnish such other information to the commission as may be required in order to keep the roster mentioned in ORS 242.774. [1959 c.252 §20]

(Miscellaneous)

242.774 Civil service roster. The commission shall keep in its office an official roster of all persons holding civil service positions and shall enter therein all appointments, promotions, demotions, transfers, reinstatements, resignations, suspensions, leaves of absence, removals and discharges, setting forth in each instance the date of beginning, change or termination of service and the nature of the duties performed, together with sufficient information to show why and how such appointments or other changes were made. The roster shall be kept so as to disclose readily to anyone desiring to inspect it all such matters as to each position subject to civil service and each person employed therein. [1959 c.252 §21]

242.792 Leave of absence. Leave of absence for not more than 90 days without pay, and without consent of the commission, may be granted by the appointing power to any person subject to civil service. Such leave shall not in any way prejudice the rights or privileges of a person subject to civil service. Leave of absence for longer periods may be granted by the governing body of the political subdivision as governed by its rules and regulations. The appointing power or governing body shall give immediate notice of such leave to the commission. [1959 c.252 §34]

242.794 Transfer or reinstatement. (1) The appointing power may authorize the transfer or reinstatement of any person holding one position to a similar position in the same classification or grade.

(2) No transfer or reinstatement shall be made from a position in one classification or grade to a position in another classification or grade. [1959 c.252 §35]

(Discipline)

242.796 Grounds for dismissal, demotion, suspension or deprivation of special privileges. (1) The tenure of persons subject to civil service shall continue during good behavior and such persons may be dismissed, demoted, suspended without pay or deprived of special privileges only for the following causes:

(a) Incompetency, inefficiency or inattention to or dereliction of duty.

(b) Dishonesty, intemperance, addiction to drugs or controlled substances, immoral conduct, insubordination or discourteous treatment of the public or of fellow employees.

(c) Any other willful failure of good conduct tending to injure the public service.

(d) Any willful violation of the provisions of ORS 242.702 to 242.824 or the rules or regulations adopted under ORS 242.702 to 242.824.

(e) Conviction of a felony or a misdemeanor involving moral turpitude.

(f) The willful giving of false information or withholding information, with intent to deceive, when making application for entrance.

(2) No person shall be dismissed, demoted, suspended without pay or deprived of special privileges for political, racial or religious reasons. [1959 c.252 §36; 1979 c.744 §12; 1997 c.359 §3]

242.798 Dismissal, demotion, suspension or deprivation of special privileges only for cause; written accusation. No person subject to civil service who has been permanently appointed under ORS 242.702 to 242.824 shall be dismissed, demoted, suspended without pay or deprived of special privileges except for cause, and then only upon the signed written accusation of the appointing power. A written statement of the accusation in general terms shall be served upon the accused, and a duplicate shall be filed with the commission. [1959 c.252 §37]

242.800 Investigation and hearing upon demand of accused; right to counsel. Any permanent employee who has been dismissed, demoted, suspended without pay or deprived of special privileges may, within 10 days, file with the commission a signed written demand for an investigation. If the demand alleges, or if it otherwise appears to the commission, that the dismissal was not made in good faith for cause, the commission shall conduct an investigation and hold a public hearing, such hearing to be within 30 days from the time appeal is filed. Appellant may be represented by counsel or any representative of appellant's own choosing. The investigation shall be confined to the determination of the question of whether the dismissal was made in good faith for cause. [1959 c.252 §38]

242.802 Findings of commission. After an investigation and public hearing, the commission may affirm or modify the action taken by the appointing power, or if it finds that the dismissal was not made in good faith for cause, the commission shall order the immediate reinstatement of the employee in the position from which the employee was dismissed. Reinstatement shall be retroactive and entitle the dismissed employee to pay or compensation or special privileges from the time of dismissal. The findings of the commission shall be certified in writing to the appointing power and immediately enforced by it. [1959 c.252 §39; 1977 c.400 §4; 1993 c.778 §27]

242.804 Appeal from finding of commission; issue on appeal limited. (1) Any decision of the commission affecting any permanent employee or employees subject to ORS 242.702 to 242.824 may be appealed to the circuit court of the county in which the office of the appointing power or the commission is located, and the court shall hear the appeal.

(2) The appeal, if taken by either an employee or by the appointing power, shall be taken by serving upon the commission, within 30 days after the date of the entry of such judgment or order, a written notice of appeal stating the grounds thereof and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order be filed by the commission with the court. The commission shall, within 10 days after the filing of such notice, make, certify and file such transcript with the court.

(3) The circuit court shall hear and determine such appeal in a summary manner. The hearing shall be confined to the determination of whether the order of removal, discharge, demotion or suspension made by the commission was made in good faith for cause. No appeal to such court shall be heard except upon such grounds.

(4) If an appeal is taken the prevailing party shall be allowed costs and disbursements on appeal. [1959 c.252 §40; 1965 c.296 §1]

(Prohibited Conduct)

242.822 Prohibited conduct generally. No person shall:

(1) Alone or in cooperation with one or more persons defeat, deceive or obstruct any person in respect to the right of that person of examination or registration according to the regulations prescribed by the commission under ORS 242.702 to 242.824.

(2) Falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to ORS 242.702 to 242.824, or aid in so doing, or make any false representation concerning the same or concerning the person examined.

(3) Furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, registered or certified or to be examined, registered or certified.

(4) Impersonate any other person or permit or aid in any manner any other person to impersonate the individual in connection with any examination or registration or application or request to be examined or registered. [1959 c.252 §41]

(Contributions or Services for Political or Religious Purposes)

242.824 Contribution to political or religious funds or performance of political service. No person holding any position subject to civil service is under any obligation to contribute to any political or religious fund or to render any political service

to any person or party. No person shall be removed, reduced in grade or salary or otherwise prejudiced for refusing to do so. No person shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person subject to civil service or promise or threaten to do so for giving, withholding or neglecting to make any contribution of money or services or any other valuable thing for any political, racial or religious purpose. [1959 c.252 §42; 1997 c.359 §1]

PENALTIES

242.990 Penalties. (1) Violation of any of the provisions of the Custodians' Civil Service Law is a misdemeanor.

(2) Willful violation of any of the provisions of ORS 242.720, 242.738, 242.768, 242.772, 242.792, 242.822 and 242.824 is a misdemeanor. [Subsection (2) enacted as 1959 c.252 §45]