

No. 86-772 <sup>(3)</sup>

Supreme Court, U.S.  
FILED

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JOSEPH F. SPANIOL, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1987

CITY OF ST. LOUIS,  
*Petitioner,*

vs.

JAMES H. PRAPROTNIK  
*Respondent.*

On Writ of Certiorari to the United States Court of Appeals  
For the Eighth Circuit

**JOINT APPENDIX**

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PETITION FOR CERTIORARI FILED NOVEMBER 13, 1986  
CERTIORARI GRANTED JANUARY 12, 1987

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

DOCKET ENTRIES

Date	N.R.	Proceedings
2/8/83	(1)	COMPLAINT (1 count) fld. 5 summonses issued (20 days). JURY.
2/22/83		SUMMONS RETURNS executed on Charles Kindelberger by serving Joan Spitale, 2/17/83; Deborah Patterson by serving Deborah Gibbs 2/17/83 fld.
2/16/83		SUMMONS RETURNS executed on Henry Jackson by serving Robert Kellen 2/15/83; Frank Hamsher by serving Mary Dusold, recp, 2/15/83; Vincent Schoemel by serving Mary Dusoid, recpt, 2/15/83 fld.
3/16/83	(2)	ANSWER fld. by defts City of St. Louis, Hamsher, Kindelberger and Patterson. Leave to file granted. WLH.
3/16/83		ENTRY OF APPEARANCE behalf of Henry Jackson for limited purpose of denying validity of service and for filing motion to set aside purported service of process fld. by counsel Judith A. Ronzio. So Ordered. WLH.
3/16/83	(3)	Special Entry of Appearance by deft. Jackson for limited purposes of denying validity of service of process and moving to set aside purported service of process; AFFIDAVIT of Robert Killen fld. by deft. Jackson. (Ref. [8/22/83])
4/5/83		— Special entry of appearance by deft., Jackson for limited purposes of denying validity

- of service of process etc., which was fld by deft Jackson 3/16/83 & entire file submitted to Judge Hungate
- 6/8/83 (4) ORDER (WLH) fld. Deft. Jackson's motion set aside service of process granted; plttf granted 45 days from date of order effect proper service on deft. Jackson or suffer dismissal without prejudice as to deft. Jackson. cc: attys.
- 8/10/83 DEPOSITION of Frank Hamsher, fld. on behalf of plttf.
- 8/12/83 Plttf. having not complies with Court's order entered 6/8/83 entire file submitted to Judge Hungate.
- 8/22/83 (5) ORDER (WLH) fld. Plttf's complaint against deft. Henry Jackson in above-entitled cause dismissed without prejudice failure obtain timely service of process in accordance with court order 6/8/83. cc: attys.
- 9/1/83 ORDER (WLH) fld. Parties jointly/individually file status report by 10/3/83. cc: attys.
- 9/1/8 ORDER OF COURT relating to trial (jury 12/12/83 9:30AM) (WLH) fld. cc: attys. (Discovery completed by 11/14/83)
- 10/6/83 LETTER-REQUEST, 10/6/83, for extension thru 10/14/83 file status report fld. by deft. So Ordered. WLH. cc: attys.
- 10/17/83 LETTER, 10/14/83, to Judge Hungate re status fld. by parties. Submitted Judge Hungate.
- 10/19/83 (6) REQUEST to produce documents to defts fld. by plttf.

- 12/2/83 EXTENSION until 12/5/83 file pretrial material fld. by deft. Without objection, so ordered, WLH.
- 12/2/83 DEPOSITION — Robert A. Killen, Jr., 10/31/83 fld. by plfff.
- 12/5/83 PRETRIAL MATERIAL fld. by plfff (agreed statement of facts, witness list, exhibit list, depo lines, proposed instructions trial memorandum).
- 12/5/83 (7) MOTION for summary judgment of alternatively for judgment on the pleadings; MEMORANDUM in support w/exhibits A,B,C; AFFIDAVIT of William C. Duffe fld. by defts. Ref. \_\_\_\_\_
- 12/5/83 PRETRIAL MATERIAL fld. by defts. (stipulation of facts, witness list, exhibit list, adoption of memo in support of defts' motion for summary judgment as memorandum of law, proposed jury instructions).
- 12/12/83 ORDER (WLH) fld. Cause *reset jury docket commencing 3/12/84, 9:30AM* cc: attys.
- 12/13/83 REQUEST for continuance to be reset by court; plfff granted thru 12/23/83 respond defts motion for summary judgment fld. by plfff. Leave granted, WLH. cc: attys.
- 12/12/83 CAUSE CALLED; counsel for plfff advised court his client is ill and not ready this day; defts announce ready; parties to check with court at 4PM this day as to when case might be set for trial.
- 12/23/83 EXTENSION OF TIME — Plfff. granted up to and including Jan. 6, 1984 within which to reply to deft.'s Motion for Summary Junt. WITH-

- OUT OBJECTION, LEAVE GRANTED,  
(WLH), memo fld.
- 1/6/84 (8) RESPONSE to defts motion for summary judgment w/attachments fld. by plfff.
- 1/9/84 AFFIDAVIT of James Praprotnik (for attachment to response to defts motion for summary judgment) fld.
- 1/24/84 ORDER (WLH) fld. Defts letter-request for continuance granted and cause reset jury trial *docket commencing 4/9/84, 9:30AM.* cc: attys.
- 2/13/84 DEPOSITION -- Harold Brewster, 12/9/83 fld. by plfff.
- 3/19/84 (9) SUPPLEMENTAL INTERROGATORIOS (4 — Total 4) to deft. City of St. Louis fld. by plfff. Leave granted, WLH.
- 3/19/84 (10) *AMENDED COMPLAINT* (1 count) fld. Leave to file granted, WLH.
- 3/19/84 ORDER (WLH) fld. Cause reset *jury docket commencing 6/11/84, 9:30AM.* cc: attys.
- 6/4/84 (11) ANSWERS to plfff's supplemental interrogatories fld. by deft. City of St. Louis.
- 6/4/84 SUPPLEMENT to Pre-Trial compliance, fld., by plfff. with attachments.
- 6/5/84 (12) FIRST AMENDED ANSWER, fld. by defts. (Leave to file requested on a Memo — SO ORDERED, WLH)
- 6/5/84 SUPPLEMENT to Pre-Trial Compliance, fld. by defts. (Leave to file request on a Memo — SO ORDERED, WLH)

- 6/6/84 (13) ANSWER to Amended Complaint, fld. by defts. (SO ORDERED, WLH)
- 6/6/84 MEMORANDUM — defts move that the Court consider defts' motion for summary judgment, filed heretofore in response to plttf's complaint, as being in response to plttf's amended complaint, and applicable thereto, fld.
- /8/84 (14) ORDER & MEMORANDUM — HEREBY ORDERED that defts' motion for summary judgment, or alternatively for judgment on the pleadings, be and the same is granted as to deft. City of St. Louis and as to all plttf's claims under 42 U.S.C. §§ 1985 and 1986, and denied as to the remainder. (WLH) (cc: attys.)
- /12/84 MEMORANDUM — Cause called & parties announce ready for trial — parties advised to check back with the Court after 4:00 p.m. this day.
- /14/84 ORDER (WLH) Ordered that this cause be and is removed from the 6/11/84 docket and reset for a jury trial on the docket commencing *Tuesday, October 9, 1984, at 9:30 a.m.* cc: attys
- 8/9/84 (15) MOTION to add additional defts., fld. by plttf. (ref: 8/17/84)
- 8/17/84 SEE ENDORSEMENT ON Pleading #15. (DENIED, WLH) cc:attys
- 8/17/84 (16) SUGGESTIONS in opposition to plttf's motion to add additional defts., fld. by deft.
- 8/18/84 DEPOSITION of James H. Praprotnik on 7/7/83, fld. by defts.
- 8/27/84 (17) MOTION to amend interlocutory order of 8/17/84 and MOTION to amend interlocutory



order of 6/8/84 with Memorandum in support of both motions fld. by plttf. (REF: 9-6-84)

- 8/27/84 NOTICE OF Deposition of Thomas R. Nash, William Lynn Edwards, John J. Temporiti, William C. Duffe and Honorable Vincent Schoemehl on 9/6/84, fld. by plttf.
- 9/6/84 (18) ORDER (WLH) ORDERED that plttf's motion to amend interlocutory order of 8/17/84 be and is DENIED. FURTHER ORDERED that plttf's motion to amend interlocutory order of 6/8/84 be and is DENIED. cc: attys.
- 9/14/84 (19) MOTION for reconsideration of the Court's order of 6/8/84 granting motion for summary judgment on behalf of the City of St. Louis, Affidavit of James Praprotnik, Affidavit of Charles R. Oldham with Memorandum in support, fld. by plttf. (REF: 10/5/84)
- 9/20/84 (20) MOTION to compel answers to questions propounded in depositions of Vincent Schoemehl, John Temporiti and Thomas R. Nash, fld. by plttf. (Memorandum states that motion set for hearing on Friday, September 21st, 1984, by consent.) (Ref: 9/27/84)
- 9/20/84 QUESTIONS for certification — Depositions of Vincent Schoemehl, John J. Temporiti and Thomas R. Nash on 9/13/84, fld.
- 9/25/84 Motion for reconsideration of the Court's order of 6/8/84 granting motion for summary judgment on behalf of the City of St. Louis, etc., which was fld. by plttf 9/14/84 & entire file submitted to Judge Hungate.
- 9/27/84 SEE ENDORSEMENT on Pleading #20, Motion to Compel answers to questions propound-

- ed in depositions of Vincent Schoemehl, John Temporiti and Thomas R. Nash. (DENIED, WLH) cc: attys
- 9/27/84 MOTIONS for full and partial summary judgment, or in the alternative for judgment on the pleadings with Memorandum of Law in support, fld. by defts. Hamsher, Kindleberger and Patterson. (ref: 10-9-84)
- 9/28/84 SUPPLEMENTAL Compliance with order of court relating to trial, fld. by plttf. (Revised list of witnesses and supplement to pretrial submission)
- 9/28/84 MEMORANDUM — Defts. amend their pretrial compliance by the addition of the attached instruction to Defts' proposed jury instructions, fld.
- 10/4/84 (22) MEMORANDUM in response to defts' motion for full or partial summary judgment or for judgment on the pleadings, fld. by plttf.
- 10/5/84 (23) ORDER (WLH) ORDERED that plttf's motion for reconsideration be and is GRANTED, and the Court's 6/8/84, order is vacated insofar as it grants deft. City's motion for summary judgment or judgment on the pleadings. FURTHER ORDERED that deft. City's motion for summary judgment or judgment on the pleadings be and is DENIED. cc: attys
- 10/5/84 DEPOSITION of James H. Praprotnik on 10/2/84, fld. on behalf of deft City of St. Louis,
- 10/9/84 (24) ORDER (WLH) ORDERED that defts' motion for summary judgment or for judgment on the pleadings be and is DENIED. cc: attys

- 10/9/84 MOTION for removal from trial docket, fld. by defts. (GRANTED, WLH) cc: attys
- 10/9/84 CAUSE CALLED parties announce ready. Cause reset to Tuesday, November 13, 1984, 9:30 am.
- 10/19/84 DEPOSITION of John J. Temporiti on 9/13/84, fld. on behalf of plttf.
- 10/19/84 DEPOSITION of Thomas R. Nash on 9/13/84, fld. on behalf of plttf.
- 10/19/84 DEPOSITION of William Lynn Edwards on 9/17/84, fld. on behalf of plttf.
- 10/19/84 DEPOSITION of William C. Duffe on 9/13/84, fld. on behalf of plttf.
- 11/2/84 MEMORANDUM — Defts. and plttfs granted an extension of time to November 5, 1984, to file supplemental compliance with pre-trial order. (WITHOUT OBJECTION, SO ORDERED, WLH) cc: attys.
- 11/5/84 SUPPLEMENTAL COMPLIANCE with pre-trial order, fld. by defts. (Defts' list of exhibits; Proposed jury instructions)
- 11/13/84 OBJECTIONS to certain exhibits, fld. by defts.
- 11/13/84 JURY TRIAL, (1st DAY), Parties present for jury trial, Plttf's evidence commenced but not concluded. Proceedings postponed until 11/14/84.
- 11/14/84 JURY TRIAL (2nd Day) Parties present, Plttf's evidence resumed but not concluded. Proceedings postponed until 11/15/84.
- 11/15/84 JURY TRIAL (3rd day), Parties present, Oral Motion of deft for directed verdict at close of

pltff's case mad, argued and denied. Deft's evidence commenced but not concluded. Proceedings postponed until 11/16/84.

- 11/16/84 JURY TRIAL (4th day) Deft's evidence concluded. Pltff's evidence in rebuttal commenced and concluded. Arguments of counsel made. Jury charged and retires to consider verdict. Jury unable its verdict by is excused to 11/19 to resume deliberations.
- 11/19/84 JURY TRIAL (5th day), Parties and jury present. Jury again retires to consider its verdict. Verdict returned.
- 11/19/84 VERDICT, fld.
- 11/19/84 JUDGMENT, fld. IT IS ORDERED and ADJUDGED that in accordance with jury's verdict the pltff recover of the deft. City of St. Louis, on Pltff's claim arising out of the issues of right to free speech and to petition for redress of grievances and for loss of his job by reason of his layoff for the pretextual reason of lack of funds the sum of \$30,000.00 IT IS FURTHER ORDERED that pltff. take nothing by his cause of action against defts. F. Hamsher, C. Kindelberger and D. Patterson, that the action be dismissed on the merits, and that defts recover of the pltff their costs of action.
- 11/29/84 MOTION for Judgment notwithstanding the verdict or in the alternative for a new trial, with Memorandum in support, fld. by deft. City of St. Louis, (ref: 12/27/84)
- 11/30/84 MOTION for attorney fees, fld. by pltff. (ref: 12/27/84)

- 12/6/84 BILL OF COSTS in the amount of \$1,487.80, fld. by plttf.
- 12/11/84 MEMORANDUM in opposition of deft. City of St. Louis' motion for judgment notwithstanding the verdict or in the alternative, for a new trial, fld. by plttf.
- 12/13/84 Motion for judgment notwithstanding the verdict or in the alternative for a new trial etc., which was fld. by deft. City of St. Louis, 11/29/84, memo in opposition fld. by plttf 12/11/84 & entire file submitted to Judge Hungate.
- 12/20/84 Motion for attorney fees which was fld. by plttf 11/30/84 & entire file submitted to Judge Hungate.
- 12/27/84 ORDER (WLH), fld. ORDERED that deft. City of St. Louis shall respond within 10 days to plttf's motion for atty's fees. FURTHER ORDERED that deft City of St. Louis' motion for judgment notwithstanding the verdict or for new trial be and the same is denied. cc: attys.
- 1/2/85 BILL OF COSTS in amount of \$1487.80 fld. by plttf., TAXED. SUGGESTIONS in opposition to plttf's motion for atty fees, fld. by defts.
- 1/10/85 Pursuant to Court order fld. 12/27/84, suggestions in oppos. to plttf's motion for atty fees which was fld. by defts. 1/7/85 & entire file submitted to Judge Hungate.
- 1/24/85 NOTICE OF APPEAL, fld. by deft. Fee Paid
- 1/25/85 DELIVERED to USCA — 2 Cert. copies of Docket entries, Notice of appeal, and Order of 12/27/84, cc: attys.

- 2/8/85 ORDER (WLH) ORDERED that plttf's motion for atty's fees be and is GRANTED, and plttf is awarded \$10,000.00 in att's fees from deft. City of St. Louis. cc: attys
- 2/8/85 RESPONSE to deft's suggestions in opposition to plttf's motion for atty fees, fld. by plttf. (LEAVE GRANTED, WLH)
- 2/11/85 DESIGNATION of record, fld. by deft-appellant.
- 2/20/85 TRANSCRIPT OF TRIAL dated 11/13/85, fld. by Pat Baeske, Court Reporter. (Volumes 1, 2, and 4, fld)
- 2/20/85 NOTICE OF APPEAL of Order entered 2/8/85, fld. by plttf. Fee Paid.
- 2/21/85 DELIVERED to USCA 8 — 2 certified copies of Notice of Appeal and docket entries. Also delivered 2 copies of order dated 2/8/85 and Docket fee payment notification form. cc: attys (ref: \_\_\_\_\_)
- 2/21/85 TRANSCRIPT of Trial dated 11/15/84 (volume #3), fld. by Pat Baeske, Court Reporter.
- 2/22/85 NOTICE OF CROSS-APPEAL of order entered 2/8/85, fld. by deft. FEE NOT PAID.
- 2/25/85 DELIVERED TO USCA8 — 2 certified copies of Notice of Cross-Appeal and docket entries. Also delivered 2 copies of order dated 2/8/85 and docket fee payment notification form. cc: attys (ref: \_\_\_\_\_)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287-C (4)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendant.

**AMENDED COMPLAINT**

Comes now the plaintiff, leave of Court first having been had and obtained and for his amended complaint states as follows:

1. This action arises under the First, Fifth and Fourteenth Amendments of the Constitution of the United States and Sections 1983, 1985, 1986 and 1988 of Title 42 of the United States Code; it is a civil rights suit for damages, attorney fees, injunctive and other relief arising out of the deprivation of the Constitutional Civil Rights of plaintiff caused by defendants acting individually and in their official capacities, and in conspiracy with each other and others. The matter in controversy exceeds the sum of the value of TEN THOUSAND DOLLARS (\$10,000.00) exclusive of interest and costs. Jurisdiction is founded on the foregoing Sections of Title 42 United States Code and Sections 1331 and 1343, Title 28 of the United States Code.

**PARTIES**

**Plaintiff**

2. Plaintiff, James Praprotnik is a citizen of the United States, a resident of the City of St. Louis, Missouri, and is an employee of the classified service of the City of St. Louis holding permanent status.

### **Defendants**

3. Defendant City of St. Louis is a political subdivision of the State of Missouri, a chartered city, a municipal corporation and exists by virtue of State law and has the capacity to sue or be sued.

4. Defendant Deborah Patterson is an employee of the City of St. Louis and is presently either Director or Acting Director of the Community Development Agency, an agency of the City of St. Louis.

5. Defendant Frank Hamsher is an employee of the City of St. Louis holding the position as Administrative Aide to the Mayor of the City of St. Louis and at some of the times mentioned herein was also Director of the Community Development Agency hereafter called CDA, an agency of the City of St. Louis.

6. Defendant Charles Kindelberger is an employee of the City of St. Louis and is the Director of Planning for CDA.

7. Defendants Hamsher and Kindelberger are sued in both their individual and official capacities and plaintiff further alleges that their actions as described herein were wilful and intentional.

8. All other defendants are sued in their official capacities only.

### **ALLEGATIONS OF FACTS**

9. That plaintiff, James Praprotnik, was originally employed by the City of St. Louis, September, 1968, as a City Planner II in the Urban Design Section of the City Plan Commission and after other promotions was on August 3rd, 1984, promoted to the Management and Supervisory position of City Planner IV in CDA with a pay grade of 59-ME.



10. On April 28, 1980, plaintiff was suspended for period of fifteen (15) working days allegedly because he failed to follow the policy of CDA regarding secondary employment.

11. Plaintiff appealed the disciplinary action taken against him to the Civil Service Commission of the City of St. Louis and on such appeal was, on October 31, 1980, reinstated to his position with back pay and was to be given a written reprimand for his failure to secure a clear understanding concerning the Agency's policy on secondary employment.

12. On or about January 13, 1981, he was reprimanded by his appointing authority for, “. . . your having entered into consulting arrangements over the last several years without proper authority.”, which reprimand was contrary to the directive and thrust of the decision of the Civil Service Commission.

13. Thereafter, plaintiff was required to make special reports on secondary employment which were not required of other personnel who were professional architects.

14. On or about July, 1981, duties normally handled by the plaintiff and his section were transferred to other CDA employees with less experience, training and qualifications and plaintiff's staff reduced from nine persons to three persons. Plaintiff made a verbal and written appeal to his supervisors which appeals were never acknowledged nor was any response given.

15. On or about July, 1981, plaintiff was moved from the payroll budgeted from City funds to a payroll budgeted from Federal Block Grant Funds.

16. On or about October 1, 1981, plaintiff was given his management performance evaluation and plaintiff was rated adequate or inadequate in all traits. Prior to this particular rating and prior to his appeal to the Civil Service Commission, a majority of plaintiff's General Evaluations were Superior ratings.

17. Plaintiff had never received an "A" (adequate) rating until after he filed the appeal to the Civil Service Commission.

18. Plaintiff filed an appeal to the Civil Service Commission from such rating.

19. In April, 1982, plaintiff was head of the Urban Design Section of CDA and on April 5, 1982, plaintiff was transferred without his consent from his Management and Supervisory position as City Planning Manager-Head of Design Review/Zoning with CDA to a position with the Commission on Heritage and Urban Design of the City of St. Louis.

20. Said transfer was in violation of the Civil Service Department of Personnel Rules and Regulations relating to layoffs. At the time of the transfer, defendants knew of an impending layoff of personnel from CDA and since Mr. Praprotnik was the most senior employee in his classification, he would have had to be retained. The transfer was done for the specific purposes of avoiding the requirements of the layoff procedure and to preserve positions for other employees of CDA having less seniority and professional experience.

21. The Commissioner of Heritage & Urban Design had an opening for a Historic Preservation Planner I or II, which was a junior staff position to existing staff and plaintiff was transferred to such job, a position for which plaintiff was grossly over-qualified.

22. After plaintiff was transferred to the position in the Commission on Heritage and Urban Design, plaintiff was assigned duties which were primarily clerical in nature, contained no supervisory responsibilities and were at a level of performance greatly below those required in his classification as a City Planner Manager in Pay Grade 59-ME.

23. Plaintiff expressed his concern to his new appointing authority, Henry Jackson, about his duties and requested that he be assigned duties consistent with his job classification

because he felt there would be an effort to reclassify him to a lower pay grade position as a result of his being assigned duties at a lower grade, however, no change in assignment was made.

24. Henry Jackson, plaintiff's new appointing authority did not establish or modify plaintiff's existing management goals.

25. Civil Service Rules and Regulations of the Department of Personnel required that management goals be established for Civil Service Employees at the management level so that their job performance can be measured against established goals.

26. On or about November 17, 1981, plaintiff received a rating of Inadequate from defendant Henry Jackson containing a recommendation that his salary be decreased by one step (5%) and the following statement, ". . . Due to the fact that Mr. Praprotnik is no longer serving in the capacity of "City Planning Manager", I hereby recommend an immediate reclassification of his position."

27. Plaintiff's salary was reduced one step or 5% and plaintiff filed an appeal to the Civil Service Commission.

28. Plaintiff was laid off on December 30, 1983 allegedly for lack of funds, however, such reason was pretextual and not the real reason for layoff. The reason plaintiff was laid off was the continuing efforts of defendants to remove him from his position and to retain others who were more favored.

29. At all times mentioned herein, plaintiff had a property interest in his classified position as a City Planning Manager IV with the City of St. Louis and in his appeal rights to the Civil Service Commission.

30. Defendants and each of them acting under color of statute, ordinance, regulation, custom or usage in violation of 42 USC 1983 have caused plaintiff to be subjected to the deprivation of certain rights, privileges, and immunities secured by the Constitution and laws of the United States by depriving

plaintiff of equal protection of the laws, his right to freedom of speech, his property interest in his classified position and his property interest in his right of appeal to the Civil Service Commission in violation of the First, Fifth and Fourteenth Amendments of the United States Constitution by one or more of the following acts of retaliation against plaintiff because of his exercise of his right of appeal to the Civil Service Commission and other constitutional rights, to-wit:

a) Giving plaintiff a written reprimand contrary to the thrust of the decision of the Civil Service Commission;

b) Requiring plaintiff to make special secondary employment reports;

c) Reducing plaintiff's staff from nine to three persons and transferring work formerly performed by his section to others with less experience and training;

d) Moving plaintiff from a payroll budgeted with City funds to a payroll budgeted from Federal funds;

e) Giving plaintiff a low service rating on or about October 1, 1981;

f) Transferring plaintiff from his management and supervisory position with CDA with a pay grade of 59-ME to a non-management and non-supervisory junior staff position with the Commission on Heritage and Urban Design;

g) Refusing to assign plaintiff duties consistent with his job classification;

h) Failing to establish goals against which his performance could be measured;

i) Giving plaintiff an inadequate rating and reducing his pay 5%;

j) Arranging the potential demotion of plaintiff from a City Planning Manager IV to Historic Preservation Planner I or II;

k) Recommending that plaintiff's position be reclassified to a lower grade;

l) Transferring plaintiff from CDA to the Heritage & Urban Design Commission in order to preserve jobs at CDA for less senior employees in the same classification all in violation of the layoff procedures of the City of St. Louis;

m) Placing a document in plaintiff's personnel file or files to the effect he was attempting to sabotage CDA;

n) Laying plaintiff off from his position on December 30, 1984, for the pretextual reason of lack of funds, and in furtherance of the conspiracy to remove plaintiff from his Civil Service position.

31. That defendants conspired with each other and others unknown to the plaintiff to interfere with plaintiff's civil rights and to deprive him of rights and privileges guaranteed by the First, Fifth and Fourteenth Amendments and 42 USC 1985 by their acts as alleged herein.

32. That defendants and each of them although they knew of the actions of others to deprive plaintiff of privileges and immunities guaranteed by the United States Constitution failed and neglected to prevent such actions all in violation of 43 USC 1986.

33. Plaintiff states that by reason of the illegal and wrongful acts of defendants and each of them he has lost pay, earnings and benefits of a reasonable value of TWENTY THOUSAND DOLLARS (\$20,000.00), that by reason of his layoff he will lose pay earnings and benefits in the future, that he has been damaged in his professional reputation as a Registered Architect and City Planning Manager, that he and his family have been subjected to a great deal of stress and strain all as a result of the willful and intentional acts of the defendant.

WHEREFORE, plaintiff makes demand for trial by jury and prays judgment against the defendants for actual damages in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) and for punitive damages in the sum of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) against the individual defendants Frank Hamsher and Charles Kindelberger.

/s/ CHARLES R. OLDHAM 13616  
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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287-C (4)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**DEFENDANTS' ANSWER TO AMENDED COMPLAINT**

(Filed June 6, 1984)

Come now Defendants and for their answer to Plaintiff's Amended Complaint state as follows:

1. Defendants admit the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 15, 17, 18, 19, 24, 25, 26, and 27 of plaintiff's amended complaint.
2. Defendants deny the allegations contained in paragraphs 13, 14, 16, 20, 21, 28, 29, 30 (a) through (n), 31, 32, and 33 of plaintiff's amended complaint.
3. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations contained and set forth in paragraphs 22 and 23 of plaintiff's petition and, therefore, denies the same.
4. With regard to paragraph 7 of plaintiff's amended complaint, defendants admit that defendants Hamsher and Kindelberger are sued in both their individual and official capacities but deny that their actions were wilful and intentional.

5. With regard to paragraph 12 of plaintiff's complaint, defendants deny that the reprimand given to plaintiff, as set forth in said paragraph 12 was contrary to the directive and thrust of the decision of the Civil Service Commission. Defendants admit the remaining allegations of said paragraph 12.

WHEREFORE, having fully answered, defendants pray to be hence dismissed together with their costs.

**AFFIRMATIVE DEFENSE**

For their first affirmative defense, defendants Hamsher, Kindelberger and Patterson state that at all times pertinent hereto they, and each of them, acted in good faith and with a reasonable belief in the validity of their actions, as well as in the validity of the Charter provisions, ordinances, rules, regulations and guidelines pursuant to which their actions were taken.

JAMES J. WILSON  
City Counselor #18356

/s/ Judith A. Ronzio  
Associate City Counselor  
Attorney for Defendants  
314 City Hall  
St. Louis, MO 63103  
622-3361



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287 C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**MOTION TO ADD ADDITIONAL PARTIES**

Comes now plaintiff, James Praprotnik, and moves this Court to permit him to add as additional parties, (1) the Honorable Vincent Schoemehl, Mayor of the City of St. Louis, (2) Mr. Thomas Nash, Director of Public Safety, (3) Mr. William Lynn Edwards, Administrative Aide to the Mayor, and (4) Mr. John Temporiti, Administrative Aide to the Mayor.

Plaintiff requests permission to add these parties under Rule 19 of the Civil Rules of Civil Procedures because in their absence complete relief cannot be accorded among those already parties. Specifically, said individuals are necessary if plaintiff is to avoid future litigation. In this particular case only the actions of Kindleberger, Patterson and Hamsher may be considered.

/s/ CHARLES R. OLDHAM 13616  
ANNE V. MALONEY 29272  
Attorneys for Plaintiff  
317 N. 11th Street, Suite 1210  
St. Louis, Missouri 63101  
Phone: 231-0464

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287 C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**MOTION TO ADD ADDITIONAL DEFENDANTS**

Comes now the plaintiff and for his motion to add additional defendants states as follows:

1. This action originally was instituted against certain individual defendants and the City of St. Louis, however the Court has dismissed the cause of action against the City of St. Louis and left only certain individual defendants. Since other individuals were actively involved in their capacity as City employees and as individuals in their actions against the plaintiff, it now becomes necessary for plaintiff to amend his petition and to include certain additional defendants to cover all parties who undertook any adverse action against plaintiff. If plaintiff is not permitted to include these individuals, the individual defendants may contend that the other defendants are the guilty parties. Because of the dismissal of the City, the additional named defendants are essential and necessary parties.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287 C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**MOTION TO AMEND INTERLOCUTORY ORDER  
OF AUGUST 17TH, 1984**

Comes now James Praprotnik, plaintiff herein and moves this Court pursuant to 28 USCA, Section 1292(b) and Rule 5(a) of the Federal Rules of Appellate Procedure, for an order amending its order of August 17th, 1984, wherein the Court denied plaintiff's motion to add additional parties defendant and to include in said order a statement that:

1. Said order involves a controlling question of law as to which there are substantial grounds for difference of opinions, and
2. An immediate appeal from an order may materially advance the ultimate determination of this litigation.
3. This motion is based upon the files and records herein of plaintiff's brief filed herewith.

Accordingly, plaintiff may have the right to file another lawsuit against Nash, Schoemehl, Temporiti and Lynn Edwards. Since their presence is necessary to completely resolve all issues, these defendants should be named as additional necessary parties.

Plaintiff also moves that his motion to add additional parties be allowed under Rule 20 of the Federal Rules of Civil Procedure relating to permissive joinder. It is clear from the allegations set forth in the amended complaint and in the proposed second amended complaint that the acts arise out of the same transactions or series of transactions and involve common questions of law and fact all as set forth in the attached amended complaint. Plaintiff attaches as a part of this motion his proposed Second Amended Complaint.

Plaintiff states that there would be no prejudice to the defendants by including them as additional named defendants at this stage of the proceedings and that the granting of such motion would promote the interest of justice.

/s/ CHARLES R. OLDHAM 13616  
ANNE V. MALONEY 29272  
Attorneys for Plaintiff  
317 N. 11th Street, Suite 1210  
St. Louis, Missouri 63101  
Phone: 231-0464

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UNITED STATES COURT OF APPEALS  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287 C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**MEMORANDUM IN SUPPORT OF MOTION TO AMEND  
INTERLOCUTORY ORDER OF JUNE 8, 1984 WHEREIN  
THE COURT DISMISSED THE CITY AS A NAMED  
DEFENDANT AND ITS ORDER OF AUGUST 17, 1984  
DENYING PLAINTIFF LEAVE TO ADD ADDITIONAL  
PARTIES DEFENDANT**

This is a suit brought by plaintiff against the City of St. Louis and several individual defendants wherein plaintiff alleges the defendants violated certain of his constitutional rights under color of law, custom or usage.

Plaintiff's original complaint was filed in the fall of 1983, and on December 5th, 1983, defendants filed their motion for summary judgment or in the alternative for judgment on the pleadings. Subsequently, on March 19th, 1984 plaintiff was granted leave to amend his complaint. Next, on June 6th, 1984, the City was granted leave to file its amended answer and at the same time requested that their motion for summary judgment or in the alternative for judgment on the pleadings be applied to the amended complaint of March 19th. The case was set for trial June 11th, 1984. Thereafter on June 8th and prior to the time that plaintiff would have had an opportunity to respond to the motion for summary judgment or alternatively for judgment on the pleadings as applied to the amended complaint, the

Court entered its ruling granting the motion for summary judgment or for judgment on the pleadings for the City of St. Louis. On June 14th, the case was removed from the trial docket and reset for hearing on October 9th. On August 8th, plaintiff filed his motion for leave to add additional defendants contending that they were necessary because of the dismissal of the City as a named defendant. The City filed their objections on August 17th and the Court denied plaintiff's motion to add additional named defendants on the same day.

In his amended complaint, plaintiff alleged the defendants (City of St. Louis, Hamsher, Kindelberger and Patterson) under color of law, custom, practice, etc., had conspired with each other to deprive him of a constitutional right by reprimanding him, giving him low ratings, transferring him from a management-supervisory position to a primarily clerical position and ultimately laid him off in furtherance of their scheme or policy to remove him from his position because of an appeal to the Civil Service Commission and to retain others more favored.

Hamsher was the former Director of CDA and is presently an Administrative Aide to the Mayor, Defendant Debra Patterson is the present Director of CDA, Defendant Charles Kindelberger is Director of Planning at CDA and the number two man in the agency. Depositions of plaintiff, Brewster and Killen reveal that other high city government officials were involved in the scheme. Bill Duffe, Director of Personnel directed the transfer, Thomas Nash, Director of Public Safety laid plaintiff off. The actions against plaintiff began in January of 1981 when he was reprimanded by Donald Spaid, former Director of CDA and continued for almost four years until December 31, 1983 when plaintiff was laid off.

## ARGUMENT

### **THE COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT OR ALTERNATIVELY FOR JUDGMENT ON THE PLEADINGS FOR THE FOLLOWING REASON:**

1. The Court order was entered before plaintiff was given an opportunity to respond to the motion for summary judgment or judgment on the pleadings filed in behalf of the City of St. Louis.

The local rules provide that a party shall have five (5) days in which to respond to motions. In this situation, plaintiff was notified in open court of the City's desire to have their original motion to be considered as refiled against the amended complaint on June 6th. On June 8th the Court issued its order granting the City's motion to dismiss as to the City of St. Louis. It is the contention of plaintiff that the Court was premature and should have given plaintiff an opportunity to respond to the City's motion for summary judgment or to file an amended pleading.

2. There is a substantial difference of opinion as evidenced by recent decisions of the Eighth Circuit as to whether or not summary judgment and or judgment on pleadings is appropriate where a plaintiff has alleged that high governmental officials have engaged in various acts over a long period of time to deprive such a plaintiff of protected constitutional rights.

In this case, plaintiff alleged a series of continuing acts covering a period from January, 1981 to December 31, 1983 by high government officials alleging that they had engaged in certain acts to punish him for his appeal to the Civil Service Commission and to remove him from his job and retain others more favored and thereby deprive him of his property interest in his job, all in violation of his Constitutional rights.

One of the first cases to discuss responsibilities of a municipality for actions of officials was *Jennings v. Patterson*, 488 F.2d 436 (5th Cir. 1974).

In this case the Court held that under its prior understanding of the law the actions of City officials in failing to dismantle a fence constituted action under "color of law" sufficient to create liability for the City, however, under the ruling in *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L. Ed. 2d 492 (1961) cites could not be held responsible under Section 1983. The allegations held to be sufficient alleged, plaintiffs were denied access to a public street by a barricade erected by certain private individuals and the City of Dadeville, Alabama and its governing officers failed to remove the barricade.

*Monroe v. Pape*, supra, was overruled by *Monnell v. New York City Department of Social Service*, 436 U.S. 658, 56 L.Ed.2d 611, 98 Sup. Ct. 2018 (1978). In this case, the Court held that Section 1983 imposed liability on a government which under color of some official policy violated the constitutional rights of an individual. *Monnell* specifically held that the policy need not receive formal approval through the governmental official decision making channels. It pointed out that although not authorized by written law that certain practices by high officials could well constitute a custom or usage with the force of law.

The question then is under what circumstances do actions of high officials of the City of St. Louis create liability for the City itself.

In *Owens v. Haas*, 601 F.2d 1242, 1979, 2nd Cir., a federal prisoner who was housed in the County Jail under contract between the County and the United States was beaten and severally injured. The prisoner filed suit alleging a deliberate indifference by the County to plaintiff's constitutional rights and the failure to train its employees. The District Court granted a motion for summary judgment and on appeal the Second Circuit reversed. The Court stated at page 1246:



While some casual link must be made between the county's failure to train and the violation of constitutional rights, a single brutal incident such as this may be sufficient to suggest that link.

See also *Leite v. City of Providence*, 463 F.Supp. 585, 590-91.

In the case of *Quinn v. Syracuse Model Neighborhood Corporation*, 613 F.2d 438 (1980), the plaintiff alleged that the Mayor of the City of Syracuse had undertaken a campaign to stigmatize his good name by alleging that he had taken money. The court stated at page 488:

“...But, although the Supreme Court in *Monnell* declared that a municipality could not be held liable on “on a *respondeat superior* theory” id at 691, 98 Sup. Ct. 2018, it explicitly recognized that a “government’s policy or custom” may be promulgated either “by its law makers or by those whose edicts or acts may fairly be said to represent official policy.”

In the *Quinn* case, the plaintiff alleged that the defendants acting in concert, labored to create a public impression that he was criminally responsible for the missing funds and that this caused him to suffer great damage to his reputation, his standing in the community, etc.

The court held that if the plaintiff could prove that the Mayor directed a campaign to stigmatize him, he would state a claim for municipal liability under 42 U.S.C. 1983.

The Eighth Circuit has also had an opportunity to consider what acts would create municipal liability in the recent case of *Westborough Mall v. City of Cape Girardeau, Mo.*, 693 F.2d 733 (1982). The courts held that summary judgment is justified only when, by viewing facts and inferences which may be derived therefrom in light most favorable to the nonmoving party, the court is convinced that there is no evidence to sustain a recovery under any discernable circumstances.

In this case, the plaintiffs contended the City acted illegally to deprive them of their zoning rights without due process of law. The District Court granted a summary judgment against the City primarily, because in its view, no official action was taken by the City with respect to the alleged reversion of plaintiff's zoning permit. On appeal, the City argued that no City action was taken because the city managers actions concerning the reversion were merely an expression of his own opinion and did not result in any change in the status of plaintiff's zoning. The court held that in the context of a motion for summary judgment this contention could not be accepted. The court stated at page 741:

...the actions by City officials in this case were not merely isolated incidents, (citations omitted) but rather may have represented official policy of the City concerning the status of plaintiff's zoning... We find that the plaintiffs have presented sufficient evidence that the reversion of their zoning "was caused by the official conduct of...those whose acts may fairly be said to represent official policy, *Owens v. City of Independence*, 589 F.2d 335, 337 (8th Cir. 1978).

The Eighth Circuit also considered a similar problem in the case of *Sanders v. St. Louis County*, 724 F.2d 665 (1983). In this case, the court held that a warden's denying an inmate's request for transfer was insufficient to establish liability of the County. In this case, two low ranking county employees told a prisoner that they were not obligated to provide medical treatment for "writ writers". The court held these comments by two low ranking county employees were insufficient to establish a pattern from which a custom or policy could be inferred.

In the instant case, we have a custom and practice by a number of city official covering a period of almost four years during which plaintiff was subjected to a number of acts as alleged in Paragraph 30 of his complaint. High government of-

officials were involved, these being Donald Spaid, former Director of CDA; Frank Hamsher, former Director of CDA, and presently Administrative Aide to the Mayor; Deborah Patterson, Director of CDA; Arthur Jackson, former Commissioner of the Division of Heritage & Urban Design; Mr. Killen, Acting Commissioner of the Division of Heritage & Urban Design; and Tom Nash, Director of Public Safety. The activities of Nash, Killen and Jackson are set forth in the deposition of Robert A. Killen taken on October 31st, 1983, the activities of Frank Hamsher are described in his deposition taken on July 6th, 1983 and the activities of Spaid, Kindleberger and Hamsher are set forth in detail in the deposition of Harold Brewster taken December 9th, 1983. These depositions along with the allegations in the complaint are sufficient to establish facts from which a jury could find that a policy existed to deprive plaintiff of his job and retain others more favored. High officials are involved over a period of three to four years. This was not an isolated incident by one individual, but involved the concerted action by a large number of high governmental officials, as alleged in plaintiff's petition and supported by evidence in various depositions to deprive plaintiff of his job and retain others more favored.

Since a substantial dispute exist under the decisions of the Eighth Circuit and under the decisions of other circuits as to whether these acts are sufficient to create municipal liability, the court should grant plaintiff's motion to amend the interlocutory order of June 8th, 1984.

#### **THE COURT ERRED IN DENYING PLAINTIFF'S MOTION TO ADD ADDITIONAL PARTIES**

Plaintiff filed a motion to add additional parties defendant since the City had been dismissed as a named defendant. Plaintiff alleged in his motion that it was essential to include all these parties since some of these officials might be able to point the finger at some other individual and say that they were responsible. Prior to the court's granting the defendant's motion to

dismiss the City there was no need to include these other named individuals.

All the parties are represented by the same counsel, there are no new facts involved, little if any additional discovery needs to be obtained, no prejudice to the present defendants was shown and under all the circumstances in this case, plaintiff should have been permitted, in the interest of justice, to amend his petition to include these essential and necessary parties.

Plaintiff contends that the additional named defendants should have been joined under Rule 19, Federal Rules of Civil Procedure which provides that "a person who is subject to service of process and whose joinder would not deprive the Court of jurisdiction over the subject matter shall be joined as a party in the action if, (1) in his absence complete relief can not be accorded among those already a party.

The Supreme Court stated that "the impulse is towards entertaining the broadest possible scope of action, consistent with fairness to the parties; joinder of claims, parties and remedies is strongly encouraged." The *United Iron Workers of America v. Gibbs*, 1966, 1138, 383 U.S. 715, 724, 16 Law. Add. 218. Plaintiff contends that under the circumstances that the additional named defendants are essential and necessary parties and plaintiff should have been permitted to add them as set forth in his second amended complaint attached to and made a part of the motion to add additional parties.

Plaintiff also contends that he should have been permitted to add additional parties under the permissive joinder provisions of Rule 20. Rule 20 permits a single action of all persons asserting or defending against a joint or alternative right to relief that arises out of a same transaction or occurrence and presents common questions of law or fact. The purpose of the rule is to promote trial convenience and to expedite the final determination of disputes thereby preventing multiple lawsuits.

The amended petition clearly indicates that plaintiff's claim is premised on the same transaction or series of occurrences and involve common questions of law and fact. In the interest of justice the Court should have permitted plaintiff to add other City officials involved in the occurrences as parties defendants, particularly in view of its recent decision dismissing the City as a named defendant. In *McMillian v. I. V. O. W. Corporation*, D.C. Vt. 1980, 495 F.Supp. 1134, it was held appropriate to join as a named defendant, the corporate officer who was personally involved in the tortious conduct of the corporation and who appeared as a witness at trial. In this particular case, the court permitted the corporate officer to be joined upon completion of the trial since it did not appear that he would be prejudiced by the joinder despite the late stage of the proceedings.

The same is true in this particular situation, none of the parties would be prejudiced by the joinder of the named additional defendants.

WHEREFORE, plaintiff respectfully request the Court to amend its interlocutory orders of June 8th and August 17th, 1984 to permit an appeal to the U. S. Court of Appeals for the Eighth Circuit or in the alternative that the Court grant plaintiff's motion to add additional parties.

/s/ Charles R. Oldham 13616  
Anne v. Maloney 29272  
Attorneys for Plaintiff  
317 N. 11th Street, Suite 1210  
St. Louis, Missouri 63101  
Phone: 231-0464

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
OFFICE OF THE CLERK  
1114 Market Street  
St. Louis, Missouri 63101

EYVON MENDENHALL  
Clerk

PHONE: 314-425-4315  
FTS 279-4315

September 6, 1984

Re: JAMES H. PRAPROTNIK  
vs.  
CITY OF ST. LOUIS, et al  
No. 83-0287C(3)

Charles R. Oldham  
317 N. 11th #1210  
St. Louis, MO. 63101

Judith A. Ronzio  
Associate City Counselor  
314 City Hall  
St. Louis, MO. 63103

  x   Enclosed is copy of an ORDER entered this date by the Honorable William L. Hungate in the above-styled cause.

       Enclosed is copy of an ORDER and MEMORANDUM entered this date by the Honorable William L. Hungate in the above-styled cause.

       Enclosed is copy of a MEMORANDUM AND ORDER entered this date by the

Honorable William L. Hungate in the above-  
styled cause.

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Very truly yours,

EYVON MENDENHALL, CLERK

By: /s/ P. McDaniel  
Deputy Clerk

Enclosure(s)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287C(3)

James H. Praprotnik,  
Plaintiff,

v.

City of St. Louis, et al.,  
Defendants.

**ORDER**

(Filed Sept. 6, 1984)

This matter is before the Court on plaintiff's motion to amend interlocutory order of August 17, 1984 (denying plaintiff's motion to add additional parties), and motion to amend interlocutory order of June 8, 1984 (granting defendants' motion for summary judgment on the pleadings as to defendant City of St. Louis). Counsel for defendants appeared at informal matters to oppose plaintiff's motions.

This action was filed on February 8, 1983, after which defendants moved for summary judgment or, alternatively, judgment on the pleadings. Following plaintiff's response, but before the Court ruled upon defendants' motion, plaintiff filed an amended complaint.

On June 6, 1984, defendants renewed their motion as to the amended complaint. On June 8, 1984, three days before trial, the Court entered its order from which plaintiff seeks interlocutory appeal. Plaintiff then sought leave to add parties, but did not seek reconsideration of, or file any response to, the Court's order as to the City of St. Louis.



In the memorandum accompanying his August 17, 1984, motions to amend, plaintiff asserts for the first time that the Court erred in granting the motion before plaintiff was given an opportunity to respond. The Court would have considered, and would still consider a memorandum offered by plaintiff addressed to this point; to date, however, the Court has received neither a memorandum or a request to allow one. The Court is not persuaded that the orders in question are appropriately certified as a matter for interlocutory appeal. Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion to amend interlocutory order of August 17, 1984, be and the same is denied.

IT IS HEREBY FURTHER ORDERED that plaintiff's motion to amend interlocutory order of June 8, 1984, be and the same is denied.

Dated this 6th day of September, 1984.

/s/ William L. Hungate  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287 C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**MOTION TO COMPEL ANSWERS TO QUESTIONS  
PROPOUNDED IN DEPOSITIONS OF VINCENT  
SCHOEMEHL, JOHN TEMPORITI AND  
THOMAS R. NASH**

Comes now plaintiff, James Praprotnik, by his attorney, Charles R. Oldham, and for his motion to compel answers to certain questions propounded at the depositions of Vincent Schoemehl, John Temporiti and Thomas R. Nash states as follows:

Plaintiff recently partially took the depositions of Mayor Schoemehl, John J. Temporiti, Chief of Staff for Mayor Vincent Schoemehl and Thomas R. Nash, Director of Public Safety for the City of St. Louis. The testimony adduced at the depositions indicated that Thomas R. Nash is the appointing authority for the Commissioner of Heritage & Urban Design and is the person who laid off Mr. Praprotnik on December 30th, 1983 allegedly for lack of funds.

Recently a Mr. Arnold Montgomery was appointed to the position of Commissioner of Heritage & Urban Design by Thomas Nash and plaintiff believes that Montgomery did not have the required qualifications for the job and that his salary is in excess of the amount of the salary that was paid to Mr. Praprotnik.

Mr. Praprotnik in his amended complaint alleged among other things that his reason for his layoff were pretextual in nature and that plaintiff was laid off as a result of the continuing efforts of defendants to remove him from his position and to retain others who were more favored.

Plaintiff alleges that his questions were designed to illicit information as to whether or not the cost of Mr. Montgomery was equal to or in excess of the salary paid to plaintiff and whether or not Mr. Montgomery was qualified for the position for which he was appointed all of which would provide information as to whether or not defendants had continued to punish plaintiff for his appeal to the Civil Service Commission and in furtherance the defendants actions to retain others who were more favored and whether or not the reasons given for his layoff were pretextual.

#### **VINCENT SCHOEMEHL**

Vincent Schoemehl refused to answer the following -

1. Did you participate in any way in the appointment of Arnold Montgomery as Director of the Division of Heritage and Urban Design?
2. Are you aware of the qualifications of Arnold Montgomery for this position he now holds?
3. Did Mr. Nash recommend to you the appointment of Arnold Montgomery as the then titled Director of the Division of Heritage and Urban Design?
4. Do you remember any discussion in which you and Mr. Hamsher and Mr. Edwards were involved were you discussed the person that would be transferred or laid off at CDA?
5. How long have you known Arnold Montgomery?

#### **JOHN J. TEMPORITI**

Mr. Temporiti refused to answer the following questions.

1. Are you familiar with the appointment of Arnold Montgomery as Commissioner of Heritage & Urban Design?
2. Mr. Temporiti did you discuss the appointment of Arnold Montgomery with any body other than the Mayor?
3. Did you discuss the appointment of Arnold Montgomery with Mr. Nash?
4. Did you discuss the appointment with Mr. Edwards?
5. Did you discuss the appointment with Mr. Duffe?
6. Were you in any way involved in his (Harold Brewster's) transfer or selection for the Parks Department? (Mr. Brewster was Second in Command at CDA and was laid off and then transferred)

**THOMAS R. NASH**

Thomas R. Nash refused to answer the following questions.

Mr. Nash testified that he made the appointment of Arnold Montgomery to the position of Commission of Heritage and Urban Design. He was then asked -

1. Do you know what the qualifications for the position were?
2. Did you get any flak from any member of your Board on the appointment of Mr. Montgomery to that position?
3. Did you discuss the appointment of Mr. Montgomery with any body from the Mayor's office?
4. What is the salary that Mr. Montgomery is making?
5. Did you get any inquiries from the press concerning the appointment of Mr. Montgomery?
6. When was Mr. Montgomery appointed?

7. Who was the appointing authority at the time the typist clerk was hired?

(There is testimony that an additional typist clerk had been hired in the office of Heritage and Urban Design).

Plaintiff states that the above questions which the individuals refused to answer could provide information or could lead to information concerning the issues involved in the lawsuit as to whether or not the layoff of Mr. Praprotnik was pretextual and secondly, whether or not it was in furtherance of their policy to remove Mr. Praprotnik and retain others more favored.

WHEREFORE, plaintiff requests that Vincent Schoemehi, John J. Temporiti and Thomas R. Nash be directed and ordered to answer the questions listed above and be further ordered and directed to answer questions of a similar nature on the same subjects.

Plaintiff further requests that he be allowed the cost of this action and reasonable attorney fees.

/s/ CHARLES R. OLDHAM 13616  
ANNE V. MALONEY  
Attorneys for Plaintiff  
317 N. 11th Street, Suite 1210  
St. Louis, Missouri 63101  
Phone: 231-0464

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287 C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**MOTION TO COMPEL ANSWERS TO QUESTIONS  
PROPOUNDED IN DEPOSITIONS OF VINCENT  
SCHOEMEHL, JOHN TEMPORITI AND  
THOMAS R. NASH**

Comes now plaintiff, James Praprotnik, by his attorney, Charles R. Oldham, and for his motion to compel answers to certain questions propounded at the depositions of Vincent Schoemehl, John Temporiti and Thomas R. Nash states as follows:

Plaintiff recently partially took the depositions of Mayor Schoemehl, John J. Temporiti, Chief of Staff for Mayor Vincent Schoemehl and Thomas R. Nash, Director of Public Safety for the City of St. Louis. The testimony adduced at the depositions indicated that Thomas R. Nash is the appointing authority for the Commissioner of Heritage & Urban Design and is the person who laid off Mr. Praprotnik on December 30th, 1983 allegedly for lack of funds.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

Article XVIII Civil Service\*

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\* City Counselor Ops.: 7802, 8175, 8362, 8387, 9137, 9346, 9346a, 9410, 9627, 9663, 9711, 9927, 9996, 10293, 10298, 10380, 10519

Cases:

The provisions for indefinite tenure and appointments according to merit apply only to the competitive positions in the classified service and not the excepted positions. *Riley v. Holland*, 243 S.W. 2d 79, 262 Mo. 682 (1951).

After September 16, 1941 no one has an absolute right to occupy a classified service position without further examination. *Bokern v. Scarce*, 174 S.W. 2d 355, 237 Mo. App. 526 (1943).

The comptroller cannot control the policy or normal functioning of the civil service commission. *Kirby v. Nolte*, 164 S.W. 2d 1, 349 Mo. 1015 (1942).

This article did not repeal the maximum salary limitation in article 8 § 8. *Simmons v. City of St. Louis*, 264 S.W. 2d 928 (1954).

The director of personnel does not have a right of appeal from a decision by the commission. *Scarce v. Simmons*, 294 S.W. 2d 673 (1956).

Within the framework of this article and the charter an ordinance changing the title and salary of employees is valid. *Sanders v. City of St. Louis*, 303 S.W. 2d 925 (1957).

Ordinances pertaining to the civil service must be recommended by the civil service commission to the board of aldermen. *Abernathy v. City of St. Louis*, 313 S.W. 2d 717 (1958).

Notice of dismissal by mail did not satisfy the requirements of the State Merit System Law. *Wolf v. Missouri State Training School for Boys*, 517 S.W. 2d 138 (1974).

A Statutory program for avoiding racial discrimination in employment was not unconstitutional as applied to the City of

## Section 1 Definitions.

The terms defined in this section, when used in this article, have the following meanings except where the context clearly requires otherwise:

*City Counselor Ops.: 8414, 8494, 10099*

(a) "Appointing authority" means any person or group of persons having power by law or ordinance, or by lawfully delegated authority, to make appointments to any position in the city service;

*City Counselor Ops.: 9548*

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*St. Louis. City of St. Louis v. Missouri Commission on Human Rights, 517 S.W. 2d 65 (1974).*

City charter provision limiting salaries of city employees and officials to \$25,000 did not violate the equal protection clause of the Fourteenth Amendment. *Bruce v. Scarce, 390 F. Supp. 297 (1975).*

McQuillin:

12.76—12.81a Civil Service Generally

History:

Submission Ordinance No. 42021

Submission Ordinance Approved April 4, 1941.

Amendment Substance: repealing Sections 1 to 13; enacting a new scheme for a civil service system of personnel employment and administration for the City, in 30 new sections.

Voter Adoption Date: September 16, 1941.

Submission Ordinance No. 49103

Submission Ordinance Approved August 9, 1958.

Amendment Substance: repeal of prior Article XVIII amendment, and substituting in lieu thereof a new comprehensive detailed classified service system.

Voter Rejection Date: November 4, 1958.



(b) "City service" or "service of the city" means all positions as herein defined, that are subject to control and regulation by the City of St. Louis as a municipal corporation or any of its officers or other agencies as such;

City Counselor Ops.: 8616

(c) "Class" or "class of positions" means a definitely recognized kind of employment in the classified service designed to embrace all positions sufficiently alike to be treated alike;

City Counselor Ops.: 7896

(d) "Classified service" means all positions in the city service except those specifically placed in the unclassified service as herein defined;

City Counselor Ops.: 7635, 8185, 8616, 10111

(e) "Compensation" means the salary, wages, fees, allowances, and all other forms of valuable consideration, earned by or paid to any employe by reason of service in any position, but does not include any allowance for expenses authorized and incurred as incidents to employment;

City Counselor Ops.: 9032

(f) "Competitive position" means any position in the classified service not expressly designated as an excepted position in this section;

(g) "Examination" means all the tests of fitness, taken together, that are applied to determine the fitness of applicants for positions of any class;

(h) "Excepted position" means any position in the classified service not subject to the provisions of this article requiring competitive tests of fitness for appointment and such other provisions as, by their terms, apply specifically to competitive positions alone. All such positions, however, shall be subject to all

the other provisions of this article insofar as consistent with law and with this exception. The following described positions, and no others, shall be deemed to be excepted positions:

- (1) all positions filled by election of the people;
- (2) all positions of heads of principal departments and of independent agencies, that are filled by appointment by the mayor;
- (3) one position of executive secretary and one position of secretary and stenographer to the mayor;
- (4) all positions of paid members of boards;
- (5) all officers and employes of the board of aldermen;

City Counselor Ops.: 7608, 7615, 9192, 9508, 10109, 10384

Cases:

The excepted positions in this subsection are not subject to the indefinite tenure provisions. *Riley v. Holland*, 243 S.W. 2d 79, 362 Mo. 682 (1951).

History:

Submission Ordinance No. 57299

Submission Ordinance Approved February 4, 1977

Amendment Substance: to amend Charter of the City by changing the requirements of Section 1(h)(3) of Article XVIII and permitting the Mayor to appoint three (3) administrative assistants as "excepted positions" in addition to present positions of executive secretary and secretary and stenographer.

Voter Rejection Date: April 5, 1977.

- (i) "Employee" means a person legally occupying a position;

City Counselor Ops.: 10111

- (j) "Grade" means all positions or classes of positions in the city service that are determined to be of the same level with respect to the difficulty and responsibility of their duties and

any other measure of value, and for which the same rate or scale of rates of compensation is prescribed, under the provisions of this article;

(k) "Position" means any appointive or elective office, and any employment, or two or more of such offices and employments the duties of which call for services to be rendered by one person;

City Counselor Ops.: 10111

(l) "Test of fitness" means any means or measure for determining the merit and fitness of persons for original appointment or promotion to positions of a class; and

(m) "Unclassified service" means all positions not subject to the provisions of the charter, ordinances and civil service rules relating exclusively to positions in the classified service, and includes positions, as follows, and no others:

(1) all positions of members of boards, commissions, or committees serving without compensation;

(2) all other positions in which services are rendered without compensation;

(3) all officers and employes of the board of aldermen.

City Counselor Ops.: 7635, 8185, 8616, 10109, 10111

## **Section 2 Purpose and basic requirements of this article.**

It is the purpose of this article to provide a modern and comprehensive system of personnel administration for the city, whereby economy and effectiveness in the personal services rendered to the city, and fairness and equity to the employes and the taxpayers of the city, alike, may be promoted. To accomplish this end the provisions of this article shall be liberally construed. The following principles and policies shall be observed, as basic requirements:

City Counselor Ops.: 8098, 8368, 8414, 8494, 10099

Cases:

The court may decide that certain standards of fitness are unreasonable. *Mahon v. Scarce*, 228 S.W. 384 (1950).

**(a) Merit and fitness.** All appointments and promotions to positions in the service of the city and all measures for the control and regulation of employment in such positions, and separation therefrom, shall be on the sole basis of merit and fitness, which, so far as practicable, shall be ascertained by means of competitive tests, or service ratings, or both.

City Counselor Ops.: 8381

Cases:

A Statutory program for avoiding racial discrimination in employment was not unconstitutional as applied to the City of St. Louis. *City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W. 2d 65 (1974).

**(b) Rates of pay.** Fair and equitable rates of pay shall be provided with due consideration of both the employes and the taxpayers and with due observance of the principle of like pay for like work, and suitable differences in pay for differences in work.

Cases:

The "like pay for like work" requirement of the city charter was not violated by difference between compensation paid to members of security force at airport and compensation paid to members of city police force because the state, not the city, had control over the city police force. *Slater v. City of St. Louis*, 548 S.W. 2d 590 (1977).

City is not required to pay airport police at the same rate as metropolitan police officers, whose pay is

positions of the several classes, by grades, with due relationships among scales of compensation of the several grades, and for the continuous administration of such compensation plan as is adopted by ordinance;

History:

Submission Ordinance No. 57154

Submission Ordinance Approved March 17, 1976.

Amendment Substance: changing requirements of Article XVIII, Secs. 3(b) and 4(a) so as to require inclusion of "excepted" positions such as the Mayor and members of the Board of Aldermen.

Voter Rejection Date: November 2, 1976.

**(c) Competitive examinations.** For determining merit and fitness for appointment and promotion to competitive positions by means of competitive examinations held after due public notice. The tests of fitness in such examinations shall be practical in character and designed fairly to measure the relative qualifications of candidates for positions of the several classes;

City Counselor Ops.: 8892

Cases:

A physical exam requiring firemen to have all natural teeth was unreasonable. *Mahon v. Scarce*, 228 S.W. 2d 384 (1950).

**(d) Certification and appointment of eligibles.** For certification of eligibles and for appointment and promotion to competitive positions on the basis of such tests, subject to a working test period of probation not to exceed one year. One of the highest three (3) eligibles certified or remaining on the list of eligibles certified to be appointed to each vacancy;

Cases:

A Statutory program for avoiding racial discrimination in employment was not unconstitutional as ap-

determined by the State. *Slater v. City of St. Louis*,  
548 S.W. 2d 590 (1977).

(c) **Employes' interests.** Considerations shall be given to the desires and interests of the employes insofar as consistent with the best interests of the city as an employer, and of the public served.

(d) **Nature of city service.** The city service, so far as practicable, shall be made attractive as a career, and each employe shall be encouraged to render his best service in willing compliance with the provisions of this article.

City Counselor Ops.: 10109

### **Section 3 Scope of civil service rules.**

To give effect to the purpose and requirements set forth in the next preceding section, the civil service rules, hereinafter required to be adopted, shall provide for the following things, among others, with relation to the classified service as defined herein:

City Counselor Ops.: 7979, 8098, 8330, 8494, 10099

(a) **Classification plan.** For a systematic classification plan providing for the classification of all positions on the basis of their duties, responsibilities, and resulting qualification requirements; for definitions of the classes in the classification plan; for the allocation of all positions to their appropriate classes in the classification plan; and, for the amendment and continuous administration of the classification plan. No person shall be employed or paid in any position until the class of such position has been determined by allocation of the position by the director to its appropriate class;

(b) **Compensation plan.** For development and recommendation to the mayor and aldermen of a systematic compensation plan, and amendments thereto from time to time as deemed necessary, to provide for uniform scales of compensation for all

plied to the City of St. Louis. *City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W. 2d 65 (1974).

**(e) Filling vacancies; promotions.** For filling vacancies in higher competitive positions, so far as practicable, by means of promotion on competitive examination except where vacancies are filled, in the interests of the service, by demotion, transfer, reinstatement, or re-employment, in the order of preference here indicated, where applicable. Promotion on competitive examination shall be deemed to be practicable whenever there are qualified employes in positions of lower classes who are willing to compete;

City Counselor Ops.: 8185

Cases:

A Statutory program for avoiding racial discrimination in employment was not unconstitutional as applied to the City of St. Louis. *City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W. 2d 65 (1974).

History:

Submission Ordinance No. 55731

Submission Ordinance Approved December 30, 1970.

Amendment Substance: repeal Section 3(e) related to filling vacancies in the Classified Service (Civil Service); enacting a new Section 3(e) to provide for a separate eligibility list for promotion within a department, division or agency where the vacancy exists.

Voter Rejection Date: March 9, 1971.

**(f) Tenure of employment.** For indefinite tenure of employment in positions in the classified service during meritorious service, except in cases for which definite terms are prescribed by law or charter, and except in cases of temporary appointment

hereunder, but with due provision for layoff on termination of the need for employment in any position, or of funds available therefor;

City Counselor Ops.: 7980, 9771

Cases:

The specific exemption from indefinite tenure provided in this subsection shows that article VIII § 1 was not repealed by inconsistency. *Riley v. Holland*, 243 S.W. 2d 79, 262 Mo. 682 (1951).

**(g) Temporary appointments.** For temporary appointments, without competitive tests, to competitive positions, for not to exceed sixty days in any case, which shall not be renewed or extended. Such temporary appointments to be provided for shall include provisional appointments in the absence of available eligibles pending establishment of eligible registers and certification and appointment therefrom, transient appointments for short jobs of work, and emergency appointments pending filling of vacancies by other means than such emergency appointments;

**(h) Service standards and ratings.** For the establishment of standards of service and a system of service ratings. The service ratings provided shall be given consideration in examinations for promotions, and in connection with increases in pay, layoffs, re-employments, transfers, reinstatements, reductions in pay, demotions, and removals, hereunder. Standards of service shall be established which any employe must meet to qualify for an increase in pay, reinstatement, re-employment, or promotion, and other standards shall be established, failure to meet which shall result in action for decrease in pay, demotion, or removal;

City Counselor Ops.: 7703

**(i) Welfare programs.** For cooperation by the director with appointing authorities in promoting programs of employe



welfare, including such training, health, recreation, economic, and other programs as may be deemed desirable;

**(j) Transfers.** For transfers between competitive positions of the same grade for which no additional or different tests of fitness are required, in the same or different departments, for the benefit of the service directly, or indirectly for such benefit by promotion of satisfaction of the employes, or by elimination of supernumerary positions;

**(k) Reinstatement.** For reinstatement to and re-employment in competitive positions after layoff, and after other separation without delinquency or misconduct, where the interests of the service will be served thereby;

**(l) Hours of duty, holidays and leaves.** For recommendations by the commission to the mayor and aldermen, regarding ordinance provisions to regulate the hours of duty, holidays, and leaves of absence, and for administration of any such ordinances adopted. Such ordinance provisions as are adopted shall be administered and carried into effect by the department of personnel herein provided for. The minimum daily, weekly, and annual service required under regular full-time employment shall be fixed by ordinance with due relation to the requirements in private employment in the city and with a view to equity as between positions of different classes and those under different appointing authorities. The requirements may vary for different classes or conditions of employment but shall be uniform in their application to employes of the same classes under like conditions of work. The ordinance provisions shall be enforced by effective control of attendance and absence and audit of pay rolls with reference thereto. Each employe in the classified service shall be required to engage in the actual work of the office or employment held to such extent as his services may be required for the complete discharge of the duties of such office or employment and a failure so to do shall be ground for removal;

(m) **Part-time services.** For payment for part-time services on an equitable basis in relation to the hours employed as compared with the requirements for full-time service. Where less than full-time service is required or rendered in any position, compensation for such service shall be paid on the part-time basis established by such rules;

(n) **Removals and demotions.** For removals, demotions, and decreases in pay in the cases of employes whose service rendered is below satisfactory standards, designed to promote the efficiency of the service. Such action shall be effective only after written notice to, with right of appeal in, the employes affected, and after such investigation as is appropriate to insure that the action taken is on the sole ground of merit and fitness;

City Counselor Ops.: 7997, 9012

(o) **Fines and suspensions.** For fines, and for suspensions without pay for not to exceed thirty days, and for other disciplinary measures deemed desirable, of less severity than those set forth in the item next preceding;

(p) **Resignations.** For resignations in good standing, for investigation of reported resignations to determine their good faith, for records of the causes of resignations, and for initiating action to remove causes leading to excessive numbers of resignations of capable employes;

(q) **Roster of employes.** For maintenance of a complete official roster of employes showing for each employe, his name, address, class title, rate of pay, and changes in any of them, and such other information as may be deemed desirable;

(r) **Retirement system.** For recommendation if and when permissible under the Constitution and Laws of the state of Missouri, to the mayor and aldermen by the civil service commission of a suitable system for the retirement of employes who, by reason of injury, ill health or age, have become incapacitated for rendering satisfactory service, and for administration by the

department of personnel of such retirement system as may be adopted by ordinance;

City Counselor Ops.: 8737

Cases:

Nothing in this subsection limits the board of aldermen's right to reduce an item of an appropriations ordinance for salaries. *City of St. Louis v. Smith*, 228 S.W. 2d 780, 360 Mo. 406 (1950).

**(s) Reports by appointing officers.** For reports by appointing officers of new positions and changes in the positions authorized and in the employments therein, and of attendance and absence, which upon approval by the director shall form bases for audit and approval of pay rolls by the comptroller as to compliance with this article and the rules and ordinance thereunder;

Cases:

Nothing in this subsection limits the board of aldermen's right to reduce an item of an appropriations ordinance for salaries. *City of St. Louis v. Smith*, 228 S.W. 2d 780, 360 Mo. 406 (1950).

**(t) Audit of pay rolls.** For audit of pay rolls by the comptroller as a condition precedent to payment by the treasurer or any other disbursing officer of any claim or account for personal services. The comptroller shall not approve any item of a pay roll or account for payment of any employe, or issue his warrant for any payment therefor, except on evidence satisfactory to him that the person named has been lawfully employed in a position duly authorized and is entitled to payment for actual service in such position or authorized absences therefrom at the rates, for the periods, and in the amounts, covered by such pay roll or account;

Cases:

This subsection simply means that the employee's services must be satisfactory to the employer and does not deprive the employee of any rights. *State v. Kirby*, 163 S.W. 2d 990, 349 Mo. 988 (1942).

**(u) List of nonessential positions.** For the listing of positions deemed nonessential for effective administration of the city's affairs, and for seeing that, as occasion arises, steps be taken toward transfer of the employees therein to any other vacant positions to which they are eligible to be transferred under the provisions of this article, and for prevention of filling of any vacancy occurring therein;

**(v) Administration.** For the administration and enforcement of the provisions of this article and all provisions of ordinances and rules adopted in pursuance thereof, by the director, subject to the rules of the commission and subject to appeal to and review on appeal by the commission.

Cases:

The director is empowered to make administrative decisions which do not include decisions contrary to ordinance enacted by the board of aldermen. *Sanders v. City of St. Louis*, 303 S.W. 2d 925 (1957).

**(w) Examination fees.** Such rules may provide for the charging and collection of reasonable fees from applicants for examinations, as prerequisites to the acceptance of their applications, and in such amounts as are calculated to pay part or all of the cost of preparing and holding the examinations and rating the results thereof.

**Section 4      Ordinances to be enacted.**

The mayor and aldermen shall provide, by ordinance:

City Counselor Ops.: 8098, 8494, 9248, 10099

Cases:

Nothing in this section limits the board of aldermen's right to reduce an item of an appropriations ordinance for salaries. *City of St. Louis v. Smith*, 228 S.W. 2d 780, 360 Mo. 406 (1950).

**(a) Compensation plan.** For adoption of a comprehensive plan for the fixing of rates of pay of all employes in the classified service, and amendments thereto, on recommendation of the civil service commission, and for its application and interpretation. Every appropriation and expenditure for personal services in any position in the classified service thereafter shall be made in accordance with the compensation plan so adopted and not otherwise;

City Counselor Ops.: 7869

Cases:

The language "on recommendation" in this subsection is mandatory. *Kirby v. Nolte*, 173 S.W. 2d 391, 351 Mo. 525 (1943).

Upon the commission's recommendation the board of aldermen may enact an ordinance which lowers the rate of pay set by a prior ordinance. *Sanders v. City of St. Louis*, 303 S.W. 2d 925 (1957).

City charter provision that salaries of firemen shall not be less than those of corresponding ranks of police officers whose pay is fixed by the State General Assembly is not invalid as an improper delegation of legislative responsibility. *State ex rel. St. Louis Fire Fighters Association Local No. 73 v. Stemmler*, 479 S.W. 2d 456 (1972).

The "like pay for like work" requirement of the city charter was not violated by difference between com-

pensation paid to members of security force at airport and compensation paid to members of city police force because the state, not the city, had control over the city police force. *Slater v. City of St. Louis*, 548 S.W. 2d 590 (1977).

History:

Submission Ordinance No. 57154

Submission Ordinance Approved March 17, 1976.

Amendment Substance: changing requirements of Article XVIII, Sections 3(b) and 4(a) so as to require inclusion of "excepted" positions such as the Mayor and members of the Board of Aldermen.

Voter Rejection Date: November 2, 1976.

**(b) Retirement system.** For a contributory retirement system on a sound actuarial basis, if and when permissible under the Constitution and Laws of the State of Missouri, to provide for retirement of employes in the classified service who have become unable to render satisfactory service by reason of physical or mental incapacity;

V.A.M.S.:

70.600 *et seq.* Retirement or pensioning of officers and employees of political subdivisions

**(c) Hours of duty and holidays.** For regulating hours of duty, holidays, attendance, and absence, in the classified service;

City Counselor Ops.: 7869

Cases:

An ordinance providing for overtime compensation was void because it had not been recommended by the civil service commission. *Abernathy v. City of St. Louis*, 313 S.W. 2d 717 (1958).

(d) **Appropriations for department of personnel.** For appropriations for the purposes of the department of personnel, adequate to provide for the effective administration and enforcement of the provisions of this article and the rules and ordinances adopted thereunder. In each fiscal year, such appropriations shall aggregate not less than one-half of one percent of the amount of all expenditures for personal services in the city service in the fiscal year next preceding, and in default of such minimum appropriations or any part thereof, such minimum appropriations or any deficiency therein, nevertheless shall be deemed to have been made.

Cases:

Since there is a minimum appropriation for the department of personnel, the unused portion of that minimum does not revert back. *Kirby v. Nolte*, 164 S.W. 2d 1, 349 Mo. 1015 (1942).

### **Section 5      Department of personnel.**

There is hereby created a department of personnel of the government of the city which shall consist of a director of personnel as head thereof, a civil service commission, and such other employes as may be needed.

City Counselor Ops.: 7778, 8494, 8595, 10252, 10483

Cases:

This section does not control the classification of the job of director as an office for the purpose of residency requirements. *Kirby v. Nolte*, 164 S.W. 2d 1, 349 Mo. 1015 (1942).

### **Section 6      Civil service commission.**

(a) **Qualifications, appointment and term of members.** The civil service commission shall consist of three members who, on

the dates of their appointment, shall have been citizens of the United States and residents of the City of St. Louis for at least two years next preceding. They shall be persons whose past records indicate that they favor the merit system of personnel administration. No person shall be eligible to appointment as a member of the civil service commission who holds any other salaried public office or who has held any elective public office or elective position in any political party, or any paid position in any political party, within the four years next preceding the date of his appointment. Members shall be appointed by the mayor without regard to any political consideration. Within thirty (30) days after the adoption of this section, the mayor shall appoint the first civil service commission, designating one member to serve for a term of two (2) years, a second member for a term of four (4) years and the third member for a term of six (6) years from the first day of July, next preceding. All subsequent appointments of members of the commission shall be for six (6) years, except that any vacancy in the membership of the commission occurring at a time other than the expiration of a term shall be filled by the appointment of a member to serve for the unexpired portion of the term.

(b) **Removal of members.** The mayor may remove a member of the commission only upon charges of nonfeasance, malfeasance, or misfeasance in office and after a public hearing to be held not less than ten days after notice to the member so charged, accompanied by a statement in writing of the specific acts charged. At the hearing, the member may be represented by an attorney and shall be entitled to present witnesses in his defense.

(c) **Compensation.** Each member of the commission shall be paid fifteen (\$15) dollars for each day on which he has actually attended a meeting of the commission officially held, as a member thereof, but in no case shall any member be paid more than sixteen hundred eighty dollars (\$1680) in any one fiscal year.



City Counselor Ops.: 8494, 9248, 9661, 10252

McQuillin:

12.55—12.56a Civil Service Commission

**Section 7 Commission powers and duties.**

The commission shall have power, and it shall be its duty:

City Counselor Ops.: 8301, 8494, 8900, 9661, 9771, 10483

Cases: \*

The commission has the power to promulgate a rule providing for the dismissal of an employee. *Fleming v. Holland*, 260 S.W. 2d 840 (1953).

An ordinance providing for overtime compensation was void because it had not been recommended by the civil service commission. *Abernathy v. City of St. Louis*, 313 S.W. 2d 717 (1958).

(a) **Administration.** To prescribe, and to amend from time to time as such action is deemed to be desirable, rules for the administration and enforcement of the provisions of this article, and of any ordinance adopted in pursuance thereof, and not inconsistent therewith;

City Counselor Ops.: 7703, 9531

(b) **Ordinances.** To recommend to the mayor and aldermen in accordance with this article, ordinances to provide for:

(1) a compensation plan providing properly related scales of pay for all grades of positions, and rules for its interpretation and application;

(2) a plan for a system for retirement of superannuated and otherwise incapacitated employes, if and when permissible under the Constitution and Laws of the State of Missouri;

(3) regulation of hours of duty, holidays, attendance and absence;

(4) such other matters within the scope of this article as require action by the mayor and aldermen;

(5) such changes in any such matters from time to time as may be deemed to be warranted;

City Counselor Ops.: 7700, 7869, 8098

(c) **Investigations.** To make such inquiries and investigations as it may deem to be warranted regarding the administration and effect of the provisions of this article and of ordinances and rules adopted in accordance therewith, and to make such recommendations to the director and to the mayor and aldermen as in its judgment may be warranted in the premises;

City Counselor Ops.: 9531

(d) **Decisions.** To consider and determine any matter involved in the administration and enforcement of this article and the rules and ordinances adopted in accordance therewith that may be referred to it for decision by the director, or on appeal by any appointing authority, employe, or taxpayer of the city, from any act of the director or of any appointing authority. The decision of the commission in all such matters shall be final, subject, however, to any right of action under any law of the state or of the United States;

City Counselor Ops.: 7691, 8101, 9531, 9544

Cases:

This section provides for an administrative remedy which must be exhausted before resorting to courts. *State v. Scarce*, 303 S.W. 2d 175 (1957); *Feldman v. City of St. Louis*, 338 S.W. 2d 345 (1960).

No right of appeal from the commission is accorded the director of personnel. *Scarce v. Simmons*, 294 S.W. 2d 673 (1954).

(e) **Director.** To hold an examination for the position of director, whenever eligibles therefor are needed, and to certify

eligibles resulting therefrom to the mayor, and also to perform all such duties with reference to that position as are assigned to the director as to all other positions in the classified service; and

**(f) Reports.** To transmit to the mayor and aldermen, with such additions and comments as it may desire to make, such annual and special reports as the director of personnel may submit for its action;

**(g) Reinstatement of employes.** To order the reinstatement without loss of pay of any employe who has been discharged, demoted, or reduced in rank or compensation for religious, racial or political reasons.

**(h) Limitations.** Except as provided in this section, the commission shall have no administrative powers or duties. Except as so provided, it shall have no power to direct or control any employe of the department of personnel or other employe of the city, or the action to be taken by any of them in any matter or case. Neither the commission nor any of its members shall have power to take any action except by majority vote in meeting assembled.

City Counselor Ops.: 9531

**Section 8      Director of personnel— Appointment; qualifications; compensation.**

The director of personnel shall be appointed by the mayor from a certification of eligibles made by the civil service commission from an eligible list established by means of competitive tests of fitness conducted by the civil service commission, within thirty (30) days after such certification. One of the three eligibles standing highest on such certification who have indicated their willingness to accept appointment shall be appointed by the mayor. The commission shall secure such information and assistance as may be practicable in formulating the fitness tests for director and rating the results, from persons ex-

perienced in public personnel administration. Any person to become eligible for appointment as director shall have had not less than five (5) years' experience in personnel administration, of which not less than two years shall have been in public personnel administration, and shall be conversant with the principles and techniques of modern public personnel administration; he need not be at the time of examination or appointment, a resident of the City of St. Louis. All action under this section shall be subject to the other provisions of this article and the rules adopted in pursuance thereof, so far as consistent with this section. The commission shall fix the initial salary of the director at not less than six thousand (\$6,000) dollars a year to be in effect until a compensation plan is adopted hereunder. Thereafter the salary of the director shall conform to such compensation plan.

City Counselor Ops.: 8494

Cases:

Although the director need not be a resident of the city he must be a Missouri resident. *Kirby v. Nolte*, 164 S.W. 2d 1, 349 Mo. 1015 (1942).

**Section 9      Director's powers and duties generally; removal from office.**

The director shall be the head of the department of personnel, responsible for the conduct of all of its affairs except as to such powers and duties as are vested in the commission by this article. He shall have power and it shall be his duty, in person or through the department of personnel:

City Counselor Ops.: 8494, 9771

Cases:

The director is empowered to make administrative decisions which do not include decisions contrary to

ordinances enacted by the board of aldermen.  
*Sanders v. City of St. Louis*, 303 S.W. 2d 925 (1957).

A standard set by the director that firemen have natural teeth may be held unreasonable by the court.  
*Mahon v. Scarce*, 228 S.W. 2d 384 (1950).

**(a) Secretary of commission.** To serve as secretary of the commission, to see to the keeping of the minutes and records thereof, to conduct investigations and prepare reports for the commission in matters under its consideration, and in all other proper ways to facilitate the actions and proceedings of the commission;

City Counselor Ops.: 9531

**(b) Appointment of employees; administration.** To appoint all employes of the department of personnel except the director and the members of the commission, and to direct and control their work and, under customary financial procedures of the city, the expenditures from appropriations for the department;

City Counselor Ops.: 9548

**(c) Roster of employes.** To establish and maintain a roster of all city employes showing the salient facts of the employment history of each employe;

**(d) Preparation of rules.** To prepare and recommend, for action by the commission, rules, including a classification plan and a service rating plan, drafts of ordinances for recommendation to the mayor and aldermen in matters requiring such ordinances, including a compensation plan, and changes as deemed desirable from time to time in such rules and ordinances;

City Counselor Ops.: 9544

**(e) Classification of positions.** To allocate each position in the classified service to its appropriate class in the classification plan adopted under the provisions of this article, and reallocate positions as conditions warrant, from class to class;

City Counselor Ops.: 9544

**(f) Definitions of classes and grades.** To prepare and maintain appropriate definitions of classes and grades in the classification plan and amend them from time to time as he may deem such action warranted;

City Counselor Ops.: 9544

**Eligible lists.** To hold examinations, pass upon the qualifications of applicants, and establish eligible lists, as needed, and to certify names of eligibles to appointing authorities for filling vacancies in competitive positions;

Cases:

It was beyond the director's authority to require firemen to have natural teeth. *Mahon v. Scarce*, 228 S.W. 2d 384 (1950).

**(h) Employe programs.** To cooperate with appointing officers and others in providing programs of training for employes, for employe welfare, for promoting of employe morale, and for otherwise raising of standards of performance in the service in every practicable way;

**(i) Employment transaction.** To pass upon, for compliance with the provisions of the charter and ordinances and these rules, and approve or disapprove as to compliance therewith, all appointments, demotions, transfers, promotions, service ratings, leaves of absence, changes in rates of pay, suspensions, separations, and other employment transactions affecting the status of employes;

City Counselor Ops.: 9531

**(j) Investigations.** To make such investigations as he may deem desirable with respect to the enforcement and effect of the personnel provisions of the charter and ordinances and of the rules, and such special investigations as the commission or the

mayor may request and make special reports relative thereto;

City Counselor Ops.: 8877, 9531

**(k) Compensation plan.** To devise and recommend to the commission a compensation plan consisting of scales of pay for the several grades or classes in due relation to each other and to rates prevailing for like employment in private industry, rules for the interpretation and application of the plan, and changes in such plan and rules from time to time as deemed desirable;

Cases:

City charter provision limiting salaries of city employees and officials to \$25,000 did not violate the equal protection clause of the Fourteenth Amendment. *Bruce v. Scarce*, 390 F. Supp. 297 (1975).

**(l) Administrative regulations.** To make such administrative regulations as he may deem necessary, not inconsistent with the charter, ordinances applicable, and these rules, relative to matters involved in the administration of the personnel provisions of such charter, ordinances, and rules;

**(m) Reports.** To make annual reports to the commission for its approval and transmission to the mayor and aldermen on the work of the department and the administration and effect of this article, with such recommendations for action as he may deem desirable, and such special reports as may be requested by the commission or the mayor. Such reports shall be public records;

**(n) Nonessential positions.** To aid the mayor and aldermen, and the several appointing officers, in determining the numbers and kinds of positions needed to carry on the city's business and in discovering and labeling unnecessary positions in order that they may be designated as supernumerary, so that they may be eliminated as opportunity affords for transfer of the employes to other positions, under the provisions of this article, and so

that, as they become vacant, steps may be taken to keep them from being filled;

(o) **Assistance to appointing authorities.** To aid the mayor and aldermen, and appointing authorities in all practicable ways in handling other personnel matters relating to positions under their jurisdictions; and

(p) **Additional powers and duties.** To do all other and further things necessary or proper for making effective the provisions of this article and all rules and ordinances adopted in pursuance thereof, and not inconsistent therewith, whether of the same kinds as those specified in this section, or of different kinds. The power of the director to make effective the provisions of this article and of ordinances shall not be deemed to be contingent on the adoption of rules but, in the absence of rules that are applicable, he shall have power to take such action, not inconsistent with this article or with ordinances pursuant thereto, as may be reasonably necessary and proper to effectuate the purposes thereof.

(q) The personnel director may be removed from office only upon charges of nonfeasance, malfeasance, or misfeasance in office and after a public hearing to be held not less than ten days after notice to the director accompanied by a statement in writing of the specific acts charged. The personnel director may be represented by an attorney and shall be entitled to present witnesses in his defense. The public hearing shall be conducted by the civil service commission. At the conclusion of the hearing, the commission shall recommend to the mayor whether or not the personnel director shall be removed from office. The mayor shall have the power to accept or reject the recommendation of the civil service commission and his decision shall be final.



**Section 10**      **Selection of examiners and assistants; qualifications of employes.**

The director of personnel may select suitable persons in the service of the city, with the consent of the appointing authorities, under whom such persons serve, to act as examiners under his direction or otherwise to assist in the administration of this article and the rules and ordinances adopted thereunder. It shall be deemed part of the official duties of all employes so selected, to render such services without extra compensation therefor and in addition to other qualifications required by this charter, all officers and employes, except day laborers, and except in such cases requiring scientific, mechanical, professional, or educational qualifications as may be determined by the civil service commission, must have resided in the city for at least one year and failing or ceasing so to reside, shall forfeit their office or employment.

City Counselor Ops.: 8014, 8185, 8234, 8368, 8602, 9059,  
10080, 10345, 10452, 10477, 10510

**Section 11**      **Offices and facilities to be provided; unauthorized compensation.**

It shall be the duty of all employes of the city to allow the reasonable use of public buildings, and to heat and light them as conditions may require, for holding examinations, and in all other proper ways to facilitate the holding of such examinations. All employes of the city shall grant the director of personnel and any agent authorized by him free access to the premises, and the records relating to employes, under their control, during the usual business hours, and shall furnish them such facilities, assistance, and information as may be required in carrying into effect the provisions of this article and the rules and ordinances adopted thereunder. After notice to the comptroller by the director that any person is employed or is proposed to be paid as an employe in the classified service in any

amount not provided for under the provisions of this article and any rules and ordinances in effect not inconsistent therewith, the comptroller shall be charged with notice thereof and shall not approve any further payment to such person except in accordance with such provisions.

City Counselor Ops.: 8617

**Section 12      Status of persons employed by city when article takes effect.**

Every person who, when this article takes effect, is legally occupying, by regular appointment thereto, a position placed by this article in the classified service, shall be entitled to continue to occupy such position, without further examination for such employment, and shall become subject to the provisions of this article, including the provisions relating to service rating, with the same effect as though he had been appointed to the position occupied, under the provisions of this article. The provisions of this section also shall apply to all persons who, on the date of acquisition of any public utility hereafter acquired by the city, are regularly employed by such utility.

Cases:

An employee who was transferred to a higher position temporarily was legally employed and therefore a permanent employee. *Feuchter v. City of St. Louis*, 210 S.W. 2d 21, 357 Mo. 616 (1948).

Persons appointed after this article took effect were not exempt from further examination. *Bokern v. Scarce*, 174 S.W. 2d 355, 237 Mo. App. 526 (1943).

**Section 13      Liability of officers and sureties for payment of unauthorized compensation.**

No claim of any person appointed or employed contrary to the provisions of this article or the rules and ordinances

thereunder, whose payroll or account is refused approval or payment, shall be paid by the city, but the officer or officers appointing or employing, or attempting to appoint or employ any such person, and the sureties on his or their official bonds, shall be liable jointly and severally for the amount due to such person by reason of such employment or purported employment. No officer, during the time of his official service or thereafter, or his surety, or other person on behalf of either, shall be reimbursed by the city for any sum so paid or recovered. The city counselor, or special counsel designated therefor by the board of aldermen, shall prosecute such actions as may be necessary to recover any sums paid contrary to the provisions of this article from any officer or officers making the appointment or continuing the employment on which such payment was based, in contravention of the provisions of this article or of the rules and ordinances made in pursuance thereof, or any officer signing or countersigning or authorizing the signing or countersigning of any order or warrant for payment, or making any payment, therefor, or from the sureties of any such officer or officers on their official bonds.

City Counselor Ops.: 8080, 9727

Cases:

This section is penal in nature and must be strictly construed. *State v. Kirby*, 163 S.W. 2d 990, 349 Mo. 988 (1942).

This section is construed as referring only to intentional or negligent wrongful appointment an employee. *State v. Kirby*, 163 S.W. 2d 990, 349 Mo. 988 (1942).

#### **Section 14      Examinations for licenses.**

The department of personnel, by agreement with any other department or other agency of the city government, may conduct examinations to determine the qualifications of applicants

for licenses issued by such department or other agency, and certify the results thereof, subject to reimbursement of the reasonable costs of such service by transfer from the appropriations of the agency served to those of the department of personnel.

City Counselor Ops.: 8368

Cases:

The function of giving examinations required by ordinance as a condition for receiving a license may be delegated to the department of personnel. *State v. Kirby*, 163 S.W. 2d 990, 349 Mo. 988 (1942).

**Section 15      Unlawful conduct relating to examinations.**

No person shall willfully, by himself or in cooperation with any other, defeat, deceive or obstruct any person in respect to his rights in relation to any tests of fitness or appointment to any position under the provisions of this article, and any rules or ordinances made thereunder, or shall willfully and falsely mark, grade, estimate or report upon the tests of fitness or proper standing of any person tested or certified pursuant to the provisions of this article or the service ratings of any employe, or aid in so doing, or shall willfully make any false representation concerning the same, or concerning any person tested, or shall willfully furnish to any person any special or secret information for the purpose of either improving or injuring the prospect or chances of any person in connection with any test or appointment, or shall impersonate any other person or permit or aid in any manner any other person to impersonate him, in connection with any test or appointment, or application or request to be examined.

**Section 16      Racial, political and religious discrimination forbidden.**

No recommendation or question under the authority of this article shall relate to the race, political or religious opinions, af-

filiations or service, of any person. No person shall be appointed to a position in the classified service hereunder, nor be demoted, re-employed, promoted, removed, increased or reduced in compensation, nor in any other way be favored or discriminated against in any matter within the purview of this article, because of his race, political or religious opinions, affiliations or service.

Cases:

The limitations in this subsection do not prevent the application of a state-established nondiscrimination policy. *City of St. Louis v. Missouri Commission on Human Rights*, 517 S.W. 2d 65 (1974).

History:

Submission Ordinance No. 43458

Submission Ordinance Approved April 8, 1946

Amendment Substance: by repealing Section 16, and enacting a new section simplifying language prohibiting political considerations and activities, and broadening section to include prohibitions against discriminations in the classified service based on race, political or religious opinions, affiliations or service.

**Voter Adoption Date:** August 6, 1946.

**Section 17 Political assessments and contributions.**

No person in the classified service shall be under any obligation to contribute to any political fund or to render any political service, and no such person shall do so or be removed or otherwise prejudiced for refusing to do so. No person in the city service shall discharge or promote or reduce, or in any manner change the official rank or compensation of any other person in such service, or promise or threaten so to do, for withholding or refusing to make any contribution of money or service or any other valuable thing for any political purpose, or in any other

manner, directly or indirectly, use his official authority or influence to compel or induce any other person to pay or render any political assessment, subscription, contribution, or service. Every such person who may have charge or control of any building, office or room occupied for any purpose of the government of the city, is hereby authorized to prohibit the entry of any person, and he shall not knowingly permit the entry of any person, for the purpose of therein making, collecting, receiving, or giving notice of, any political assessment, subscription or contribution; and no person shall enter or remain in any such office, building, or room, or send or direct any letter or other writing thereto, for the purpose of giving notice of, demanding, or collecting a political assessment, subscription, or contribution, nor shall any person therein give notice of, demand, collect, or receive any such assessment, subscription, or contribution; no person shall prepare or make out, or take any part in preparing or making out, any political assessment, subscription, or contribution with the intent that it shall be sent or presented to or collected from any employe in the classified service, and no person shall knowingly send or present any political assessment, subscription, or contribution to, or request its payment of, any such employe.

City Counselor Ops.: 8236, 8426

Cases:

The application of the restrictions in this section to classified employees only does not violate the equal protection clause since it serves the legitimate goal of increasing efficiency in public service. *State v. Kirby*, 163 S.W. 2d 990, 349 Mo. 988 (1942).

**Section 18      Promises of official influence to affect political action.**

No person, while holding any city office, or while in nomination or seeking nomination to appointment to any such office,

shall corruptly use or promise to use, directly or indirectly, any official authority of influence, possessed or anticipated, to confer upon any person, or to secure or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion, or increase of salary, upon the consideration or condition that the vote or political influence or action of any person shall be given or used in behalf of any candidate, officer, or party, or upon any other corrupt condition or consideration. No person, being an officer of the city, or having or claiming any such authority or influence, in relation to the nomination, employment, confirmation, promotion, removal or increase or decrease of salary, of any employe, shall corruptly use, or promise or threaten to use, any such authority or influence, directly or indirectly, to coerce or persuade the vote or political action of any person, or the removal, discharge, or promotion of any employe of the city.

City Counselor Ops.: 8426, 10095

**Section 19 Political activity of classified employes.**

No person holding a position in the classified service shall use his official authority or influence to coerce the political action of any person or body, or to interfere with any election, or shall take an active part in a political campaign, or shall seek or accept nomination, election, or appointment as an officer of a political club or organization, or serve as a member of a committee of any such club or organization, or circulate or seek signatures to any petition provided for by any primary or election law, or act as a worker at the polls, or distribute badges, color, or indicia favoring or opposing a candidate for election or nomination to a public office, whether federal, state, county, or municipal. But nothing in this section shall be construed to prohibit or prevent any such person from becoming or continuing to be a member of a political club or organization or from attendance upon political meetings, from enjoying entire freedom from all interference in casting his vote, from express-

ing privately his opinions on all political questions, or from seeking or accepting election or appointment to public office, provided, however, that no active campaign for election shall be conducted by any employe unless he shall first resign from his position.

City Counselor Ops.: 8118, 8426, 8876, 9376, 9825, 10384

Cases:

The application of the restrictions in this section to classified employes only does not violate the equal protection clause since it serves the legitimate goal of increasing efficiency in public service. *State v. Kirby*, 163 S.W. 2d 990, 349 Mo. 988 (1942).

**Section 20 Leave to be granted for purpose of voting.**

On any election day which is not a state or national holiday, the offices of the city shall remain open for business. All employes shall be entitled to vote and whenever necessary may be granted not more than four hours' leave with pay for the purpose of voting.

Cases:

For this section to conform with state statutes the words "not more than" have no effect. *State v. Kirby*, 163 S.W. 2d 990, 349 Mo. 988 (1942).

**Section 21 False statements under oath.**

No person knowingly and willfully shall make under oath any false statement in any application or other statement filed with, or in any proceeding before, the director of personnel, or the civil service commission, or in any investigation conducted by the director or the commission.



**Section 22 Penalties for violation.**

Any person who shall willfully or through culpable negligence violate or conspire to violate any provision of this article or of any ordinance made pursuant thereto for which no other punishment is provided herein, shall be guilty of a misdemeanor, and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars or by imprisonment for not to exceed six months, or both, in the discretion of the court. The conviction of any employee of any such offense shall operate automatically to terminate his service and to vacate his position. Any employee so removed from the service shall not be reinstated, reemployed or reappointed, or in any other manner re-enter the service of the City of St. Louis for a period of five years from the date of such conviction, and the comptroller and any other fiscal officers responsible for payment of any compensation to such person are hereby charged with notice thereof. Nothing in this section shall be construed to supplant or in any way affect any prosecution that may be elected to be initiated under any other provision of law relating to the nonfeasance, malfeasance, or misfeasance of public officers.

Cases:

An employee need not be convicted under this section to be validly dismissed. *Fleming v. Holland*, 260 S.W. 2d 840 (1943).

**Section 23 Compliance with article and civil service rules.**

It shall be the duty of all employes to conform to and comply with, and to aid in all proper ways in carrying into effect, the provisions of this article, and the rules and ordinances prescribed thereunder. Whenever the director of personnel shall make any order under the provisions of this article or in accordance with any rules or ordinance thereunder, the employe to whom such order is directed shall forthwith comply with the terms and

provisions thereof, and any failure or neglect on the part of such employe properly to satisfy or meet the requirements of such order without sufficient justification therefor, shall be construed as grounds for his removal, subject to all rights of appeal and review provided by this article or by ordinance or law.

City Counselor Ops.: 8617

**Section 24      Legal remedies for payment of unauthorized compensation.**

The city counselor, or special counselor designated therefor by the board of aldermen, on complaint of any officer or employe of the city or of any taxpayer, shall prosecute, and of his own motion may prosecute, such action as may be appropriate to restrain the payment of salary or other compensation to any person appointed to or holding any position in violation of any of the provisions of this article or the rules and ordinances thereunder, or to recover any payment so made, and such right shall not be limited or denied by reason of the fact that such position shall have been classified as, or determined to be, not subject to competitive tests. All money recovered in any action brought under the provisions of this section shall, when collected, be paid into the treasury of the city.

**Section 25      Investigatory powers of director; payment of witnesses.**

In the course of any hearing, investigation, or tests of fitness conducted under the provisions of this article, the director of personnel and any other person authorized by him as his representative for such purposes, shall have power to administer oaths, to subpoena and require the attendance of witnesses within the city and the production by them of books and papers pertinent to any matter of inquiry and to examine such witnesses under oath, in relation to any matter properly involved in such proceeding. For such purposes, the director or his authorized

representative may invoke the power of any court of record in the city, or judge thereof, in term time or vacation, to compel the attendance and testifying of witnesses and the production of books and papers in compliance with such subpoenas. All witnesses so subpoenaed, who are not employes of the city, shall be entitled to the same fees as are allowed in civil cases in courts of record, which shall be paid upon vouchers approved by the director of personnel from the appropriations of the department of personnel on the audit and warrant of the comptroller.

City Counselor Ops.: 9531

**Section 26      Effect of established titles and rates of pay.**

The titles and rates of pay of any positions in the classified service, as set forth in any ordinance or appropriation now or hereafter in effect, shall be deemed to be permissive only, authorizing positions that might properly be designated by such titles and compensated at such rates if so constituted that such titles and rates would apply under the provisions of this article, but not as mandatory in requiring that such titles shall be used to designate such position to the exclusion of all others or that payments shall be made at such rates, irrespective of the true nature of the positions existing by virtue of such authority and of whether such titles and rates are appropriate to the positions as actually constituted.

**Section 27      Partial invalidity of provisions.**

If any part of this amendment is held by competent authority to be invalid, every other part thereof not so held, shall continue in full force and effect as though such invalid part had not been included therein.

**Section 28      Repeal of inconsistent provisions.**

All provisions of the city charter and ordinances and rules thereunder, or parts thereof, inconsistent with this amendment, are hereby repealed.



**Section 31 Fire department.**

(a) Notwithstanding any other provisions of this charter or ordinances of the City of St. Louis to the contrary or in conflict herewith, the following designated ranks and positions of members and employes of the fire department of the City of St. Louis shall for the purposes of compensating said members and employes of said fire department by salaries for their duties be equivalent to and correspond with the ranks and positions of officers of the police force of the City of St. Louis hereinafter set forth beside each respectively, and the salaries of said designated ranks and positions of members of the fire department of the City of St. Louis shall from and after the effective date of this section and thereafter not be less than the salaries provided by law for the said equivalent and corresponding ranks and positions of officers of the police force of the City of St. Louis, set forth beside each respectively:

<b>Fire Department</b>	<b>Police Force</b>
<b>Rank or Position</b>	<b>Rank or Position</b>

Fire Chief — Chief of Police

Deputy Fire Chief — Lieutenant Colonel, other than Assistant Chief of Police

Battalion Fire Chief — Major

Fire Captain — Lieutenant

Fire Equipment Dispatcher III — Lieutenant

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who has served more than twenty years in the Fire Department — Patrolman who has served more than twenty years as a patrolman

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who has served more than fifteen years in the Fire Department — Patrolman who has served more than fifteen years as a patrolman

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who has served more than ten years in the Fire Department — Patrolman who has served more than ten years as a patrolman

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who has served more than five years in the Fire Department — Patrolman who has served more than five years as a patrolman

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who has served more than four years in the Fire Department — Patrolman who has served more than four years as a patrolman

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who has served more than three years in the Fire Department — Patrolman who has served more than three years as a patrolman

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who has served more than two years in the Fire Department — Patrolman who has served more than two years as a patrolman

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who has served more than one year in the Fire Department — Patrolman who has served more than one year as a patrolman

Fire Fighter, Fire Equipment Dispatcher I and II and Fire Prevention Inspector who is serving in his first year in the Fire Department — Patrolman who is beginning his first year as a patrolman

(b) All provisions of the city charter and ordinances and rules thereunder or parts thereof, inconsistent with this amendment are hereby repealed.

City Counselor Ops.: 10346

Cases:

This section is not invalid as an improper delegation of legislative responsibility and does not violate any constitutional requirement relative to separation of powers. *State ex rel. St. Louis Fire Fighters Association Local No. 73 v. Stemmler*, 479 S.W. 2d 456 (1972).

This section, insofar as it prescribes minimum compensation, is self-enforcing. *State ex rel. St. Louis Fire Fighters Association Local No. 73 v. Stemmler*, 479 S.W. 2d 456 (1972).

A proposed amendment to a city charter pursuant to an initiative petition requiring salaries of the city fire department to be not less than salaries received by members of another city's fire department was unconstitutional. *State ex rel. Card v. Kaufman*, 517 S.W. 2d 78 (1974).

Firemen's salaries may be above the maximum set by article VIII of this charter. *Bruce v. Searce*, 390 F. Supp. 297 (1975).

History:

Submission Ordinance No. 55656

Submission Ordinance passed over veto June 26, 1970.

Amendment Substance: amendment of Article XVIII, as amended, by enacting a new Section 31, establishing parity of compensation of City Fire Department salaries with those of the police force of the City; and detailing equivalent ranks of the two services.

**Voter Adoption Date:** September 15, 1970.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

RULE II

**Section 4. AMENDMENT OF RULES:**

Amendments to the rules may be made by the Commission from time to time, as circumstances and conditions may require and may be made in accordance with the procedure outlined in Rule II, Section 3.

**Section 5. ADMINISTRATIVE REGULATIONS:**

The Director shall promulgate and, as occasion requires, rescind or amend administrative regulations which shall prescribe the detailed procedures to be followed in carrying out the provisions of Article XVIII and of these rules.

**Section 6. POWERS AND DUTIES OF THE COMMISSION:**

The Commission shall have the power and it shall be its duty:

(a) to prescribe, and to amend from time to time as such action is deemed to be desirable, rules for the administration and enforcement of the provisions of Article XVIII and of any ordinance adopted in pursuance thereof, and not inconsistent therewith;

(b) to recommend to the Mayor and Aldermen, in accordance with Article XVIII, ordinances to provide for:

1. a compensation plan providing properly related scales to pay for all grades of positions, and rules for its interpretation and application;
2. a plan for a system for retirement of superannuated and otherwise incapacitated employees, if and when permissible under the constitution and laws of the State of Missouri;



3. regulation of hours of duty, holidays, attendance and absence;
4. such other matters within the scope of this article as require action by the Mayor and Aldermen;
5. such changes in any such matters from time to time as may be deemed to be warranted.

(c) to make such inquiries and investigations as it may deem to be warranted regarding the administration and effect of the provisions of this article and of ordinances and rules adopted in accordance therewith, and to make such recommendations to the Director and to the Mayor and Aldermen as in its judgment may be warranted in the premises;

(d) to consider and determine any matter involved in the administration and enforcement of Article XVIII and the rules and ordinances adopted in accordance therewith that may be referred to it for decision by the Director, or on appeal by any appointing authority, employee, or taxpayer of the City, from any act of the Director or of any appointing authority. The decision of the Commission in all such matters shall be final, subject, however, to any right of action under any law of the State or of the United States;

(e) to hold an examination for the position of Director, whenever eligibles therefor are needed, and to certify eligibles resulting therefrom to the Mayor, and also to perform all such duties with reference to that position as are assigned to the Director as to all other positions in the classified service;

(f) to transmit to the Mayor and Aldermen, with such additions and comments as it may desire to make, such annual and special reports as the Director of Personnel may submit for its action;

(g) to order the reinstatement without loss of pay of any employee who has been discharged, demoted, or reduced in rank or compensation for religious, racial, or political reasons;

(h) to represent the public interest in the improvement of personnel administration in the City Service;

(i) to advise the Mayor and the Director on problems concerning personnel administration;

(j) to advise and assist the Director in fostering the interest of institutions of learning, civic, professional, and employee organizations in the improvement of personnel standards in the City Service.

**Section 7. DUTIES AND POWERS OF THE DIRECTOR:**

The Director shall have the power and it shall be his duty:

(a) as executive head of the Department, to direct and supervise all its administrative and technical activities;

(b) to serve as secretary of the Commission, to see to the keeping of the minutes and records thereof, and in all other proper ways to facilitate the actions and proceedings of the Commission;

(c) to appoint all employees of the Department of Personnel except the Director and the members of the Commission, and to direct and control their work;

(d) to direct and control, under the customary financial procedures of the City, the expenditures from appropriations for the Department;

(e) to establish and maintain a roster of all City employees showing as to each employee the class title of the position held, the salary or pay, any change in class title, pay or status, and any other necessary data;

(f) to prepare and recommend for action by the Commission rules, including a classification plan and a service rating plan, drafts of ordinances for recommendation to the Mayor and Aldermen in matters requiring such ordinances, and changes as deemed desirable from time to time in such rules and ordinances, including a compensation plan;

(g) to allocate each position in the classified service to its appropriate class in the classification plan adopted under the provisions of Article XVIII, and reallocate positions as conditions warrant, from class to class;

(h) to prepare and maintain appropriate definitions of classes and grades in the classification plan and amend them from time to time as he may deem such action warranted;

(i) to hold examinations, pass upon the qualifications of applicants, and establish eligible lists as needed, and to certify names of eligibles to appointing authorities for filling vacancies in competitive positions;

(j) to cooperate with appointing officers and others in providing programs of training for employees, for employee welfare, for promoting of employee morale, and for otherwise raising of standards of performance in the service in every practicable way;

(k) to pass upon, for compliance with the provisions of the Charter and ordinances and these rules, and approve or disapprove as to compliance therewith, all appointments, demotions, transfers, promotions, service ratings, leaves of absence, changes in rates of pay, suspensions, separations, and other employment transactions affecting the status of employees;

(l) to make such investigations as he may deem desirable with respect to the enforcement and effect of the personnel

provisions of the Charter and ordinances and of these rules, and such special investigations as the Commission or the Mayor may request and make special reports relative thereto;

(m) to devise and recommend to the Commission a compensation plan consisting of scales of pay for the several grades or classes in due relation to each other and to rates prevailing for like employment in private industry, rules for the interpretation and application of the plan, and changes in such plan and rules from time to time as deemed desirable, including a draft of an ordinance for recommendation to the Mayor and Board of Aldermen;

(n) to make such administrative regulations as he may deem necessary, not inconsistent with the Charter, ordinances applicable, and these rules, relative to matter involved in the administration of the personnel provisions of such Charter, ordinances, and rules;

(o) to make annual reports to the Commission for its approval and transmission to the Mayor and Aldermen on the work of the Department and the administration and effect of Article XVIII, with such recommendations for action as he may deem desirable, and such special reports as may be requested by the Commission or the Mayor;

(p) to aid the Mayor and Aldermen, and the several appointing officers, in determining the number and kinds of positions needed to carry on the City's business and in discovering and labeling unnecessary positions in order that they may be designated as supernumerary, so that they may be eliminated as opportunity affords for transfer of the employees to other positions, under the provisions of Article XVIII, and so that, as they become vacant, steps may be taken to keep them from being filled;

(q) to aid the Mayor and Aldermen, and appointing

authorities in all practicable ways in handling other personnel matters relating to positions under their jurisdiction.

(r) to do all other and further things necessary or proper for making effective the provisions of Article XVIII and all rules and ordinances adopted in pursuance thereof, and not inconsistent therewith, whether of the same kinds as those specified in this section, or of different kinds;

(s) to take such action, not inconsistent with Article XVIII or ordinances pursuant thereto, as may be reasonably necessary and proper to effectuate the purpose of such article and ordinances, in the absence of specific provisions in Article XVIII, ordinances, or rules of the Commission;

(t) to designate an employee of the Department to act as his deputy, upon whom the powers and duties of the Director shall devolve in the absence of the Director or his inability from any cause to discharge the powers and duties of his office;

(u) to retain, for purposes of assisting in the examination of candidates for positions of high responsibility and positions requiring unusual qualities or qualifications, the services of persons *without regard to their residence*, who because of their experience or for other reasons have special acquaintance with the qualities or qualifications requisite for the positions under examination;

(v) to administer and enforce the provisions of Article XVIII, of all ordinances adopted pursuant thereto, and of these rules, subject to these rules and to appeal and review by the Commission.

**Section 8. COMPLIANCE WITH LAW, RULES, AND ORDERS:**

It shall be the duty of all employees to conform to and comply with, and to aid in all proper ways in carrying into effect, the

provisions of Article XVIII and the rules and ordinances prescribed thereunder. Whenever the Director of Personnel shall make any order under the provisions of Article XVIII or in accordance with any rules or ordinances thereunder, the employee to whom such order is directed shall forthwith comply with the terms and provisions thereof, and any failure or neglect on the part of such employee properly to satisfy or meet the requirements of such order without sufficient justification therefor, shall be construed as grounds for his removal, subject to all rights of appeal and review provided by this Article or by ordinance or law.

**Section 9. VIOLATION AND PENALTIES:**

Any person who shall willfully or through culpable negligence violate or conspire to violate any provision of Article XVIII or of any ordinance made pursuant thereto for which no other punishment is provided therein, *shall be guilty of a misdemeanor*, and upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars or *by imprisonment for not to exceed six months, or both*, in the discretion of the court. The conviction of any employee of any such offense shall operate automatically to terminate his service and to vacate his position; any employee so removed from the service shall not be reinstated, reemployed, or reappointed, or in any other manner reenter the service of the City of St. Louis for a period of five years from the date of such conviction, and the Comptroller and any other fiscal officers responsible for payment of any compensation to such person are hereby charged with notice thereof. Nothing in this section shall be construed to supplant or in any way affect any prosecution that may be elected to be initiated under any other provision of law relating to the nonfeasance, malfeasance, or misfeasance, of public officers.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**RULE III**

**COMMISSION, ORGANIZATION & PROCEDURE**

**Section 1. ORGANIZATION OF THE COMMISSION:**

The Commission shall, at its first regular meeting in October, elect one Commissioner to serve as chairman for a term of two years, or until a successor is duly elected. The Commission shall also, at the same meeting, elect one Commissioner to serve as vice-chairman for a term of two years, or until a successor is duly elected. If either of these offices is vacated because of death, resignation, or in any other manner, before the expiration of the incumbent's term of office, the Commission shall elect his successor at the next regular meeting of the Commission. The Director of Personnel shall act as secretary of the Commission.

**Section 2. REGULAR MEETINGS:**

Regular meetings of the Commission shall be held in the office of the Department at the Municipal Courts Building in the City of St. Louis, weekly, on Fridays, provided that the Commission may designate other times or places of regular meeting by giving public notice thereof. When the meeting day falls on a holiday the regular meeting shall be held on the following Tuesday.

**Section 3. SPECIAL MEETINGS:**

Special meetings may be called by any Commissioner or by the Director, upon giving advance notice to each Commissioner.

**Section 4. RULES OF ORDER:**

The Commission shall not be bound by any rules of order,

evidence or procedure in its meetings, hearings, or investigations, except such as it may itself establish.

**Section 5. QUORUM:**

Two members of the Commission shall constitute a quorum for the transaction of business. Any meeting shall be adjourned in the absence of a quorum.

**Section 6. POWER TO TAKE ACTION:**

Neither the Commission or any member shall have power to take action except by majority vote in meeting assembled.

**Section 7. MINUTES:**

The Director, or in case of his absence, or disability, the person acting for him, shall attend all regular meetings of the Commission, shall act as its secretary and record its official actions in the minutes. The time and place of each meeting of the Commission, names of Commissioners present, all official acts of the Commission, the votes of each Commissioner except when the acts are unanimous and, when requested, a Commissioner's dissent, with his reasons, and the actions of the Commission thereon, shall be recorded in the minutes. All communications and requests referred to the Commission for official action shall be appended to and made a part of the minutes. The Director shall cause the minutes to be transcribed and presented for approval or amendment at the next regular meeting. The official copy of the minutes and any amendments thereto, or a true copy thereof, certified by the Secretary of the Commission shall be kept at the offices of the Department and shall, subject to reasonable regulations, be open to the public inspection. (Rule III, Section 7, amended by Civil Service Commission, April 7, 1944.)



**Section 8. APPEALS TO THE COMMISSION:**

Any appointing authority, employee, or taxpayer of the City who feels himself aggrieved by the action of any appointing authority, or of the Director may appear before the Commission at a regular meeting and after having filed written complaint within ten (10) days after the effective date of such action shall have the right to be heard at reasonable length at the time designated by the Commission, on any matter involved in the administration and enforcement of Article XVIII, the rules, and ordinances adopted in accordance with Article XVIII. Any such appeals may also be filed in writing with the Director within ten (10) days after the effective date of such action, provided that at least six signed copies of such appeals are filed, whereupon it shall be the duty of the Director to transmit immediately a copy of the appeal to each Commissioner and the person complained against. The provisions of this section shall not apply in cases of dismissals which shall be governed by Rules IX and XIII. (Amended February 24, 1947.)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

RULE VII

**Section 7. TRANSFERS:**

An appointing authority may at any time transfer any classified employee under his jurisdiction from one position to another position in the same class by giving written notice to the Director before the effective date thereof. Transfer of a classified employee from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority may be made with the approval of the Director and the appointing authorities' consent, provided the positions are in the same class or a similar class requiring no additional or different tests of fitness and having the same max-

imum rate of pay. Any transfer of an employee from a position in a lower class to a position in a class carrying a higher maximum salary shall be deemed a promotional appointment and may be accomplished only in the manner provided in these rules for making promotional appointments. Any transfer from a position in a higher class to a position in a class carrying a lower maximum salary shall be deemed a demotion, and may be effected only in the manner . . .

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**RULE IX**

**SEPARATIONS AND DISCIPLINARY ACTIONS**

**Section 1. TENURE:**

Every employee who is legally appointed as a result of certification from an appropriate eligible list and who successfully completes his or her working test period shall have indefinite tenure of employment in the classified service during meritorious service.

**Section 2. LAYOFFS:**

Whenever there shall be no further need for employment in any position because of either a stoppage of work or lack of available funds or for any other reason, such position may be abolished and regular employees in the classified service may be laid off without pay, despite any provisions of the rules concerning tenure. The Director of Personnel shall establish procedures for such layoffs. Employees who are laid off shall have their names placed on an appropriate reemployment list or lists and shall be entitled to reappointment if their position is refilled during the period of their eligibility on such reemployment list. Any such reemployment list which is composed of the names of employees who have been laid off in accordance with the provisions of these rules and of employees who have resigned in good standing shall be used in such a manner as to give priority in referral to positions in other agencies to those employees who have been laid off. In every case of layoff, the appointing authority shall give written notice of his or her action to the Director and the employee and shall certify therein that the layoff is for reasons not reflecting discredit on the employee. In cases where the appointing authority refuses or fails to so certify, the action shall be deemed a dismissal and shall be so treated.

### Section 3. DISCIPLINARY ACTION:

Employees in the competitive service may be removed, demoted, reduced in pay, or suspended without pay for just cause.

(a) Reasons for disciplinary action; appointing authority to take such action:

- When any employee in the competitive service is unable or unwilling to perform the duties of his or her position in a satisfactory manner, or has committed an act or acts to the prejudice of the service, or has omitted to perform an act or acts it was his or her duty to perform, or who has removed his or her place of residence from the City of St. Louis, or whose service rendered is below satisfactory standard, or otherwise has become subject to disciplinary or other corrective measures, the appointing authority shall have the power and it shall be his or her duty to take action in one of the following ways:

- (1) To reprimand or bring to the attention of the employee the deficiency or action which may subject the employee to other disciplinary action.
- (2) To suspend the employee without pay for a period not to exceed twenty-eight (28) days.
- (3) To order the pay of the employee reduced to a lower rate within the range of pay provided for the class of position in accordance with provisions in the compensation ordinance then in effect.
- (4) To demote the employee to a class of position in which, in the opinion of the appointing authority, the employee will be able to function successfully.

- (5) To dismiss the employee from the City Service.
- (6) To retire the employee under the terms of any retirement act under which the employee is entitled to benefits.

(b) Employees in the competitive service who have not yet completed a working test period for their position may be removed or otherwise disciplined for such reasons the appointing authority may deem necessary and shall not have right of appeal in accordance with Rule XIII.

**Section 4. PROCEDURE IN DISCIPLINARY ACTIONS:**

(a) Counseling/Reprimands: Verbal counseling and/or written reprimands of an employee shall be made a part of the employee's departmental personnel record, providing, however, the Director may require that such actions be reported to the Department of Personnel in connection with the review of more serious disciplinary actions.

(b) Suspensions without pay and reductions in pay: The appointing authority shall notify the Director, in the manner and form prescribed by him, whenever any employee is suspended or reduced in pay indicating the reasons therefor and the duration of the suspension or reduction in pay and such action shall not be revocable by the Director. Suspensions shall not exceed twenty-eight (28) days for any one offense and suspensions totaling more than twenty-eight (28) days in any twelve (12) successive months shall be deemed a dismissal and so treated. Any reduction in pay shall be made in accordance with procedures established in the compensation ordinance.

(c) Dismissal and demotion: Any dismissal or demotion shall be reported to the Director in writing and a copy of such notice shall be given to the employee and shall include a notice of the employee's right of appeal and the reasons

for the action. The Director shall, within a reasonable time, in every such case, review the circumstances surrounding the action to assure that it is being taken on the grounds of merit and fitness. In the event the action is approved, the Director shall advise the employee of the approval. In the event the action is disapproved, the Director shall notify both the appointing authority and the employee and the employee shall be continued in the same status in the position, providing, however, that the appointing authority shall retain the right of appeal to the Commission. Such appeal from the decision of the Director shall be taken in accordance with Rule XIII.

(d) Removal by the Director for fraud or other acts to the prejudice of the service: The Director shall remove any employee at once if he finds, after investigation and after giving the employee notice and an opportunity to be heard, that the employee was appointed as the result of fraud or a material misstatement of fact, or that the employee has committed a serious act to the prejudice of the service in connection with an examination or other official function carried out by the Department of Personnel.

#### **Section 5: RESIGNATION:**

(a) Submission of resignation: Any employee in good standing who shall decide to leave the City Service for any reason, shall submit a formal resignation in writing to his or her appointing authority, a copy of which shall be forwarded to the Director.

(b) Review: Upon receipt of the resignation, the Director shall conduct a review as he shall deem proper and necessary to determine that the resignation was submitted in good faith by the employee. In the event the Director determines that the resignation was forced, such action

shall be deemed to be dismissal from the City Service and the employee shall retain any right of appeal provided by the rules.

(c) Whenever resignations within any organizational unit are, in the opinion of the Director, excessive, the Director may determine that it is appropriate to conduct an investigation, and in such case he shall have the power to investigate the cause of such resignations and to initiate action to remove such causes. (Rule IX, amended by the Civil Service Commission March 3, 1981.)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**RULE XIII**

**APPEALS, HEARINGS, INVESTIGATIONS & REVIEWS**

**Section 1. APPEALS:**

The Commission shall have power, and it shall be its duty to consider and determine any matter involved in the administration and enforcement of Article XVIII and the rules and ordinances adopted in accordance therewith that may be referred to it for decision by the Director, or on appeal by any appointing authority, employee, or taxpayer of the City, from any act of the Director or of any appointing authority. The decision of the Commission in all such matters shall be final, subject, however, to any right of action under any law of the State or of the United States.

(a) Appeals by employees from disciplinary actions: Any regular permanent employee in the competitive service, subject to the provisions of Article XVIII and these rules, who believes that he or she has been dismissed, retired, or demoted without just cause may, within ten (10) days after the effective date of such action, request in writing a hearing to determine the reasonableness of such action. Any regular permanent employee in the competitive service, subject to the provisions of Article XVIII and these rules, who believes that he or she has been suspended or reduced in pay without just cause may, within ten (10) days after the effective date of such action, request in writing a review to determine the reasonableness of such action. The Commission shall act on the employee's request in an expeditious manner and shall grant the employee such hearing or other review as soon as possible considering the nature of the appeal and the Commission's docket of hearings and reviews.



(b) Decision of the Commission: After hearing and considering the evidence for and against the employee, the Commission shall prepare a report of its findings and approving or disapproving the disciplinary action. In case of approval, the disciplinary action shall be deemed final as ordered. In case of disapproval, the Commission shall order the reinstatement or transfer of the employee or such other action as it deems suitable and order full pay for the time lost as the result of disciplinary action found to have been taken because of the employee's race, national origin, sex, political or religious affiliations or beliefs, age, physical disability which does not affect job performance, or in such other cases as the Commission deems appropriate.

(c) Appeals for disapproval of disciplinary actions by appointing authority: Whenever the Director, after review of a dismissal or demotion ordered by an appointing authority, shall indicate disapproval of the action, the appointing authority may request in writing a hearing to determine the reasonableness of such decision. The Commission shall act on the appointing authority's request in an expeditious manner and shall grant a hearing scheduled as soon as possible considering the nature of the appeal and the Commission's docket of hearings.

(d) Decision of the Commission: After hearing and/or reviewing and considering the evidence for and against the employee, the Commission shall prepare a report of its findings, approving or disapproving the disciplinary action. In the case of approval, the disciplinary action shall stand as made by the appointing authority. In the case of disapproval or modification, the employee shall be restored to his or her former status or the actions shall be modified as ordered by the Commission.

**Section 2. DISCIPLINARY ACTION FOR NON—MERIT REASONS:**

If the Commission finds that any disciplinary action was for reasons of race, national origin, sex, political or religious affiliations or beliefs, age, or physical disability which does not affect job performance, then the employee shall be immediately reinstated in his position and be reimbursed for any loss of pay occasioned by such disciplinary action.

**Section 3. ADMINISTRATIVE AND OTHER APPEALS:**

(a) In reviewing any appeal made under these rules the Commission may defer its consideration until a determination procedure established or approved by the Director of Personnel. In cases of the existence of an established administrative appeals procedure, all matters appealable under such procedure shall be dealt with through such procedure unless the Commission determines that it is appropriate to assume original jurisdiction. Determinations made under any administrative appeals procedure adopted or approved by the Director of Personnel which are subsequently appealed to the Civil Service Commission may be determined on the basis of the record of such proceedings, or through such other hearing, investigation, review, or submission of additional information as the Commission deems appropriate. Appeals to the Commission of the results of any approved administrative appeals procedure of any matter otherwise appealable shall be made in writing within ten (10) days after the date of notification of the results of the administrative appeal.

(b) Appeals to the Commission on matters involved in the administration and enforcement of Article XVIII and these rules not involving disciplinary action shall be made in writing within ten (10) days after the effective date of the action being appealed. Such appeal shall set forth the point at issue and the reason or reasons for the request.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

DEPARTMENT OF PERSONNEL ADMINISTRATIVE  
REGULATION NO. 92

TO: DEPARTMENT HEADS AND APPOINTING  
AUTHORITIES

FROM: WILLIAM C. DUFFE, DIRECTOR OF  
PERSONNEL

SUBJECT: LAYOFFS

The Rules of the Department of Personnel and Civil Service Commission provide that employees in the competitive service may be laid off for lack of funds. When it is necessary for an appointing authority to reduce the number of employees, the layoff shall be made as follows:

1. LAYOFF UNIT & SELECTION OF POSITIONS

A. Layoffs shall be made within a unit composed of all employees under the jurisdiction of an appointing authority as set forth in the City Charter or ordinance.

B. The appointing authority shall select the class or classes of position in which layoffs will be made, and also determine the number of employees to be laid off in each class selected. The Department of Personnel will review the proposed list of number and class titles of positions to be eliminated for compatibility with the classification system and good management practice.

C. Due to the unique and specialized training required for individual classes of position in the physician staff group and physician management group, the layoff procedure outlined in this Administrative Regulation will not apply. If layoffs are required for the physician staff group and physician management group, the positions to be

eliminated will be identified by the appointing authority and submitted to the Director of Personnel for approval.

## 2. ORDER OF LAYOFF

A. Layoffs in the competitive service shall be made on the basis of last Service Rating grade as the first and most important factor, and then by length of service as the second factor. The order of layoff of employees *in a given class of position in the layoff unit* will be as follows:

- (1) Employees serving in a provisional appointment by inverse order of employment.
- (2) Employees serving under a limited-term appointment in inverse order of employment.
- (3) Employees in their probationary working test period in inverse order of employment.
- (4) Permanent employees whose last Service Rating was Unsatisfactory in inverse order of employment.
- (5) Permanent employees whose last Service Rating was Inadequate by inverse order of employment.
- (6) Permanent employees whose last Service Rating was at least Adequate by inverse order of employment.

B. All employees in the unit in the selected class of position having employment status as described above in paragraph (1) must be laid off first, next all employees described in paragraph (2), then all employees described in paragraph (3), etc. This procedure shall continue through the employees described in paragraph (6), or as far as is necessary in order to lay off the required number of employees.

### 3. PROCEDURE

A. When an appointing authority determines that a layoff is necessary, he shall immediately notify the Department of Personnel of: (1) the reason for the layoff; (2) the classes of position and number of employees in each class to be laid off; and (3) the effective date of the layoff.

B. The Department of Personnel will determine the order of layoff for the unit as outlined above and advise the appointing authority. In order to make the list of the order of layoff it is necessary for the Department of Personnel to have the Service Ratings of all employees in the unit for rating periods prior to the effective date of the layoff.

C. In order to consummate the actual layoff it will be necessary to prepare a "Change in Employee Status" form DP-202 (rev. 1/68) for each employee certifying the reason for the layoff as being for lack of funds and that it does not reflect discredit on the employee. The Department of Personnel will advise the appointing authority of the proper wording to be used on the "Change in Employee Status" form.

D. Employees being laid off shall be granted all accrued authorized compensatory time and vacation leave, if any.

E. An employee being laid off should, whenever possible, be given ten days notice before his last day on the payroll.

### 4. GENERAL

A. Length of service will be determined by the Department of Personnel. An individual's length of service is determined from the date of regular appointment or reemployment in a position in any department in the competitive service of the City of St. Louis.

B. Employees in competitive positions funded by grants

who are employed in the regular manner will be considered a part of the established layoff unit.

C. Employees in non-competitive positions which are filled through procedures, such as the procedure used in the PSE program, will be terminated in accordance with Federal Program guidelines and procedures established by the Department of Personnel.

D. The layoff procedures in this Administrative Regulation are effective immediately. This Administrative Regulation supercedes and cancels Administrative Regulation No. 58.

Additional copies of this Administrative Regulation may be obtained from Mrs. Linda Thomas or Miss Josephine Profeta of the Department of Personnel, 622-3567.

Department of Personnel

/s/ William C. Duffe

Director of Personnel

April 2, 1976

Reissued April 22, 1981

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 9**

Where more than one claim is involved, as in this case, you should consider each claim, and the evidence pertaining to it, separately, as you would had each claim been tried before you separately.

Unless otherwise stated, the jury should consider each instruction given to apply separately and individually to each plaintiff and to each defendant in the case.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 9A**

It is stipulated by the parties that defendants' acts were done under color of state law.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 10**

Although there are four defendants in this action, it does not follow from that fact alone that if one is liable, all are liable. Each defendant is entitled to a fair consideration of his own defense, and is not to be prejudiced by the fact, if it should become a fact, that you find against the other. Unless otherwise stated, all instructions given you govern the case as to each defendant.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 13**

Section 1983 of Title 42 U.S.C.A. provides that any inhabitant of this Federal District may seek redress in this Court, by way of damages, against any person or persons who, under color of any law, statute, ordinance, regulation, or custom, knowingly subject such inhabitant to the deprivation of any rights, privileges, or immunities, secured or protected by the Constitution or laws of the United States.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 14**

The statute just outlined to you comprises one of the Civil Rights Acts enacted by the Congress under the Fourteenth Amendment to the Constitution of the United States. The Fourteenth Amendment to the Constitution provides that:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 15**

As a general principle, a municipality is not liable under 42 U.S.C. 1983 for the actions of its employees. However, a municipality may be held liable under 42 U.S.C. 1983 if the allegedly unconstitutional act was committed by an official high enough in the government so that his or her actions can be said to represent a government decision.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 16**

An individual defendant may not be held liable under 42 U.S.C. 1983 unless he was personally involved in causing the deprivation of a constitutional right or he either has or is charged with having actual knowledge that his subordinates are causing deprivations of constitutional rights.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 17**

A municipality is liable under 42 USC 1983 only for a constitutional deprivation visited pursuant to an unconstitutional governmental custom, usage or official policy knowingly followed by the municipality.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**PLAINTIFF'S INSTRUCTION NO. 19**

The Charter of the City of St. Louis and the rules and regulations of the Civil Service Commission of the City of St. Louis provide that a permanent civil service employee may be laid off only for lack of work and/or lack of funds.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 20**

The First Amendment to the Constitution of the United States states, in pertinent part:

“Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”

Further, the mandate of this amendment is made applicable to the States, and to political subdivisions of the States by means of the Fourteenth Amendment to the Constitution of the United States.



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 22**

In regard to plaintiff's claim that defendants retaliated against him because of his exercise of his right to free speech and his right to petition for redress of grievances:

Your verdict must be for the plaintiff James Praprotnik and against the defendants on plaintiff's claim of violation of his First Amendment rights if you find by a preponderance of the evidence:

1. That plaintiff's action in appealing his suspension involved the exercise of free speech and the right to petition for redress of grievances; and
2. That a substantial or motivating factor in the decision to transfer and lay plaintiff off was his exercise of his right of appeal to the Civil Service Commission, and that plaintiff would not have been transferred or laid off but for his appeal to the Civil Service Commission; and
3. That defendants Hamsher, Patterson and Kindleberger are high government officials of the City of St. Louis with the right to make policy decisions and to speak for the defendant City of St. Louis.
4. That defendants Hamsher and Kindleberger were personally involved in causing plaintiff's transfer and/or layoff; and
5. That defendant Deborah Patterson was personally involved or knew of the participation of her subordinates in causing deprivation of plaintiff's constitutional rights, and
6. That plaintiff was damaged thereby.

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If you find that the plaintiff has established each of these elements of his claim, you will then consider the defendants' defenses as to which the defendants have the burden of proof by a preponderance of the evidence. It is not unlawful for the defendants to transfer plaintiff and lay him off for bonafide business reasons. Your verdict must be for the defendants and against the plaintiff if you find by a preponderance of the evidence:

1. That plaintiff was transferred to the Division of Heritage and Urban Design because of the transfer of functions; and

2. That plaintiff was laid off from his position because of lack of funds; and

3. That the actions taken were reasonably necessary to the business operations of the City of St. Louis.

In the event that you are convinced by the evidence that defendants' actions were substantially motivated by plaintiff's appeal of his suspension, then you must determine the amount of damages the plaintiff sustained.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 23**

In regard to plaintiff's claim that he was laid off in violation of his rights to due process under the 14th Amendment and 42 USC 1983 in the deprivation of his property interest in his job:

Your verdict must be for the plaintiff James Praprotnik and against Defendants Hamsher, Kindleberger and Patterson, if you find by a preponderance of the evidence:

1. That plaintiff was laid off for reasons other than lack of funds; and
2. As to defendants Kindleberger and Hamsher, that they were personally involved in the decisions which led to the layoff of the plaintiff; and
3. As to defendant Deborah Patterson, that she was either personally involved or knew of the participation of defendants Hamsher and Kindleberger in the decision to lay off plaintiff; and
4. That the actions taken were done under color of law as defined in these instructions; and
5. That plaintiff was damaged thereby.

If you find that the plaintiff has established each of these elements of his claim, you will then consider the defendants' defenses as to which the defendants have the burden of proof by a preponderance of the evidence. It is not unlawful for the defendants to lay plaintiff off for lack of funds, which is a bonafide business reason. Your verdict must be for the defendants and against the plaintiff if you find by a preponderance of the evidence:

1. That plaintiff was laid off from his position because of lack of funds.

If you are convinced that plaintiff was laid off for a reason other than lack of funds, then you must determine the amount of damages the plaintiff sustained.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 24**

In regard to plaintiff's claim against the City of St. Louis that he was laid off in violation of his rights to due process under the 14th Amendment and 42 U.S.C. § 1983 in the deprivation of his property interest in his job:

Your verdict must be for the plaintiff, James Praprotnik, and against the City of St. Louis if you find by a preponderance of the evidence:

1. That plaintiff was laid off for reasons other than lack of funds; and
2. That the layoff resulted from an unconstitutional custom, usage or official policy knowingly followed by the City of St. Louis; and
3. That plaintiff was damaged thereby.

Your verdict must be for the defendant City of St. Louis and against plaintiff, James Praprotnik, if you find:

1. That plaintiff was laid off for lack of funds; or
2. That, even if plaintiff was laid off for a reason other than lack of funds, said layoff was not the result of an unconstitutional government custom, usage or official policy knowingly followed by the defendant City of St. Louis; or
3. That plaintiff was not damaged thereby.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 25**

If Defendants Hamsher, Kindleberger and Patterson reasonably believed that their actions were taken pursuant to valid provisions of the Charter of the City of St. Louis, Ordinances of the City of St. Louis, and Rules of the Civil Service Commission of the City of St. Louis, and acted in good faith on the basis of this belief, then their reasonable belief and good faith action would constitute a defense to the plaintiff's claim of deprivation of property without due process of law pursuant to 42 USC 1983.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 26**

If you determine the issue of liability favorably as to the plaintiff, you can then assess damages based upon the violation of any of the plaintiff's substantive constitutional rights to property and to due process.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 27**

If you find that the plaintiff has been deprived of a constitutional right, you may award damages to compensate him for the deprivation. Damages for this type of injury are more difficult to measure than damages for a physical injury or injury to one's property. There are no medical bills or other expenses by which you can judge how much compensation is appropriate. In one sense, no monetary value we place upon constitutional rights can measure their importance in our society or compensate a citizen adequately for their deprivation. However, just because these rights are not capable of precise evaluation does not mean that an appropriate monetary amount should not be awarded.

The precise value you place upon any constitutional right which you find was denied to plaintiff is within your discretion. You may wish to consider the importance of the right in our system of government, the role which this right has played in the history of our republic, the significance of the right in the context of the activities which the plaintiff was engaged in at the time of the violation of the right.

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. 29**

If you find in favor of plaintiff, James Praprotnik, then you must award plaintiff such sum as you believe will fairly and justly compensate plaintiff for any damages you believe he sustained and is reasonably certain to sustain in the future as a direct result of the occurrences mentioned in the evidence.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**INSTRUCTION NO. A**

An isolated incident of illegal conduct on the part of a municipality's agents, servants or employees is not sufficient to establish a governmental custom, usage or official policy such as would give rise to liability on the part of a municipality pursuant to 42 U.S.C. 1983.

Rather, in order to establish such governmental custom, usage or official policy, it must be shown that the alleged illegal conduct is both systematic and municipally-supported.

*Adickes v. S.H. Kress and Co.*, 398 US 144, 90 S.Ct. 1598,  
26 L.Ed.2d 142 (1970)

*Berry v. McLemore*, 670 F.2d 30 (1982).

*Magayanes v. Chicago*, 496 FS 812 (1980).

Defendant's Instruction No. \_\_\_\_\_

Given \_\_\_\_\_

Refused \_\_\_\_\_

Withdrawn \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287 C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**VERDICT FORM**

We, the jury in the above-entitled cause, make the following findings as to the plaintiff's claim against the defendants arising out of the issues of right to free speech and to petition for redress of grievances. A finding for the plaintiff against a defendant shall be indicated by writing "yes" on the appropriate line. A finding for an individual defendant shall be indicated by writing "no" on the appropriate line.

Defendant City of St. Louis      Yes

Defendant Frank Hamsher      No

Defendant Deborah Patterson      No

Defendant Charles Kindleberger      No

(If you find in favor of the plaintiff against any of the defendants, you must complete the following.)

We assess plaintiff's damages as follows:

FOR ACTUAL DAMAGES:      \$15,000

FOR PUNITIVE DAMAGES:

Defendant Frank Hamsher      none

Defendant Charles Kindleberger      none

11-19-84  
Date

/s/ Henry Dampier  
Foreperson

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

No. 83-0287 C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, et al.,  
Defendants.

**VERDICT FORM**

We, the jury in the above-entitled cause, make the following findings as to the plaintiff's claim against the defendants for loss of his job by reason of his layoff for the pretextual reason of lack of funds. A finding for the plaintiff against a defendant shall be indicated by writing "yes" on the appropriate line. A finding for an individual defendant shall be indicated by writing "no" on the appropriate line.

Defendant City of St. Louis      Yes

Defendant Frank Hamsher      No

Defendant Deborah Patterson      No

Defendant Charles Kindleberger      No

(If you find in favor of the plaintiff against any of the defendants, you must complete the following.)

We assess plaintiff's damages as follows:

FOR ACTUAL DAMAGES:      \$15,000

FOR PUNITIVE DAMAGES:

Defendant Frank Hamsher      none

Defendant Charles Kindleberger      none

11-19-84  
Date

/s/ Henry Dampier  
Foreperson

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

Cause No. 83-287C (3)

James H. Praprotnik,  
Plaintiff,

vs.

City of St. Louis, Frank Hamsher, Charles  
Kindelberger, and Deborah Patterson,  
Defendants.

**JUDGMENT**

This action came on for trial before the Court and a jury, Honorable William L. Hungate, District Judge, presiding, and the issues having been duly tried and the jury having rendered its verdict;

IT IS ORDERED AND ADJUDGED that, in accordance with the jury's verdict, the plaintiff recover of the defendant City of St. Louis on plaintiff's claim arising out of the issues of right to free speech and to petition for redress of grievances and for loss of his job by reason of his layoff for the pretextual reason of lack of funds the sum of THIRTY THOUSAND DOLLARS (\$30,000.00), with interest thereon at the rate of 10.33% per annum and costs.

IT IS FURTHER ORDERED AND ADJUDGED that plaintiff take nothing by his cause of action against defendants Frank Hamsher, Charles Kindelberger, and Deborah Patterson, that the action be dismissed on the merits, and that the defendants recover of the plaintiff their costs of action.

EYVON MENDENHALL, CLERK

By: Florence H. Bertel, Deputy Clerk

Dated at St. Louis, Missouri,  
this 19th day of November, 1984.