

THE PORTSMOUTH POLICE COMMISSION

PURPOSE: Subject to the powers, duties and limitations of Title VII, N.H. Rev. Stat. Ann. 105-C:1 through 105-C:7, and the Portsmouth City Charter, the following establishes the role and authority of the Portsmouth Police Commission. ¹

The role of the Portsmouth Police Commission is not to run the day-to-day operations of the police department. The role of this commission is to provide civilian oversight and ensure:

1. The safety and security of the citizens and guests of Portsmouth;
2. The Portsmouth Police Department operates in an ethical manner;
3. The goals and objectives of the department are accomplished;
4. The department is operating in a manner that is responsible to the taxpayer;
5. The Police Commission, Chief of Police and all Police Department employees are accountable to the citizens of Portsmouth.

AUTHORITY SUPPORTED BY STATUTE AND CITY CHARTER

101. Duties; Powers

The Police Commission shall be the policy making body for the Portsmouth Police Department. It shall be the duty of the police commissioners to appoint such police personnel, including police officers, staff, constables and superior officers, as they deem necessary and to fix such persons' compensation. The commissioners shall make and enforce all rules necessary for the operation of the police force in the manner most beneficial to the public interest. The Commission shall have authority to consider and act upon any complaint and/or employee grievance(s) brought to it through such procedures. ²

The commissioners may at any time discipline or remove police personnel for just cause and after a hearing satisfying the requirements of due process, which cause shall be specified in an order of discipline or removal, except special police officers appointed and designated as such shall serve at the pleasure of the commission and may be removed for other than just cause.

Appeals from such decisions shall be heard pursuant to such grievance procedures as shall be established by the Commissioners or as prescribed in respective collective bargaining agreements. The commission shall assume all administrative responsibilities, which would otherwise be vested in the City Manager under the city charter relating to the administration of the Department. Such powers are to include, but are not limited to, the following:

- A. Determine the number, location and type of facilities and installations subject to final approval of the City Council.
- B. Determine the size of the work force and increase or decrease it's size subject to final approval of the City Council.

102. Prohibition; Police in Office

Any chief of police, police officer, constable, or superior officer in office on the date the commission has been duly established, shall be deemed to have been appointed by the commission, subject to the terms and conditions of his or her original appointment.

103. Compensation

Police commissioners shall serve without compensation except as authorized by the City Council for the purposes of indemnification and may be reimbursed for any expenses actually incurred in performance of their official duties.

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By letter dated August 7, 2015 addressed to Secretary of State William Gardner from Assistant Attorney General Stephen G. LaBonte given as a directive to the City by the Secretary it is written, "When a vacancy occurs on an elected police commission the vacancy is filled by appointment of the municipality's governing body until the next regular municipal election. RSA 105-C:3,(1)".

Said letter indicates the Charter of the City of Portsmouth conflicts with state statute, and the city was directed by Secretary of State Gardner to comply with RSA 105-C:3 (1) when filling a vacancy in the police commission. In 2015, the city acquiesced to this directive and filled the vacancy according to state statute, and not in the manner prescribed by city charter.

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The authority to "fix such persons' compensation" is provided by RSA 105-C:4. It is the City of Portsmouth's position that the authority to fix compensation rests solely with the city council pursuant to the City Charter. This position conflicts with state statute and the binding authority of the New Hampshire Supreme Court. The Police Commission is cognizant there may be a need in the future to have a legal ruling to determine whether this commission operates pursuant to the authority of Title VII Chapter 105-C of the General Laws of the State of New Hampshire or the Portsmouth City Charter.