

ORIGINAL

IN THE SUPREME COURT OF OHIO

ORIGINAL ACTION FOR A WRIT OF QUO WARRANTO

STATE *ex rel.*,)
 PAUL CALVARUSO,)
et al.,)
)
 Relators,)
)
 v.)
)
 CHARLES BROWN)
)
 Respondent,)
)
and)
)
 CITY OF AKRON,)
)
 Intervenor.)

CASE NO: 2013-0280

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I. STATEMENT OF THE CASE

Relators Paul Calvaruso, Elizabeth A. Daugherty, Michael G. Prebonick, Martha L. Sullivan, Sylvia D. Trundle and Daniel D. Zampelli (collectively “Relators”) filed the instant original action for writ of quo warranto pursuant to Ohio Constitution Article IV, Section 2(B)(1)(a) and Ohio Revised Code Chapter 2733, requesting this Court to oust unclassified civilian Respondent Charles Brown from the public offices of Acting Police Chief and Police Deputy Chief of the City of Akron.

In order to be completely successful in a quo warranto claim “a relator must establish 1) that the office is being unlawfully held and exercised by respondent, and 2) that relator is entitled to the office.” *State ex rel. Varnau v. Wenninger*, 131 Ohio St.3d 169, 2012-Ohio-224, 962 N.E.2d 790, ¶ 12; *State ex rel. Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 23; *State ex rel. Newell v. Jackson*, 118 Ohio St.3d 138, 2008-Ohio-1965, 886 N.E.2d 846, ¶ 6. However, so long as a relator makes a good faith claim to a public office, “Judgment may be rendered . . . only upon the right of the defendant” who unlawfully holds public office. R.C. 2733.08; *State ex rel. Deiter v. McGuire*, 119 Ohio St.3d 384, 2008-Ohio-4536, 894 N.E.2d 680, ¶ 22; *State ex rel. Delph v. Barr*, 44 Ohio St. 3d 77, 80, 541 N.E.2d 59 (1989). In this matter, Relators have made a good faith claim to hold the public offices of Acting Chief and *de facto* Deputy Chief. Respondent Brown holds these offices unlawfully and must be ousted.

On January 13, 2013, with complete disregard for the Charter of the City of Akron, the Akron Division of Police Rules and Regulations and Chain of Command of the Akron Division of Police, the Intervenor City of Akron (“City”) assigned an unclassified civilian—Respondent Brown—to serve within the rank structure of the Division of Police. Respondent

Brown is formally referred to as the “Assistant Chief of Police,” but, as is clear from the evidentiary record, Respondent Brown fulfills the duties of a Deputy Chief of Police within the Chain of Command of the Akron Division of Police. Rather than simply promote one of nine (9) Police Captains to the rank of Deputy Chief, in assigning Respondent Brown, the City chose to circumvent and undermine the Charter of the City of Akron and the City’s Civil Service Rules.

Indeed, both Respondent Brown’s and the City’s actions illustrate that Respondent Brown serves within the Chain of Command with the authority of a Deputy Chief. Immediately after Respondent Brown’s appointment he was assigned “S-2,” the second highest rank—immediately behind the Chief of Police—on the Division of Police seniority list. (Jt. Ex. F).¹ The City has publicized Respondent Brown as a “Chief” both publicly and within the Division of Police. (See Ex. N-1; Ex. X; Nice Aff. ¶ 2). Police Chief James Nice has revoked supervisory authority for police captains refusing to recognize Respondent Brown’s appointment within the Chain of Command. (Ex. Q). And, as will be shown, Respondent Brown has consistently managed subdivisions of the Division of Police, administered the Police Department Rules and Regulations and assisted Chief Nice with management of the Division of Police. Respondent Brown illegally serves the City of Akron as a *de facto* Deputy Chief.

In further contravention of the Charter of the City of Akron and the Rules and Regulations, from February 11 through February 15, 2013, Respondent Brown illegally served as Acting Police Chief of the Akron Division of Police. (Jt. F. 14; Jt. Ex. I).

¹ Citations reference Evidence and Pleadings filed with this Court as follows: Joint Exhibits are cited as “Jt. Ex. ___”; Joint Facts are cited as “Jt. F. ___”; Relators’ Exhibits are cited as “Ex. ___”; Intervenor / Respondent’s Exhibits are cited as “I/R Last Name Ex. ___”; Affidavits are cited as “Last Name Aff. ¶ ___”; Respondent’s Motion for Judgment on the Pleadings is cited as “MJP, p. ___”; Respondent’s Answer is cited as “Brown Answer ¶ ___.” Exhibits cited herein refer to the Parties’ evidence as filed on June 25, 2013, except for the following: “I/R Brown Ex. 2” and “Ex. O-2, p.3” are available in the Joint Motion for Leave to Clarify the Record; and, the redacted version of “Ex. N-2” is available in the Joint Motion for Leave to Redact and Replace.

Respondent Brown and the City now imply that Respondent Brown only plays a minor role in the Akron Division of Police. However, any such allegation is mere window-dressing. The City claims that Respondent Brown's name is no longer on the Division of Police seniority list. (Nice Aff. ¶ 11). Likewise, Respondent Brown and Chief Nice both state Respondent Brown has not been designated as Acting Police Chief since February 15, 2013. (Nice Aff. ¶ 10; Brown Aff. ¶ 8). But the City did not amend its seniority list or stop appointing Respondent Brown to serve as Acting Chief on its own accord. The City amended its seniority list after Relators' counsel addressed correspondence to the City pointing out that an unclassified civilian— Respondent Brown—cannot serve within the Chain of Command. (Jt. Ex. G). The City ceased from re-appointing Respondent Brown as Acting Chief only after the instant claim was filed. Rather than remove Respondent Brown from his illegal position, the City continues to operate a shadow Chain of Command within Division of Police wherein it is unclear who serves as the executive head of the Department or how Respondent Brown has authority within the Chain of Command. Rather than appoint Respondent Brown or Relator Captains to serve as Acting Chief in Chief Nice's absence, Mayor Donald Plusquellic has been assigned to resolve any issues that "require immediate attention." (Ex. M-2; Ex. M-3).

In an effort to defend the rank structure of the Division of Police and the integrity of the Department, Relators filed the instant request for writ of quo warranto on February 13, 2013. Thereafter, Respondent Brown filed an Answer and a Motion for Judgment on the Pleadings and the City filed a Motion to Intervene. On June 5, 2013 this Court denied Respondent Brown's Motion for Judgment on the Pleadings and granted the City's Motion to Intervene. Pursuant to this Court's order, on June 25, 2013, the Parties jointly filed Stipulations, Joint Facts and Joint Exhibits. On the same date the Relators filed evidence; Respondent and Intervenor filed

evidence. On July 1, 2013, the Parties filed a Joint Motion for Leave to Clarify the Record as well as a Joint Motion for Leave to Redact and Replace.

Despite the instant litigation, Respondent Brown's appointment continues to disrupt the Chain of Command of the Akron Division of Police. Rather than lawfully operate a functional department, the City has elected to manage a shadow Chain of Command within the Division of Police. Respondent Brown unlawfully serves as Acting Chief and *de facto* Deputy Chief. In the interest of justice, Respondent Brown must be ousted from the public offices of Acting Chief and Deputy Chief.

II. STATEMENT OF THE FACTS

A. THE STRUCTURE OF THE AKRON DIVISION OF POLICE PROHIBITS UNCLASSIFIED CIVILIANS FROM SERVING WITHIN THE CHAIN OF COMMAND.

Sections 67 and 68 of the City's Charter establish a Department of Public Safety and a Division of Police, respectively. (Jt. Ex. A, p.24). Pursuant to Section 68, "[t]he police force shall consist of a Chief of Police and such officers and employees as may be provided for by City Council." (Jt. Ex. A, p.24). The Chief of the Division of Police

shall be in immediate charge of said Division, shall have jurisdiction over the Police Station and any substation which may be hereafter established, and shall have control over the stationing and transfer of all patrolmen and other employees constituting the Division of Police, under such rules and regulations as the Mayor may prescribe.

The Mayor shall have the right, whenever authorized by council, to appoint substitute or special patrolmen who shall not be considered in any sense to be regular member of the Police Division and who need not be in the classified service.

(Jt. Ex. A, p.24). Section 105 of the City Charter divides all positions into the unclassified and classified service as follows:

- (1) The unclassified service shall include:
 - (a) All officers elected by the people.
 - (b) The Director and Deputy Directors of the Department of Public Service.
 - (c) The Director and Deputy Directors of Finance.
 - (d) The Director of Law, the Deputy Directors of Law and the Assistant Directors of Law.
 - (e) The Director and Deputy Directors of Planning and Urban Development appointed after November 15, 1990.
 - (f) The members of all appointed boards or commissions, and advisory boards.
 - (g) The Secretaries and assistants to the Mayor.
 - (h) The Deputies to the Mayor.
- (2) The classified service shall comprise all positions not specifically included by this Charter in the unclassified service.

(Jt. Ex. A, p.39). Respondent and Intervenor claim that the City has appointed several individuals to serve as unclassified "Assistants to the Mayor." (Miller-Dawson Aff. ¶ 4). However, Respondent Brown is uniquely situated as the only Assistant to the Mayor who serves at the "direction of the Chief of Police."² (Miller-Dawson Aff. ¶ 4(a)).

City Ordinance 409-2012 is an enabling ordinance that creates, establishes, and reorganizes all departments, offices, bureaus, divisions and positions in the classified service of the City. (Jt. Ex. B, p.1). The classified ranking positions within the Division of Police consist of the following: Police Chief, Police Deputy Chief, Police Captain, Police Lieutenant, Police Sergeant, Police Officer. (Jt. Ex. B, p.28). All other positions (Account Clerk, Crime Analyst, Heath Education Specialist, Law Enforcement Planner, Safety Communications Technician, Safety Communications Supervisor and Secretary) within the Division of Police are civilian

² George Romanoski allegedly served as coordinator of the City's Safety Communications Center. The City claims Mr. Romanoski managed police personnel, including supervisors, as well as civilian employees. (Miller-Dawson Aff. ¶ 4(g)). However, the Organization Chart for the Division of Police shows that the Combined Communication Center now falls into the Chain of Command under the Communications Sub-Division. (Ex. Z, p.16).

(non-sworn) positions. (Jt. Ex. B, p.29). No position with the title "assistant chief of police" exists within the Division of Police either as a sworn classified officer or an unclassified civilian employee.

The City has proscribed Rules and Regulations for the Division of Police pursuant to Charter Section 68 which allows for "rules and regulations as the Mayor may prescribe." (Jt. Ex. A, p.2). The Department's Rules and Regulations define several terms relevant to the instant matter:

- Chain of Command: the unbroken line of authority from the Chief of Police downward through a single subordinate at each level of command to the level of execution. (Jt. Ex. C, p.6).
- General Order: permanent written orders issued by the Chief of Police. (Jt. Ex. C, p.6).
- Line Supervisor: the supervision by a ranking officer of a subordinate under his direct command. (Jt. Ex. C, p.6).
- Officer Channels: through the hands of the ranking officers in the chain of command. (Jt. Ex. C, p.6).
- Order: an instruction or directive, either oral or written, given by an officer of higher rank to a subordinate. (Jt. Ex. C, p.6).
- Acting: temporary in a position to which a member is not ordinarily assigned, usually in a position of higher rank. All the authority, responsibilities and duties of the position rest with the acting member. (Jt. Ex. C, p.7).
- Captain: officer in charge of a bureau, section, detail, or other such unit or shift as the Chief of Police may direct. (Jt. Ex. C, p.7).
- Chief of Police; the executive head of the Police Department. (Jt. Ex. C, p.7).
- Commanding Officer: a supervisor above the rank of Sergeant who command a subdivision, bureau, section, shift, unit or special detail of the police division. (Jt. Ex. C, p.7).

- Deputy Chief of Police/Major: serves as commander of a police subdivision and can assume the duties of the Chief of Police if assigned to do so during the absence of the Chief of Police. (Jt. Ex. C, p.7).
- Lieutenant: officer in charge of a bureau, section, detail, or other such unit. (Jt. Ex. C, p.7).
- Police Reserve Officer: trained civilian volunteers with full police authority under the control of the Police Division who are available for emergency duty. (Jt. Ex. C, p.7).
- Rank: the order of position in job classification of the Police Division. The titles of the ranks are: Chief of Police; Deputy Chief of Police/Major; Captain; Lieutenant; Sergeant; Police Officer. (Jt. Ex. C, p.7).
- Subdivision Commander: a Deputy Chief, or his/her designated replacement, assigned by the Chief of Police to command a subdivision. (Jt. Ex. C, p.7).
- Rules and Regulations: directions issued by the Chief of Police, with the approval of the Mayor, defining the police purpose, duties, and conduct of all members and employees of the Police Division. (Jt. Ex. C, p.9).

Police Department Rule 500.13 provides that police officers may be subject to discipline for failing to obey lawful orders or deliberately refusing to obey lawful orders. (Jt. Ex. C, p.19). In other words, the "Chain of Command" in the Division of Police is clearly delineated to begin with the Chief and move down the ranks of the sworn civil service employees. The Chain of Command does not include "Assistant Chief of Police" or "Assistant to the Mayor."

All active police officers in the Division of Police have a three- or four- digit identification number. (Zampelli Aff. ¶ 18; Daugherty Aff. ¶ 19). All reserve police officers have a four-digit identification number which begins with the number five (5). (Zampelli Aff. 18; Daugherty Aff. ¶ 19). Active police officer identification numbers are utilized to identify police officers in the normal course of police business: identification numbers are used in Firearms Review Board Reports, (Ex. R); overtime approval forms, (Ex. T); requests for secondary employment, (Ex. V-2); and, among others, training request forms. (Ex. U).

Likewise, the Division of Police maintains a seniority list of sworn police officers in the classified service. This list is known as an "S-List." (Jt. F. 15). The S-List assigns all sworn supervisors an S-Number which identifies the officer's rank within the Chain of Command. (Calvaruso Aff. ¶ 10; Daugherty Aff. ¶ 10; Prebonick Aff. ¶ 10; Sullivan Aff. ¶ 10; Trundle Aff. ¶10; Zampelli ¶ 10).

The instant matter concerns the performance of duties of an Acting Chief of Police and Deputy Chief. The facts show Relator Captains have a good faith claim of entitlement to both positions as discussed herein.

1) Relator Captains have made a Good Faith Claim of Entitlement to the Public Office of Acting Police Chief.

James Nice is currently the City's Chief of Police and has held that position since on or about June 6, 2011. (Jt. Fact 12). In his position, Chief Nice is the executive head of the Division of Police and holds the highest rank classification within the Division of Police. (Jt. Ex. C, p.7). As such, Chief Nice is at the top of the Chain of Command. (Jt. Ex. C, p.6). An acting officer serves "in a position to which a member is not ordinarily assigned, usually in a position of higher rank. All the authority, responsibilities and duties of the position rest with the acting member." (Jt. Ex. C, p.7). Indeed, an individual "temporarily filling the position of a supervisor in an acting capacity shall be vested with the authority and responsibility of the supervisory officer whose position he / she is filling." (Jt. Ex. C, p.20).

From time to time, Chief Nice has issued Chief's Directives designating a Police Captain as Acting Chief of Police during his temporary absences. (Jt. Fact 13). Pursuant to the Rules and Regulations, when an individual is designated Acting Chief, all roles and responsibilities assigned to the Chief are the responsibility of the Acting Chief. The following chart reflects Chief Nice's Directives designating a Police Captain as Acting Police Chief:

<u>Date of Absence</u>	<u>Designated Acting Chief</u>	<u>Citation</u>
June 29 & 30, 2011	Captain Daugherty	I/R Nice Ex. 1
August 5 through August 7, 2011	Captain Shearer	I/R Nice Ex. 2
August 8 & 9, 2011	Captain Calvaruso	I/R Nice Ex. 2
August 10 & 11, 2011	Captain Prebonick	I/R Nice Ex. 2
August 11, 2011	Captain Daugherty	I/R Nice Ex. 2
August 13 & 14, 2011	Captain Zampelli	I/R Nice Ex. 2
September 1, 2011	Captain Daugherty	I/R Nice Ex. 3
September 2, 2011	Captain Zampelli	I/R Nice Ex. 3
September 15, 2011	Captain Prebonick	I/R Nice Ex. 4
October 21 through October 23, 2011	Captain Ball	I/R Nice Ex. 6
October 24 & 25, 2011	Captain Trundle	I/R Nice Ex. 6
October 26 & 27, 2011	Captain Caprez	I/R Nice Ex. 6
December 1 through December 4, 2011	Captain Calvaruso	I/R Nice Ex. 7
April 28 through May 6, 2012	Captain Trundle	I/R Nice Ex. 8
May 12 through May 20, 2012	Captain Prebonick	I/R Nice Ex. 9
August 3 through August 7, 2012	Captain Caprez	I/R Nice Ex. 10
August 8 through August 12, 2012	Captain Ball	I/R Nice Ex. 10
September 28 through October 2, 2012	Captain Calvaruso	I/R Nice Ex. 11
October 3 through October 8, 2012	Captain Daugherty	I/R Nice Ex. 11
October 26 through October 31	Captain Prebonick	I/R Nice Ex. 12
January 9 through January 13, 2013	Captain Zampelli	I/R Nice Ex. 13

Likewise, on or about September 15, 2011, while serving as Acting Chief of Police, Captain Prebonick assigned Captain Zampelli to serve as Acting Chief of Police on September 17 & 18, 2011. (I/R Nice Ex. 5). Because there were no Deputy Chiefs in the Division of Police during this time, these Directives complied with the Division of Police Chain of Command. (See Calvaruso Aff. ¶ 7; Daugherty Aff. ¶ 7; Prebonick Aff. ¶ 7; Sullivan Aff. ¶ 7; Trundle Aff. ¶ 7; Zampelli Aff. ¶ 7).

On or about February 5, 2013, Police Chief Nice issued a Directive officially assigning Charles Brown—an unclassified civilian employee—to serve in the Chief's position thereby giving Respondent Brown the authority to exercise all of the Chief's roles and responsibilities. Respondent Brown was assigned to serve as the Acting Chief of Police from 5:00 p.m. Monday, February 11, 2013 through 5:00 p.m. Friday, February 15, 2013. (Jt. Ex. I).

Following Respondent Brown's term as Acting Chief and since the Relators filed the instant complaint, Chief Nice has refused to appoint an Acting Chief during his absence. Instead, Chief Nice has ordered "During my absence . . . any issues that arise that require immediate attention are to be directed to Mayor Donald L. Plusquellic." (Calvaruso Aff. ¶ 16; Daugherty Aff. ¶ 16; Prebonick Aff. ¶ 16; Sullivan Aff. ¶ 16; Trundle Aff. ¶ 16; Zampelli Aff. ¶ 16; Ex. M-2; Ex. M-3). In these instances the Division of Police has lacked an "executive head." Indeed, no party has provided any evidence regarding who serves at the top of the Chain of Command in these circumstances.

As Relator Captains have consistently served as Acting Police Chief in compliance with the Chain of Command, they have made a good faith claim to serve as Acting Police Chief in place of Respondent Brown.

2) Relator Captains have made a Good Faith Claim of Entitlement to Serve as *de facto* Deputy Chief.

The Akron Civil Service Commission has a job description for the classified position Police Deputy Chief. (Jt. Ex. D). The position is defined as a management position responsible for policy development, goal setting and team building. The description states that the Deputy Chief exercises considerable independent responsibility for planning and directing police activities. In addition, the description includes several job characteristics and qualifications: representing the Police Chief at various public and private functions; assisting the Police Chief in all aspects of management of the Division of Police; planning and directing all activities of one or more subdivisions of the Akron Division of Police; assisting in the creation, implementation and revision of departmental goals, objectives and policies; acquiring knowledge of current trends and innovations in law enforcement and recommends implementation for the efficient and effective delivery of public service and management objectives; participating in the development

and administration of the division budget and forecasting necessary to staff and equip the Division of Police; engaging in public speaking; acting as a liaison with other law enforcement and judicial agencies, government officials, community groups and general public; responding to incidents and emergencies as needed; performing leadership and other managerial duties in direct assistance to the Police Chief and Mayor; performing related work as required; serving as Acting Police Chief as assigned. (Jt. Ex. D).

During Chief Nice's tenure as Chief of the Division of Police, the City has not employed any Deputy Chiefs. (Calvaruso Aff. ¶ 7; Daugherty Aff. ¶ 7; Prebonick Aff. ¶ 7; Sullivan Aff. ¶ 7; Trundle Aff. ¶ 7; Zampelli Aff. ¶ 7; *see also* Ex. Z, p.18). The current S-List, issued on January 22, 2013, shows that the Deputy Chief positions are vacant. (Jt. Ex. H).

In the absence of Deputy Chiefs, Relator Captains have fulfilled the Deputy Chiefs' job duties. Pursuant to the Chain of Command the job duties of the Deputy Chiefs fall to the Captains. For example, Relator Captains have regularly served as the Acting Chief of Police. (*See* I/R Nice Ex. 1-13). Of course, Relator Captains respond to emergencies as needed. Likewise the Rules and Regulations state that the three subdivisions of the Division of Police (Uniform, Services and Investigative) are to be commanded by a Deputy Chief. (Jt. Ex. C, p.6). Relator Captains have supervised, directed and controlled one or more subdivisions of the Division of Police: Captain Zampelli serves as the acting Services Sub-Division Commander and has served in that capacity since March 3, 2009, (Zampelli Aff. ¶ 21); Captain Daugherty has served as the acting Commander of the Investigative Sub-Division. (Ex. Z, p.13). Relator Zampelli was also responsible for overseeing the hiring of new Division of Police employees in his role as acting Commander of the Services Sub-Division. (Zampelli Aff. ¶ 25). Captains regularly assist the Chief with management of day-to-day functions of the department. Relator

Captains and other sworn supervisors hold regular morning meetings with Chief Nice. During these regular meetings confidential and sensitive police information is discussed. (Daugherty Aff. ¶ 18).

In lieu of Deputy Chiefs, Relators have also been responsible for administering command level-responsibilities within the Chain of Command. For example, overtime was exclusively approved within the Chain of Command: an employee's immediate supervisor certifies that an officer worked overtime; thereafter, the supervising Sub-Division Commander (typically a Captain and occasionally a Lieutenant) approves the overtime request. (Daugherty Aff. ¶ 21). Similarly, requests for training were approved exclusively within the Chain of Command: an officer would make a training request; the subdivision commander would make a recommendation regarding the training; the Services Sub-Division Commander would determine whether funding is available for the requested training; finally, the Chief would make a final decision to approve or disapprove the training. (Zampelli Aff. ¶ 26).

Relator Captains have served as members of the Firearms Review Board pursuant to the Rules and Regulations. The Rules and Regulations require a Board review "each incident in which a firearm is discharged deliberately or unintentionally." (Jt. Ex. C, p.14). In the absence of Deputy Chiefs, only Captains have been assigned to the Firearms Review Board. Indeed, only classified supervisors within the Chain of Command of the Division of Police have served as members of the Firearms Review Board. (Daugherty Aff. ¶ 20; Prebonick Aff. ¶ 22).

As Relator Captains have consistently fulfilled the job duties of the Deputy Chief, they have made a good faith claim to serve as and fulfill the duties of Deputy Chief in place of Respondent Brown.

B. CIVILIAN CHARLES BROWN UNLAWFULLY SERVES WITHIN THE CHAIN OF COMMAND AS ACTING CHIEF AND *DE FACTO* DEPUTY CHIEF.

Charles Brown formerly served as a Police Lieutenant within the Division of Police until his resignation on January 12, 2013. (Jt. F. 8). Effective January 13, 2013, the Mayor of the City of Akron appointed Respondent Brown to serve as Assistant to the Mayor pursuant to Section 105 of the City Charter. (Jt. F. 9). Respondent Brown also took an oath to serve as a Reserve Police Officer—a “trained civilian volunteer,” (Jt. Ex. C, p.7)—for the City. (Jt. F. 10; Jt. Ex. K). Upon Respondent Brown’s appointment the City sent “Notice of Peace Officer Appointment” to the Ohio Attorney General indicating Respondent Brown was appointed as a “City / Municipality Auxiliary / Reserve / Special” officer pursuant to R.C. 737.051. (Jt. Ex. L).

The City’s public image of Respondent Brown connotes that Respondent Brown is a command-level officer with the Chain of Command. Since his appointment Respondent Brown has been referred to as “Assistant Chief of Police.” (Jt. F. 11). Indeed, Chief Nice’s Secretary sent correspondence to all Division of Police personnel confirming Respondent Brown’s “formal title is Assistant Chief of Police.” (Ex. N-1). Local media refer to Respondent Brown as “Assistant Police Chief Charles Brown.” (Ex. X). Respondent Brown has been regularly categorized as a member of the Chief’s office. (See Ex. U). However, the position “Assistant Chief of Police” does not exist either in the classified service or the unclassified service, in Akron. In addition, there is no position known as the “Assistant Chief of Police” within the sworn ranks of the Division of Police. (See Calvaruso Aff. ¶ 9; Daugherty, Aff. ¶ 9; Prebonick Aff. ¶ 9; Sullivan Aff. ¶ 9; Trundle Aff. ¶ 9; Zampelli Aff. ¶ 9).

The non-existent “Assistant Chief of Police” position appears to originate in correspondence sent from the City to the Ohio Police and Fire Pension Fund (“OP&F”). Months prior to Respondent Brown’s appointment, Cheri Cunningham, the City’s Director of Law, sent

correspondence to OP&F inquiring whether an unclassified assistant chief of police could continue membership in OP&F. Specifically, the City explained to OP&F that the City desired to appoint then-Lieutenant Brown to “serve as Assistant Chief of Police.” The City described Respondent Brown’s potential-new job to include:

. . . performance, leadership, and administrative duties in the direct assistance of the Police Chief, and serving in the role of the Chief in his absence. Mr. Brown will maintain his peace officer credentials while serving in this position. This job is not provisional, seasonal or temporary.

(Ex. O-2, p.3; *see* Ex. P-1; Muskovitz Aff. ¶ 5(a)). In addition, Ms. Cunningham attached a “Summary of Job Duties” describing the duties of the Assistant Chief of Police. (Ex. P-1). As described in the City’s “Summary of Job Duties,” Respondent Brown is responsible for the following duties:

- Representing the Police Chief, Mayor and City of Akron at various public and private meetings and events.
- Assisting the Police Chief in the supervision and direction of all Police Department functions.
- Monitoring the daily operations of the Police Department.
- Developing, recommending and / or instituting policies with the Chief of Police to maintain or improve the Department’s effectiveness, efficiency and customer service.
- Reviewing and providing guidance on administrative investigations and personnel issues.
- Analyzing data and information to evaluate departmental activities to determine effective allocation of resources.
- Communicating with the media, public and employees.
- Taking police action, if necessary.
- Performing related duties as required by the Chief of Police and Safety Director.

(Jt. Ex. E). In response to the City’s inquiry, OP&F replied that “based on the information” provided by the City “the position does meet the criteria for OP&F membership.”³ (Ex. O-2, p.5; Muskovitz Aff. ¶ 5b; Brown Aff. ¶ 9). Upon receipt of the City’s inquiry to OP&F and OP&F’s response, on or about April 3, 2013, Relators’ counsel, Susannah Muskovitz, sent correspondence to OP&F challenging Respondent Brown’s eligibility to maintain his membership in OP&F. (Muskovitz Aff. ¶ 6; Ex. P-2). In correspondence, Ms. Muskovitz compared Ms. Cunningham’s correspondence with OP&F and the City’s statements made in pleadings before this Court⁴:

Ms. Cunningham’s Correspondence with OP&F	The City’s claims made in Supreme Court Case Number 2013-0280
Mr. Brown “will serve as Assistant Chief of Police.” (Ex. A).	Mr. Brown was appointed to the unclassified position titled “Assistant to the Mayor,” and does not serve as “Assistant to the Chief.” (City Answer, ¶ 18). Mr. Brown was “hired as an Assistant to the Mayor, who delegated to Brown the responsibility of assisting the Chief of Police.” (City Motion for Judgment on the Pleadings, p.4).
This job is not provisional, seasonal or temporary. (Ex. A).	Mr. Brown was temporarily assigned to serve as Acting Police Chief. (City Motion for Judgment on Pleadings, p.8, 15).
Mr. Brown will serve in the “role of the Chief in his absence.” (Ex. A).	Mr. Brown served as Acting Police Chief from February 11, 2013 until February 15, 2013. Thereafter, Mr. Brown has not been designated Acting Chief. (City Motion for Judgment on the Pleadings, p.5). Akron Police Chief James Nice was absent from March 9, 2013 until March 17, 2013. However, Mr. Brown did not serve in the role of the Chief during his absence. (Ex. H).
Ms. Cunningham attached a summary of job duties. (Ex. B).	The City denies that Exhibit B is a “job description” for Mr. Brown’s current position.

³ Respondent Brown admits that he continues to be a member of OP&F. (Brown Answer ¶ 18).

⁴ The citations referenced in this chart refer to documents attached to Ms. Muskovitz’s April 3, 2013 correspondence. They do not correspond with the citations submitted to this Court.

<p>Mr. Brown's job duties include the following: Assisting the Police Chief in the supervision and direction of all Police Department functions; Monitoring the daily operations of the Police Department; Developing, recommending and / or instituting policies with the Chief of Police to maintain or improve the Department's effectiveness, efficiency and customer service; Taking police action, if necessary. (Ex. B).</p>	<p>(City Answer, ¶ 19-20). The City denies Mr. Brown "has been working in the Division of Police and assuming the authority of a ranking sworn police officer, below the rank of Chief and above the ranks of Police Captain, Police Lieutenant, Police Sergeant, and Police officer." (City Answer, ¶ 26).</p>
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(Ex. P-1). On or about May 10, 2013, Ms. Cunningham responded to OP&F simply claiming that the allegations in Ms. Muskovitz's April 3 correspondence were "not true or accurate." Yet, the City did not rebut any of the facts presented by Ms. Muskovitz. (Ex. P-2). On or about June 7, 2013, OP&F sent correspondence stating the City "confirmed" the facts provided to OP&F in November, 2012. OP&F explained that it would "await the Court's resolution" of the instant dispute before reconsidering Respondent Brown's membership status. (Ex. P-3). In response to this action the City now claims this "Summary of Job Duties" is not a "job description" *per se* but is merely a document which was submitted to OP&F in order to determine whether Respondent Brown could continue to be a member of OP&F in the event Respondent Brown was appointed as Assistant Chief of Police. (Brown Aff. ¶ 9).

The facts in the instant matter clearly confirm that Respondent Brown serves as an unclassified civilian, but unlawfully works inside the Chain of Command of the Division of Police. The facts clearly show Respondent Brown served as Acting Chief and continues to serve as *de facto* Deputy Chief.

1) Respondent Brown Unlawfully Served as Acting Chief.

There is no doubt that Respondent Brown unlawfully served as Acting Chief. On or about February 5, 2013, Police Chief Nice issued a Directive officially assigning Respondent

Brown to serve as Acting Chief of Police from 5:00 p.m. Monday, February 11, 2013 through 5:00 p.m. Friday, February 15, 2013. (Jt. Ex. I). As Acting Chief, Respondent Brown was assigned and performed the roles and responsibilities of the Police Chief. (Jt. C, p. 6-7). Even though Respondent Brown is a civilian outside the Chain of Command, Chief Nice's February 5 order inserted Respondent Brown at the top of the Chain of Command as the head executive of the Division of Police. Indeed, Respondent Brown exercised the authority of the Chief while serving as Acting Chief. Respondent Brown issued Chief's Directive 2013-CD-12 on February 13, 2013 reassigning officers in the Training Academy to the Uniform Sub-Division. (Ex. M-1).

In light of the instant matter, rather than continue to appoint Respondent Brown to serve as Acting Chief or appoint any Captain to serve as Acting Chief, the City has elected to operate the Division of Police without a lead executive in the event the Chief is absent. On or about March 8, 2013, Chief Nice issued a Chief's Directive stating Mayor Donald L. Plusquellic would be responsible for "any issues that arise that require immediate attention" during Chief Nice's absence from March 9, 2013 through March 17, 2013. (Ex. M-2). Likewise, on or about May 13, 2013, Chief Nice issued a Chief's Directive stating Mayor Donald L. Plusquellic would be responsible for "any issues that arise that require immediate attention" during Chief Nice's absence from May 14, 2013 through May 21, 2013. (Ex. M-3). Pursuant to Chief Nice's March 8 and May 13, 2013 Directives it is entirely unclear who is in command of the Division of Police.

The facts clearly show that Respondent Brown has served as Acting Chief.

2) Respondent Brown Unlawfully Serves as *de facto* Deputy Chief.

On January 17, 2013, days after Respondent Brown's appointment the City issued a revised S-List assigning Respondent Brown S-Number S-2. (Jt. Ex. F). Although civilians are

never issued S-Numbers and are not listed on the S-List, Respondent Brown was placed within the Chain of Command immediately after the Police Chief and superior to Police Captains, including Relators. (Calvaruso Aff. ¶ 10-11; Daugherty Aff. ¶ 10-11; Prebonick Aff. ¶ 10-11; Sullivan Aff. ¶ 10-11; Trundle Aff. ¶ 10-11; Zampelli Aff. ¶ 10-11). Indeed, the S-Number S-2 is reserved for a Deputy Chief. (See Jt. Ex. H). On January 22, 2013, the City issued a revised S-List; Respondent Brown was not included anywhere on the City's revised S-List. (Jt. Ex. H; Calvaruso Aff. ¶ 12; Daugherty Aff. ¶ 12; Prebonick Aff. ¶ 12; Sullivan Aff. ¶ 12; Trundle Aff. ¶ 12; Zampelli Aff. ¶ 12). Chief Nice now claims the S-List was "corrected" to remove Respondent Brown's name from the S-List. (Nice Aff. ¶ 11). However, the January 17 S-List was only revised after Susannah Muskovitz, counsel for Relators, sent correspondence to Patricia Ambrose-Rubright, the City's Director of Labor Relations and Assistant Director of Law, stating that Respondent Brown's position on the January 17 S-List placed a civilian "within the Chain of Command below the rank of Chief and above the ranks of Deputy Chief and Captain." (Jt. Ex. G, p.2).

Since Respondent Brown's appointment as Assistant to the Mayor; after January 22, 2013 when he was removed from the S-List; and, after Respondent Brown's service as Acting Chief, Respondent Brown has continued to work within the Division of Police assuming the authority of a ranking sworn police officer, below the rank of Chief and above the ranks of Police Captain, Police Lieutenant, Police Sergeant, and Police Officer. This has created enormous disruption within Akron's Division of Police because it means that an unclassified civilian employee, who was hired as an Assistant to the Mayor, has been inserted within the Police Chain of Command. (See Calvaruso Aff. ¶ 13; Daugherty Aff. ¶ 13; Prebonick Aff. ¶ 13; Sullivan Aff. ¶ 13; Trundle Aff. ¶ 13; Zampelli Aff. ¶ 13). A litany of examples illustrate that

Respondent Brown has been inserted into the Chain of Command as the *de facto* Deputy Chief even though Respondent Brown is an unclassified civilian employee.

Respondent Brown has attempted to maintain control he once held within the rank structure even though he is now outside the Chain of Command. Prior to his resignation, Respondent Brown served as the Lieutenant tasked with overseeing the Office of Community Policing, including the Office of Community Relations, within the Division of Patrol Operations. In this capacity then-Lieutenant Brown reported directly to Captain Calvaruso in accord with the Chain of Command. (Calvaruso Aff. ¶ 19.) Prior to Respondent Brown's resignation, Sergeant Eric Wells, a supervisor in the Office of Community Relations, reported to then-Lieutenant Brown within the Chain of Command. On or about January 16, 2013, Respondent Brown indicated that he would continue to oversee the Office of Community Relations even though he no longer served within the Chain of Command. (Calvaruso Aff. ¶ 20; Ex. Y). Indeed, Respondent Brown has issued several orders to Sergeant Wells even though he is a civilian employee. (Ex. Y). Because Respondent Brown is no longer within the Chain of Command of the Division of Police his orders and directions are disruptive to the Department and interrupt the Chain of Command. (Calvaruso Aff. ¶ 20).

Respondent Brown has interrupted the Chain of Command by utilizing the resources of the Division of Police without providing notification through the Chain of Command. For example, on or about June 5, 2013, the Division of Police partnered with the Akron Public Schools and other groups to hold a "fake flash mob." (Ex. X). After reviewing a news article related to this event Captain Calvaruso learned that several officers in the Patrol Operations Division, specifically the Office of Community Policing—within Captain Calvaruso's Chain of Command—were involved in this event. However, Captain Calvaruso was not aware that this

event took place or that officers working in his Division were involved in this event until he read a news article describing the event in the *Akron Beacon Journal*. (Calvaruso Aff. ¶ 21).

Respondent Brown now takes part in several activities traditionally performed by Deputy Chiefs and Captains (in the absence of Deputy Chiefs) in accord with the Chain of Command. For example, the Rules and Regulations require subdivision commanders to serve as members of the Firearms Review Board. Since his appointment Respondent Brown has regularly signed Findings and Recommendations of the Firearms Review Board which are addressed to Chief Nice. Respondent Brown signs under the title "Assistant Chief C.A. Brown." (Ex. R). Likewise, overtime is approved pursuant to the Chain of Command. (Daugherty). However, since his appointment Respondent Brown has regularly approved overtime requests, signing "A.C. Brown" in place of the "sub-division commander." (Ex. T). Further, training requests are regularly approved through the Chain of Command. (Zampelli Aff. ¶ 26). Nonetheless, since his appointment Respondent Brown has regularly approved overtime requests, signing "A.C. Brown" in place of the "Chief Signature." (Ex. W). Respondent Brown's work as a member of the Firearms Review Board as well as his approval of training and overtime requests is clear evidence that Respondent Brown serves within the Chain of Command as the *de facto* Deputy Chief.

Chief Nice has even retaliated against supervisors who allegedly refuse to honor Respondent Brown's authority within the Chain of Command. On or about February 8, 2013 Respondent Brown approached Captain Prebonick to discuss Respondent Brown's appointment to serve as an unclassified civilian. Respondent Brown asked Captain Prebonick about his recent appointment. To wit, Captain Prebonick replied he would work with Respondent Brown in the same manner as he worked with then-Lieutenant Brown in when he was within the Chain of

Command; Captain Prebonick did not state that he would not work with Respondent Brown. (Prebonick Aff. ¶ 19). On the same date, Chief Nice removed the Department of Planning, Research and Development from Captain Prebonick's Chain of Command and assigned the Department to Lieutenant Richard Edwards. (Prebonick Aff. ¶ 20). Chief Nice wrote to Captain Prebonick, "I am hoping that you will begin honoring the Mayor's assignment of Charles [Brown] in the future." (Ex. Q). Upon receipt of this email Captain Prebonick contacted Chief Nice and stated he [Captain Prebonick] was not unwilling to work with Respondent Brown. Shortly thereafter, Chief Nice verbally informed Captain Prebonick that he would retain supervision of the Department of Planning, Research and Development; however, Chief Nice has not formally rescinded his February 8, 2013 email re-assigning the Department of Planning, Research and Development. (Prebonick Aff. ¶ 21). In other words, Chief Nice will not hesitate to revoke an officer's supervisory authority in the event Respondent Brown's position in the Chain of Command is disrespected.

Respondent Brown's own actions show that he serves within the Chain of Command of the Division of Police. The Division of Police maintains a procedure for secondary police employment opportunities wherein both active and reserve police officers are eligible for police employment. (Ex. V-1; Zampelli Aff. ¶ 20). Captain Zampelli has approved requests for secondary employment in his capacity as acting Services Sub-Division Commander since March 2009. During Captain Zampelli's time approving requests for secondary police employment, no reserve officer has ever secured secondary police employment as a contact officer and / or supervisor.⁵ (Zampelli Aff. ¶ 21). Indeed, only active officers—not reserve officers—are

⁵ In the context of secondary police employment a contact officer and / or supervisor is responsible for scheduling work at a secondary jobsite and serves as a liaison between the Division of Police and the secondary employer. (Zampelli Aff. ¶ 20).

eligible to serve as contact officers and / or supervisors. (Zampelli Aff. ¶ 22). Further, reserve officers do not request secondary jobs—reserve officers are assigned to secondary employment. (Zampelli Aff. ¶ 21). On or about April 10, 2013 Respondent Brown submitted a request for approval of secondary employment specifically asking to perform “investigations and supervisory” work with the Akron Metropolitan Housing Authority (“AMHA”). (Zampelli Aff. ¶ 23). In his application Respondent Brown printed the AMHA / APD Security Roster sorted by identification number and dated April 2, 2013. Respondent Brown used his active identification number (828), rather than his reserve identification number (5907) in his application. (Ex. V-2; Ex. N-2). Captain Zampelli brought Respondent Brown’s request for secondary employment to Chief Nice’s attention. To wit, Chief Nice stated he would determine whether to approve Respondent Brown’s request for secondary employment. (Zampelli Aff. ¶ 23). Despite prohibitions against reserve officers working as secondary employment contact officers and / or supervisors, Chief Nice approved Respondent Brown’s application. (Ex. V-2).

Respondent Brown is involved in command-level activities even though he serves the City as a Reserve Police Officer. On a regular basis, Captains and other sworn supervisors have a morning meeting with Chief Nice. During this meeting police supervisors discuss confidential and sensitive police information. Since his appointment as an unclassified civilian Respondent Brown has attended several morning meetings. At several of these meetings Chief Nice has excused all Captains and other sworn supervisors in order to meet with representatives of the Department of Internal Affairs⁶ to discuss ongoing confidential investigations. Respondent Brown has not been excused. (Daugherty Aff. ¶ 18). Likewise, as reflected in the Division of Police Travel Log, Respondent Brown and Chief Nice both attended an “FBI Active Shooter

⁶ The Division of Police’s Office of Internal Affairs is formally referred to as the “Office of Professional Standards and Accountability.”

Executive Law Enforcement Conference” limited to “top command representatives that would be responsible for overseeing a response to” active shooter events. (Ex. S-1; Ex. S-2; Zampelli Aff. ¶ 28).

The facts clearly show that Respondent Brown is a *de facto* Deputy Chief.

III. LAW & ARGUMENT

This Court has long held that quo warranto is the exclusive method for “testing the question of title to office.” *State ex rel. Maxwell v. Schneider*, 103 Ohio St. 492, 134 N.E. 443 (1921); *State ex rel. Battin v. Bush*, 40 Ohio St.3d 236, 238-239, 533 N.E.2d 301 (1988); *State ex rel. Deiter v. McGuire*, 119 Ohio St.3d 384, 2008-Ohio-4536, 894 N.E.2d 680, ¶ 20.

Writs of quo warranto are governed by the Ohio Constitution and Ohio Revised Code Chapter 2733. The Ohio Supreme Court has original jurisdiction over writs of quo warranto. Ohio Constitution, Article IV, Section 2(B)(1)(a). Pursuant to R.C. 2733.01:

A civil action in quo warranto may be brought in the name of the state:

(A) Against a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise, within this state, or an office in a corporation created by the authority of this state.

R.C. 2733.06 states:

A person claiming to be entitled to a public office unlawfully held and exercised by another may bring an action therefor by himself or an attorney at law, upon giving security for costs.

Further, R.C. 2733.08 provides:

When an action in quo warranto is brought against a person for usurping an office, the petition shall set forth the name of the person claiming to be entitled to the office, with an averment of his right thereto. Judgment may be rendered upon the right of the defendant, and also on the right of the person averred to be so entitled, or only upon the right of the defendant, as justice requires.

For a writ of quo warranto to issue, a relator must establish 1) that a public office is being unlawfully held and exercised by respondent; and, 2) that the relator is entitled to the public office. *State ex rel. Varnau v. Wenninger*, 131 Ohio St.3d 169, 2012-Ohio-224, 962 N.E.2d 790, ¶ 12; *State ex rel. Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 23; *State ex rel. Newell v. Jackson*, 118 Ohio St. 3d 138, 2008-Ohio-1965, 886 N.E.2d 846, ¶ 6. The Ohio Supreme Court has held “a police officer of a municipal corporation is a public officer and occupies a public office” for the purposes of a quo warranto claim. *State ex rel. Brenders v. Hall*, 71 Ohio St.3d 632, 633, 646 N.E.2d 822 (1995); *State ex rel. McArthur v. DeSouza*, 65 Ohio St.3d 25, 28, 599 N.E.2d 268 (1992); see *State ex rel. Mikus v. Hirbe*, 7 Ohio St.2d 104, 218 N.E.2d 438 (1966). The Akron City Charter establishes a Division of Police which is composed of police officers of the following ranks: Police Chief, Police Deputy Chief, Police Captain, Police Lieutenant, Police Sergeant, Police Officer. (Jt. Ex. B, p.28). Further, an acting officer “shall be vested with the authority and responsibility of the supervisory officer whose position he / she is filling.” (Jt. Ex. C, p.20). As such, pursuant to R.C. Chapter 2733, all acting and regular police officers—including the Acting Police Chief and Police Deputy Chief—hold a public office.

In the instant matter, Relators have made a good faith claim to serve in the public offices of Acting Police Chief and Deputy Police Chief. This Court should issue a writ of quo warranto ousting Respondent Brown from 1) the public office of Acting Police Chief; and, 2) the public office *de facto* Police Deputy Chief.

Proposition of Law #1: Relators have made a good faith claim of entitlement to serve in the public office of Acting Police Chief and Deputy Police Chief.

The Revised Code states

When an action in **quo warranto** is brought against a person for usurping an office, the petition shall set forth the name of the person claiming to be entitled to the office, with an averment of his right thereto. *Judgment may be rendered* upon the right of the defendant, and also on the right of the person averred to be so entitled, or *only upon the right of the defendant, as justice requires.*

State ex rel. Deiter v. McGuire, 119 Ohio St.3d 384, 2008-Ohio-4536, 894 N.E.2d 680, ¶ 22 (emphasis original) (citing R.C. 2733.08). In order to be completely successful in a quo warranto claim “a relator must establish (1) that the office is being unlawfully held and exercised by respondent, and (2) that relator is entitled to the office.” *State ex rel. Varnau v. Wenninger*, 131 Ohio St.3d 169, 2012-Ohio-224, 962 N.E.2d 790, ¶ 12; *State ex rel. Zeigler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405, ¶ 23; *State ex rel. Newell v. Jackson*, 118 Ohio St.3d 138, 2008-Ohio-1965, 886 N.E.2d 846, ¶ 6. A relator need not prove his own title beyond all doubt, but his claim must be established on good faith and reasonable grounds. *State ex rel. Delph v. Barr*, 44 Ohio St. 3d 77, 80, 541 N.E.2d 59 (1989). Relators’ pleadings make a good faith and reasonable claim of entitlement to office.

A good faith claim may be established even when a relator is not entitled to serve in a public office. For example, in *Newell*, the relator was not entitled to the office of fire chief because she “did not pass the promotional examination.” *Newell* ¶ 6. Nonetheless, the relator’s failure to establish her entitlement “did not preclude a writ of quo warranto.” *Id.* ¶ 8. Likewise, in *Delph*, this Court ousted a police chief from office even though none of the relators were entitled to serve as police chief. *Delph*, 44 Ohio St.3d at 81.

Relators make a good faith claim that they are entitled to serve in the public office of Acting Police Chief. Relators may lawfully be assigned to serve as Acting Police Chief because they are members of the classified civil service. (See Calvaruso Aff. ¶ 7; Daugherty Aff. ¶ 7; Prebonick Aff. ¶ 7; Sullivan Aff. ¶ 7; Trundle Aff. ¶ 7; Zampelli Aff. ¶ 7). Further, Relators—unlike Respondent Brown—are employees of the Division of Police, are within the Chain of Command and may lawfully serve as Acting Police Chief. (Ex. A, p.2; Ex. B, p. 28-29). In fact, the City's evidence shows that Chief Nice has regularly assigned many Relator Captains to serve as Acting Police Chief. (See I/R Nice Ex. 1-14).

Likewise, Relators make a good faith claim that they are entitled to serve in the public office of Deputy Chief. As classified civil servants Relators may lawfully be assigned to fulfill the duties of Deputy Chief. (See Calvaruso Aff. ¶ 4; Daugherty Aff. ¶ 4; Prebonick Aff. ¶ 4; Sullivan Aff. ¶ 4; Trundle Aff. ¶ 4; Zampelli Aff. ¶ 4). Only classified civil servants may fill the position of Deputy Chief pursuant to City Ordinance No. 409-2012, (Jt. Ex. B, p. 28), and City Charter Section 105. (Jt. Ex. A, p.39). But for Respondent Brown's *de facto* service as Deputy Chief, Relators—as the highest ranking members of the Division of Police below the rank of Chief—have assumed the responsibilities of the vacant Deputy Chief positions. For example, Deputy Chiefs are responsible for commanding one or more subdivisions of the Division of Police. However—in the absence of Deputy Chiefs—Captain Zampelli serves as the acting Services Sub-Division Commander and has served in that capacity since March 3, 2009, (Zampelli Aff. ¶ 21); Captain Daugherty has served as the acting Commander of the Investigative Sub-Division, (Ex. Z, p.13). Likewise—in the absence of Deputy Chiefs—Relator Captains regularly serve on the Firearms Review Board, (Daugherty Aff. ¶ 20; Prebonick Aff. ¶ 22); approve overtime requests within the Chain of Command, (Daugherty Aff. ¶ 21); and,

approve requests for training within the Chain of Command. (Zampelli Aff. ¶ 26). Relators are entitled to continue fulfilling said responsibilities until a Deputy Chief is properly appointed pursuant the City Charter and corresponding Civil Service Rules.

Even if this Court finds that Relators are not entitled to serve as Deputy Chief or Acting Chief, the interest of justice requires this Court to oust Respondent Brown from the positions of Acting Chief and *de facto* Deputy Chief. Although Respondent Brown admits he is not part of the classified service of the City of Akron, Respondent Brown denies that he is not part of the rank structure of the Akron Police Department, (Brown Answer, ¶ 32, 36); denies that he cannot serve as Acting Chief of the Akron Police Department, (Brown Answer, ¶ 37); and, denies that he cannot serve as or fulfill the duties of the Police Deputy Chief of the Akron Police Department. (Brown Answer, ¶ 38). The City seeks to evade its own Civil Service Rules. Like in *Delph*—wherein a police chief was ousted from office even though none of the relators were entitled to serve as police chief, *Delph*, 44 Ohio St.3d at 81— Respondent Brown must be ousted from office even if this Court finds Relators are not entitled to serve as Deputy Chief or Acting Chief. Because the instant writ of quo warranto is the Relators' exclusive remedy to test Respondent Brown's claim to public office, justice demands that judgment is rendered against Respondent Brown.

As the highest ranking officers in the Division of Police below the rank of Chief, the Relator Captains have made a good faith claim to their entitlement to the office of Acting Police Chief and to execute the duties of Police Deputy Chief.

Proposition of Law #2: Respondent Brown, an unclassified civilian appointed as an assistant to the Mayor of the City of Akron, unlawfully held and exercised the office of Acting Deputy Police Chief and must be ousted from the office of Acting Deputy Chief.

It is beyond doubt that Respondent Brown held and exercised the public office of Acting Police Chief. Chief James Nice appointed Respondent Brown to serve as Acting Police Chief from 5:00 p.m. Monday, February 11, 2013 through 5:00 p.m. Friday, February 15, 2013. (Jt. Ex. I). Indeed, Respondent Brown admits he served as Acting Police Chief during this time. (Brown Answer ¶ 27). Established pursuant to the City Charter, the Division of Police Rules and Regulations grant an Acting Police Chief the powers and responsibilities of the Chief of the Division of Police. (Jt. C, p.6-7, 20). Indeed, Respondent Brown exercised his power as Acting Chief as evidenced Respondent Brown's issuance of Chief's Directive 2013-CD-12. (Ex. M-1).

Respondent Brown's appointment as Acting Chief was unlawful. The City Charter requires that the Division of Police consist of a "Chief of Police" and other officers and employees as approved by City Council. (Jt. Ex. A, p.24). City Charter mandates that the Police Chief be a member of the City's classified civil service. (Jt. Ex. A, p.39). Respondent Brown is not a member of the classified civil service— Respondent Brown is an unclassified civilian. (Jt. F. 9). As such, Respondent Brown illegally served as Acting Police Chief.

In the face of clear language of the City Charter requiring a classified civil servant to serve as Police Chief, the City will likely argue that nothing prohibits the appointment of an unclassified civilian employee to serve as Acting Chief. This argument ignores the City Charter and disregards the Division of Police Rules and Regulations granting an Acting Police Chief all the powers and responsibilities of the Police Chief. (Jt. C, p.6-7, 20). No unclassified civilian employee may serve as Acting Police Chief: Respondent Brown may not serve as Acting Chief;

a retired Akron Police Officer may not serve as Acting Chief; Mayor Plusquellic may not serve as Acting Chief. Only a classified civil servant within the Division of Police Chain of Command may serve as Acting Police Chief.

Similarly, the City may argue that “Acting Chief” is not a separate public office within the Division of Police. If the office of Acting Chief is not a separate office, what is it? The only rational explanation is that it is a temporary assignment to the office of Police Chief. Following this argument, the office of Acting Chief is the same office as the Police Chief. Respondent Brown illegally held the public office of Acting Chief.

The City may also claim that Relators did not make a good faith claim to the office of Acting Chief. Of course, as Respondent Brown recognizes, Relators have regularly—and legally—been assigned to serve as Acting Chief between June 6, 2011 and January 15, 2013. As such, Relators have made a good faith claim to the office of Acting Chief.

Finally, the City may allege that the Relators’ claim is moot because Respondent Brown’s term as Acting Chief took place several months ago or that Respondent Brown only served as Acting Chief for a short period of time. However, both claims are distractions. Respondent Brown has claimed that he may be reappointed as Acting Chief at any time. (Brown Answer ¶ 56). Further, if this Court dismissed the instant matter as moot, this Court would effectively protect the City’s decision to appoint an unclassified civilian to serve as Acting Chief. *See State ex rel. Ziegler v. Zumbar*, 129 Ohio St.3d 240, 2011-Ohio-2939, 951 N.E.2d 405. In *Zumbar*, the respondent alleged a quo warranto claim was moot because the respondent was no longer serving in the contested office. In fact, several successors had already been appointed to and removed from the office. *Id.* at ¶ 13. However, this Court held,

the fact that there have been three successors since [the relator] does not bar his quo warranto claim. If this were true, an appointing authority

could insulate its improper removal of a public officer by appointing multiple persons to the office in quick succession [sanctioning] an unreasonable result.

Id. at ¶ 13. The same legal principal applies to the instant action: if this Court dismisses the instant matter as moot, this Court would effectively sanction the temporary appointment of an unclassified civil servant to the office of Acting Chief and override the precedent set in *Zumbar*.

Respondent Brown illegally held and must be ousted from the office of Acting Chief.

Proposition of Law #3: Respondent Brown, an unclassified civilian appointed as an assistant to the Mayor of the City of Akron, unlawfully serves the City of Akron within the Chain of Command of the Akron Division of Police as a *de facto* Deputy Chief. Respondent Brown must be ousted from the office of *de facto* Deputy Chief.

A. RESPONDENT BROWN SERVES AS A *DE FACTO* DEPUTY CHIEF.

The term “de facto” is defined as “having effect even though not formally or legally recognized.” *Black’s Law Dictionary* 427 (7th ed. 1999). This Court has defined a *de facto* officer “as one who, although not an officer in point of law, has the reputation of being the officer he assumes to be and is accepted as such by those who deal with him.” *State ex rel. Witten v. Ferguson*, 148 Ohio St. 702, 708, 76 N.E.2d 886 (1947); see *State ex rel. Huron Cty. Prosecutor v. Westerhold*, 72 Ohio St.3d 392, 396, 650 N.E.2d 463 (1995). Respondent Brown is a *de facto* Deputy Chief: 1) Respondent Brown has a reputation with the public and within the Division of Police as a Deputy Chief; and, 2) Respondent Brown performs and is assigned the duties of a Deputy Chief.

1) Respondent Brown is Regularly Identified as a Deputy Chief.

The City presents Respondent Brown as a *de facto* Deputy Chief to the public and internally within the Division of Police. Local media refer to Respondent Brown as “Assistant Police Chief Charles Brown.” (Ex. X). Chief Nice’s secretary has explained to the entire Division of Police that Respondent Brown’s “formal title is Assistant Chief of Police.” (Ex. N-1). Indeed, the City admits Respondent Brown is regularly referred to as “Assistant Chief of Police.” (Jt. F. 11).

Within the Division of Police, Respondent Brown is identified as a “Chief.” The City’s revision of the S-List—immediately after Respondent Brown was hired—shows that the City intended that Respondent Brown serve as a Deputy Chief within the Chain of Command of the Division of Police. On or about January 17, 2013—not more than two days after hiring Respondent Brown as an unclassified civilian—the City revised its S-List, assigning Respondent Brown the rank of “S-2,” the rank reserved for Deputy Chiefs. (Jt. Ex. F). Indeed, S-2 is the second-highest rank in the Police Department, immediately below Chief Nice and above all other classified officers. (See Jt. Ex. H (noting there are four (4) vacant Deputy Chief positions which would receive S-numbers S-2 through S-5)). There is no doubt that upon his appointment in January 2013, the City intended to place Respondent Brown at the top of the Chain of Command immediately after the Police Chief and before the positions of Police Deputy Chief and Police Captain. (See Calvaruso Aff. ¶ 11; Daugherty Aff. ¶ 11; Prebonick Aff. ¶ 11; Sullivan Aff. ¶ 11; Trundle Aff. ¶ 11; Zampelli Aff. ¶ 11). The City only removed Respondent Brown from the S-List after receiving notice from Susannah Muskovitz that an unclassified civilian cannot serve within the Chain of Command. (Jt. Ex. G).

Chief Nice has even retaliated against supervisors who allegedly refuse to honor Respondent Brown's authority within the Chain of Command. On or about February 8, 2013 Respondent Brown approached Captain Prebonick to discuss Respondent Brown's appointment to serve as an unclassified civilian. Shortly after their conversation Chief Nice removed the Department of Planning, Research and Development from Captain Prebonick's Chain of Command. (Prebonick Aff. ¶ 20). Chief Nice wrote to Captain Prebonick, "I am hoping that you will begin honoring the Mayor's assignment of Charles [Brown] in the future." (Ex. Q). Chief Nice has not formally rescinded his February 8, 2013 email removing the Department of Planning, Research and Development from Captain Prebonick's command. (Prebonick Aff. ¶ 21).

As has been shown, the City presents Respondent Brown as a ranking officer within the Chain of Command both internally and externally. The City claims neither Respondent Brown nor the City have ever referred to Respondent Brown as a "Deputy Chief" and therefore Respondent Brown is not a Deputy Chief. However, the City's semantics are a red herring. The City could assign Respondent Brown any job title (e.g., police consultant, assistant to the mayor or not-the-Deputy Chief), but the fact remains that Respondent Brown is presented as a "Chief" to the public and internally to the Division of Police.

2) Respondent Brown is Assigned and Performs the Duties of a Deputy Chief.

A review of the evidence submitted shows Respondent Brown is assigned to serve as a Deputy Chief and performs the duties of a Deputy Chief. In order to develop of full picture of Respondent Brown's service as a Deputy Chief, Respondent Brown's job duties and actions are compared with the job description of a Deputy Chief.

As a preliminary issue, the City has claimed that document presented as the “assistant Chief of police summary of job duties” is “not a job description,” but was merely a document submitted to OP&F in order to determine whether Respondent Brown would remain a member of OP&F in his unclassified employment. (Brown Aff ¶ 9). However, the “summary of job duties” was provided to Relators’ counsel in response to her request for a job description of Respondent Brown’s new position. (Jt. Ex. G). Further, if the summary of job duties is not a job description, what is it, and why was it submitted to OP&F to describe the required duties of Respondent Brown’s position? At a minimum, Joint Exhibit E is the best evidence of Respondent Brown’s assigned job duties—it is the only description of Respondent Brown’s job duties despite repeated requests.⁷ As such, Joint Exhibit E is used to evaluate Respondent Brown’s job duties.

The City’s “Summary of Job Duties” for the Assistant Chief of Police and Respondent Brown’s actions collectively reflect the responsibilities the City has charged Respondent Brown with executing. Several issues are discussed illustrating Respondent Brown is a *de facto* Deputy Chief.

Assisting the Chief with management and implementation of services.

A Deputy Chief is required to assist “the Police Chief in all aspects of management of the Police Division.” In addition a Deputy Chief “assists in the creation, implementation and revision of departmental goals, objectives and policies” and “acquires knowledge of current trends and innovations in law enforcement and recommends implementation for the efficient and effective delivery of public service and management objectives.” (Jt. Ex. D). Correspondingly, Respondent Brown’s summary of job duties requires the Assistant Police Chief to assist “the

⁷ Further, it is odd that the City now attempts to distance itself from the Summary of Job duties after preparing this document for a public entity—OP&F.

Police Chief in the supervision and direction of all Police Department functions” and develop, recommend and / or institute “policies with the Chief of Police to maintain or improve the Department’s effectiveness, efficiency and customer service.” (Jt. Ex. E). Indeed, Respondent Brown assists Chief Nice with the implementation of policy and management of the Division of Police.

On a regular basis, Captains and other sworn supervisors hold a morning meeting with Chief Nice— Respondent Brown attends these command-level meetings. During these meetings confidential and sensitive police information is discussed. (Daugherty Aff. ¶ 18). At the conclusion of several command-level meetings Chief Nice has excused all Captains and other sworn supervisors in order to meet with representatives of the Department of Internal Affairs to discuss ongoing confidential investigations. Respondent Brown has not been excused. (Daugherty Aff. ¶ 18). Through these morning meetings Respondent Brown is privy to the day-to-day operations, management and policy decisions of the Division of Police, as well as confidential internal affairs investigations.

Respondent Brown has acquired knowledge of current trends in law enforcement during his service as Assistant Chief. The Division of Police Travel Log shows that Respondent Brown and Chief Nice both attended an “FBI Active Shooter Executive Law Enforcement Conference” limited to “top command representatives that would be responsible for overseeing a response to” active shooter events. (Ex. S-1; Ex. S-2; Zampelli Aff. ¶ 28). In attending the Active Shooter conference Respondent Brown is acquiring knowledge of current trends in law enforcement. In addition, by sending Respondent Brown to the Active Shooter conference the City further portrays Respondent Brown as a “top command representative.”

Respondent Brown's approval of training requests shows that Respondent Brown actively assists with management of the Division of Police. Training requests are regularly approved through the Chain of Command. (Zampelli Aff. ¶ 26-27). However, since his appointment Respondent Brown has regularly approved overtime requests, signing "A.C. Brown" in place of the "Chief Signature." (Ex. W).

Further, Respondent Brown's supervision of the Division of Police's hiring process illustrates that Respondent Brown assists with the management of the Division of Police. Prior to Respondent Brown's appointment Captain Zampelli supervised the Division of Police's hiring process in his role as the acting Services Sub-Division Commander. As part of this process Captain Zampelli assigned a Sergeant to coordinate the background investigation component of the hiring process. The Sergeant reported directly to Captain Zampelli within the Chain of Command. (Zampelli Aff. ¶ 24). In early 2013, the Division of Police commenced the hiring process. Again, Captain Zampelli began oversight of the hiring process, including background investigations. However, at the early stage of the background investigation process Captain Zampelli became aware that Respondent Brown was also overseeing the hiring process, including background investigations. In early April, 2013, during the course of a meeting with several of his fellow Captains and Chief Nice, Captain Zampelli asked Chief Nice who (Captain Zampelli or Respondent Brown) was responsible for overseeing the ongoing hiring process—including background investigations. Chief Nice responded that Respondent Brown was responsible for handling background investigations and that Captain Zampelli should report to Respondent Brown. (Zampelli Aff. ¶ 25). Indeed, both Respondent Brown and Chief Nice admit that Respondent Brown manages the Division of Police's hiring process. (Brown Aff. ¶ 6; Nice Aff. ¶ 5).

Respondent Brown assists Chief Nice in all aspects of management of the Division of Police; assists with the creation, implementation and revision of departmental goals, objectives and policies; and, acquires knowledge of current trends in law enforcement. Respondent Brown is a *de facto* Deputy Chief.

Planning and directing activities of subdivisions.

A Deputy Chief is required to plan and direct the “activity of one or more subdivisions of the Akron Police Division.” (Jt. Ex. D). Respondent Brown’s job duties require that he monitor “the daily operations of the Police Department.” (Jt. Ex. E). Respondent Brown’s actions make clear that he is able to direct the activities of the various subdivisions of the Division of Police.

Respondent Brown has attempted to maintain and expand the control he once held within the rank structure even though he is now outside the Chain of Command. Prior to Respondent Brown’s resignation as a Police Lieutenant, Sergeant Wells (a supervisor within the Chain of Command in the Office of Community Relations) reported to then-Lieutenant Brown. After Lieutenant Brown’s resignation, on or about January 12, 2013, Respondent Brown indicated that he would continue to oversee the Office of Community Relations even though he was no longer serving within the Chain of Command of the Division of Police. (Calvaruso Aff. ¶ 20; Ex. Y). Indeed, Respondent Brown has issued several orders to Sergeant Wells even though he is a civilian employee. (Ex. Y). Respondent Brown’s management of Sergeant Wells is just one example of Respondent Brown’s direction of members of the various subdivisions within the Division of Police.

Similarly, Respondent Brown has directed the activities of employees within the Uniform Subdivision, thereby interrupting the Chain of Command. On or about June 5, 2013, the

Division of Police partnered with the Akron Public Schools and other groups to hold a “fake flash mob.” (Ex. X). After reviewing a news article related to this event Captain Calvaruso learned that several officers under Captain Calvaruso’s Chain of Command in the Patrol Operations Division’s Office of Community Policing were involved in this event. However, Captain Calvaruso was not aware that this event took place or that officers working in his Division were involved in this event until he read a news article in the *Akron Beacon Journal*. (Calvaruso Aff. ¶ 21). Respondent Brown’s actions show that Respondent Brown plans and directs activities within the subdivisions of the Division of Police.

Respondent Brown also approves requests for overtime and submits Findings and Recommendations of the Firearms Review Board wherein he claims to be a subdivision commander. The Rules and Regulations require subdivision commanders to serve as members of the Firearms Review Board. (Jt. Ex. C, p.14). Since his appointment Respondent Brown has regularly acted as a subdivision commander pursuant to the Rules and Regulations by signing Findings and Recommendations of the Firearms Review Board and sending such recommendations to Chief Nice. (Ex. R). Likewise, overtime is approved through the Chain of Command. (Daugherty Aff. ¶ 21). Since his appointment Respondent Brown has regularly approved overtime requests, signing “A.C. Brown” in place of the “sub-division commander.” (Ex. T).

Respondent Brown’s actions show he plans and directs the activities of one or more subdivisions of the Division of Police and therefore acts as a *de facto* Deputy Chief.

Acting as a liaison.

A Deputy Chief is required to “engage in public speaking” and act as a “liaison to other law enforcement and judicial agencies, government officials, community groups and general

public.” (Jt. Ex. D). Respondent Brown’s job duties state he is required to communicate “with the media, public and employees.” (Jt. Ex. E). Respondent Brown even admits he acts as a liaison with the public and other government agencies. Respondent Brown communicates with the media, the public and employees; makes television and public appearances; provides community outreach to faith based organizations and community groups including the Akron Urban League. Respondent Brown serves as a liaison working with the Ohio Attorney General’s office to implement a “Safe Neighborhood Initiative.” (Brown Aff. ¶ 4). Further, Respondent Brown’s organization and participation in the June 5, 2013 “fake flash mob” is evidence that Respondent Brown engages in public speaking and acts as a liaison with other government agencies and the public.

Respondent Brown is a *de facto* Deputy Chief.

Serving as Acting Chief.

A Deputy Chief is required to serve as Acting Police Chief as assigned. (Jt. Ex. D). As discussed in Proposition of Law Number 2, it is beyond doubt that Respondent Brown held and exercised the public office of Acting Police Chief. (Jt. Ex. I). Indeed, Respondent Brown admits he served as Acting Police Chief. (Brown Answer ¶ 27).

Respondent Brown’s service as Acting Chief shows Respondent Brown serves as a *de facto* Deputy Chief.

Administering Rules and Regulations.

A Deputy Chief is required to administer the Division of Police Rules, Regulations and Procedures. (Jt. Ex. D). Respondent Brown claims he does not administer the Rules and

Regulations. (Brown Aff. ¶ 6). However, Respondent Brown’s actions speak louder than his words.

While Respondent Brown served as Acting Chief he was “vested with the authority and responsibility” of the Chief. (Jt. Ex. C, p.20). As the acting executive head of the Division of Police, Respondent Brown was responsible for administering the Rules and Regulations of the Division of Police. For example, Respondent Brown administered the Rules and Regulations when he issued Chief’s Directive 2013-CD-12. (Ex. M-1). Further, the Rules and Regulations require the establishment of a Firearms Review Board to review “each incident in which a firearm is discharged deliberately or intentionally” and report “findings and recommendations to the Chief of Police.” (Jt. Ex. C, p.14). Respondent Brown regularly administers the Rules and Regulations when he submits Findings and Recommendations of the Firearms Review Board to Chief Nice. (Ex. R).

Respondent Brown’s administration of the Rules and Regulations illustrates Respondent Brown is a *de facto* Deputy Chief.

Other responsibilities.

In addition, the following chart displays other activities which a Deputy Chief is required to perform as well as corresponding activities described as Respondent Brown’s job duties.

<i>Assistant Police Chief “Summary of Job Duties” (Jt. Ex. E)</i>	<i>Corresponding Language in Deputy Chief Job Description (Jt. Ex. D)</i>
Representing the Police Chief, Mayor and City of Akron at various public and private meetings and events.	Represent the Police Chief at various public and private functions.
Analyzing data and information to evaluate departmental activities to determine effective	Participates in the development and administration of the division budget and

allocation of resources.	forecasting necessary to staff and equip the Police Division.
Taking police action, if necessary.	Responds to incidents and emergencies as needed.
Performing related duties as required by the Chief of Police and Safety Director. Respondent Brown admits he performs other duties assigned by the Mayor and Police Chief. (Brown Aff. ¶ 4).	Performs leadership and other managerial duties in direct assistance to the Police Chief and Mayor. Perform related work as required.

Clearly Respondent Brown performs and is assigned to perform the duties of a Deputy Chief. As such, Respondent Brown is a *de facto* Deputy Chief.

Respondent Brown’s “reserve officer” status.

Respondent and Intervenor will likely claim that Respondent Brown is merely a “reserve officer” and therefore cannot perform or be responsible for the duties of a Deputy Chief. The Rules and Regulations define police reserve officers as “trained civilian volunteers with full police authority under the control of the Police Division who are available for emergency duty.” (Jt. Ex. C, p.7). However, the City’s position conflicts with itself: Respondent Brown is clearly assigned and performs the duties of the Deputy Chief, yet the City claims he is a reserve office.

Plainly, Respondent Brown is not a volunteer—he is a full-time paid police officer. (See Ex. O-2, p.10 (showing a list of Respondent Brown’s earnings for calendar year 2013)). In Respondent Brown’s Answer he states he is a member of OP&F. (Brown Answer ¶ 18; see also Ex. O-2). The Revised Code describes a member of OP&F as

(a) Any person who receives an original appointment as a full-time regular police officer in a police department

(c) Any person who commences employment on or after September 16, 1998, as a full-time police officer with a police department in a position in which the person is required to satisfactorily complete a peace officer training course in compliance with section 109.77 of the Revised Code.

R.C. 742.01(A)(2). In accord with statutory provisions regulating OP&F, Respondent Brown must serve as a “full-time police officer.”

The City’s Charter provides that the police force “consists of a Chief of Police and such officers and employees as may be provided for by the Council.” Alternatively, the Mayor—when authorized by City Council—may “appoint substitute or special patrolmen who shall not be considered in any sense to be regular member of the Police Division and who need not be in the classified service.” (Jt. Ex. A, p.24-25). Therefore, pursuant to the City Charter, Respondent Brown must either 1) serve as a full-time police officer in a position established in City Ordinance 409-2012 (Police Chief, Police Deputy Chief, Police Captain, Police Lieutenant, Police Sergeant, Police Officer), (Jt. Ex. B); or, 2) serve as a full-time police officer who is not “considered in any sense” to be a member of the Police Division.

Respondent Brown’s formal title “Assistant Chief of Police” is not included anywhere in City Ordinance 409-2012. (Jt. Ex. B). As such, Respondent Brown must be considered a “substitute or special patrolmen who shall not be considered in any sense to be regular member of the Police Division.” Because Respondent Brown is not “in any sense” a member of the Police Division, Respondent Brown cannot attend command-level meetings wherein sensitive police information is discussed; approve overtime and travel requests; administer provisions of the Police Division Rules and Regulations; or, serve as Acting Chief. However, Respondent Brown is an active participant in the command structure of the Division of Police. Therefore, Respondent Brown serves (illegally) in a public office as a member of the command structure in the Police Division.

Even though the City claims Respondent Brown is a Reserve Officer, Respondent Brown enjoys the benefits of service as an active patrol officer. For example, when reserve officers attend the shooting range, they are listed as reserve officers. (Daugherty Aff. ¶ 22; Ex. U). However, when Respondent Brown attends the shooting range, he is listed as a representative of the Chief's Office—not as a reserve officer. Further, even though no reserve officer has submitted a request to serve as a supervisor / contact officer for secondary police employment, Respondent Brown applied to serve as a supervisor / contact officer. (Zampelli Aff. ¶ 22). While the secondary employment policy prohibits Respondent Brown from serving as a supervisor / contact officer, Chief Nice approved Respondent Brown's application for secondary employment. (Ex. V-1; Ex. V-2).

Despite Respondent Brown's alleged status as a reserve officer, Respondent Brown is a *de facto* Deputy Chief.

B. RESPONDENT BROWN UNLAWFULLY SERVES AS A *DE FACTO* DEPUTY CHIEF AND MUST BE OUSTED FROM THE POSITION.

Respondent Brown cannot lawfully act as *de facto* Deputy Police Chief in his capacity as an unclassified civilian with the title "Assistant to the Mayor." Because Respondent Brown is not a classified civil servant, he cannot legally serve within the Chain of Command as a *de facto* Deputy Police Chief.

A City may not appoint an unclassified civil servant to a position required to be filled by a classified civil servant. See *Jonovich v. E. Cleveland*, 8th Dist. No. 88272, 2007-Ohio-1984, ¶14 (April 26, 2007). In *Jonovich*, the plaintiffs successfully restrained the defendant city from appointing a non-classified employee to the position of fire chief. The Eighth District Court of Appeals affirmed a trial court's decision determining that the Mayor had no authority to appoint

an unclassified, civilian civil servant to the classified fire chief position. The Mayor's actions were contrary to the requirements of that city's charter and codified ordinances. *Id.*

Pursuant to the City Charter, in this case, the Police Chief has jurisdiction and control over all patrolmen and employees within the Division of Police. (Jt. Ex. A, p.24). Correspondingly, the Police Department Rules and Regulations establish an "unbroken line of authority from the Chief of Police downward through a single subordinate at each level of command to the level of execution." (Ex. C, p.1). Police Department Rules and Regulations include only the following ranks: Chief of Police, Deputy Chief of Police/Major, Captain, Lieutenant, Sergeant, and Police Officer. (Ex. C, p.3). Akron's City Charter requires that all ranks within the Division of Police—including the Police Deputy Chief—be classified civil servants. (See Jt. Ex. A, p.39). Pursuant to City Charter and *Jonovich*, Respondent Brown unlawfully serves as a *de facto* Deputy Chief.

Further, Respondent Brown's service as *de facto* Police Chief illegally circumvent the City's Charter and related Civil Service Rules. See *Local 330, Akron Firefighters Assn., AFL-CIO v. Romanoski*, 68 Ohio St. 3d 596, 629 N.E.2d 1044 (1994). In *Romanoski* this Court addressed whether the Akron City Charter authorized Akron's Fire Chief to assign *classified* employees as acting officers in vacant promotional positions. *Id.* at 598. The City argued that the City's civil service provisions were inapplicable because the fire chief only "assigned" officers to vacant positions and did not make "appointments" because no vacancies were actually filled. *Id.* at 601. This Court held that the City's analysis misconstrued its municipal charter and circumvented the purpose and rules of the civil service commission. The City should have promoted qualified classified employees through its civil service commission rather than selecting classified officers to serve in an acting capacity in vacant classified positions because

the purpose of Akron's Civil Service Commission is to promote fair competition and ensure only qualified individuals serve in classified positions. *Id.* at 601-602.

In the instant matter, the City's actions are far more egregious than they were in *Romanoski*. In *Romanoski*, the City "assigned" *classified* civil servants to vacant positions. Here the City has unlawfully assigned Respondent Brown—an *unclassified* civilian—the duties and responsibilities of the Police Deputy Chief. Respondent Brown's assignment unlawfully undermines the rank structure and Chain of Command within the Division of Police. (See *Calvaruso Aff.* ¶ 13; *Daugherty Aff.* ¶ 13; *Prebonick Aff.* ¶ 13; *Sullivan Aff.* ¶ 13; *Trundle Aff.* ¶ 13; *Zampelli Aff.* ¶ 13). Respondent Brown's assignment clearly circumvents Charter Section 105 which requires that the City's Deputy Police Chief be a member of the classified civil service.

Respondent Brown unlawfully serves as a *de facto* Deputy Chief and must be ousted from the office of Deputy Chief.

IV. CONCLUSION

Respondent Brown unlawfully holds the position of Acting Police Chief, unlawfully serves as *de facto* Police Deputy Chief and unlawfully serves within the Chain of Command of the City of Akron's Division of Police. Relators respectfully request that Respondent Brown be ousted from the public office of Acting Police Chief and be ousted from the public office of Police Deputy Chief. Relators further request that Respondent Charles Brown be ordered not to assume the duties of a sworn police officer in the Chain of Command. Correspondingly Relators request that Intervenor City of Akron be prohibited from assigning an unclassified civilian to perform the duties within the Chain of Command of the Akron Division of Police. Further, Relators believe they possess the necessary qualifications to serve as Acting Police Chief and

Deputy Chief and respectfully request a declaration that they are entitled to be considered for the positions of Acting Police Chief and Deputy Police Chief. Relators respectfully request this Court grant their writ of quo warranto with attorney fees, costs, and any other relief this Court deems appropriate.

Respectfully submitted,

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CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing RELATORS' BRIEF and the accompanying APPENDIX was served via email and regular U.S. Mail this 3rd day of July, 2013, upon the following:

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APPENDIX

Ohio Supreme Court Order dated June 5, 2013 P2
Ohio Constitution Article IV, Section 2 P3
R.C. Chapter 2733..... P5
R.C. 737.051 P14
R.C. 742.01 P15
Excerpts* of the Akron City Charter P19
Excerpts* of Akron City Ordinance 409-2012 P23
Excerpts* of the Division of Police Rules and Regulations P29

**Complete copies of the Akron City Charter, Akron City Ordinance 409-2012 and the Division of Police Rules and Regulations were filed on June 25, 2013 as part of the Parties Joint Exhibits.*

FILED

JUN 05 2013

The Supreme Court of Ohio

CLERK OF COURT
SUPREME COURT OF OHIO

State ex rel. Paul Calvaruso, Elizabeth A.
Daugherty, Michael G. Prebonick, Martha
L. Sullivan, Sylvia D. Trundle, and Daniel
D. Zampelli

Case No. 2013-0280

IN QUO WARRANTO

ENTRY

v.

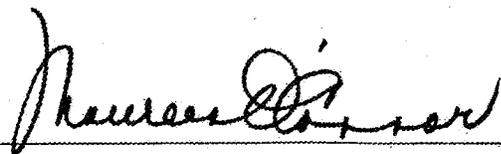
Charles Brown

This cause originated in this court on the filing of a complaint for a writ of quo warranto.

Upon consideration of respondent's motion for judgment on the pleadings and intervening respondent, City of Akron's motion for leave to intervene as respondent, it is ordered by the court that the motion for judgment on the pleadings is denied and the motion to intervene as a respondent is granted.

It is further ordered by the court, sua sponte, that an alternative writ is granted and the following briefing schedule is set for presentation of evidence and filing of briefs pursuant to S.Ct.Prac.R. 12.05:

The parties shall file any evidence they intend to present within 20 days of the date of this entry; relators shall file a brief within 10 days of the filing of the evidence; respondents shall file a brief within 20 days after the filing of relators' brief; and relators may file a reply brief within 7 days after filing of respondents' brief.



Maureen O'Connor
Chief Justice

governor and after a public hearing, at which all interested parties may appear and be represented, shall determine the question of disability. The court shall make its determination within twenty-one days after presentment of such resolution.

If the governor transmits to the Supreme Court a written declaration that the disability no longer exists, the Supreme Court shall, after public hearing at which all interested parties may appear and be represented, determine the question of the continuation of the disability. The court shall make its determination within twenty-one days after transmittal of such declaration.

The Supreme Court has original, exclusive, and final jurisdiction to determine all questions concerning succession to the office of the governor or to its powers and duties.

(1976)

ARTICLE IV: JUDICIAL

JUDICIAL POWER VESTED IN COURT.

§1 The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law.

(1851, am. 1883, 1912, 1968, 1973)

ORGANIZATION AND JURISDICTION OF SUPREME COURT.

§2 (A) The Supreme Court shall, until otherwise provided by law, consist of seven judges, who shall be known as the chief justice and justices. In case of the absence or disability of the chief

justice, the judge having the period of longest total service upon the court shall be the acting chief justice. If any member of the court shall be unable, by reason of illness, disability or disqualification, to hear, consider and decide a cause or causes, the chief justice or the acting chief justice may direct any judge of any court of appeals to sit with the judges of the Supreme Court in the place and stead of the absent judge. A majority of the Supreme Court shall be necessary to constitute a quorum or to render a judgment.

(B)(1) The Supreme Court shall have original jurisdiction in the following:

- (a) Quo warranto;
- (b) Mandamus;
- (c) Habeas corpus;
- (d) Prohibition;
- (e) Procedendo;
- (f) In any cause on review as may be necessary to its complete determination;
- (g) Admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

(2) The Supreme Court shall have appellate jurisdiction as follows:

- (a) In appeals from the courts of appeals as a matter of right in the following:
 - (i) Cases originating in the courts of appeals;
 - (ii) Cases in which the death penalty has been affirmed;
 - (iii) Cases involving questions arising under the constitution of the United States or of this state.
- (b) In appeals from the courts of appeals in cases of felony on leave first obtained.

(c) In direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed.

(d) Such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law;

(e) In cases of public or great general interest, the Supreme Court may direct any court of appeals to certify its record to the Supreme Court, and may review and affirm, modify, or reverse the judgment of the court of appeals;

(f) The Supreme Court shall review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.

(3) No law shall be passed or rule made whereby any person shall be prevented from invoking the original jurisdiction of the Supreme Court.

(C) The decisions in all cases in the Supreme Court shall be reported together with the reasons therefor.

(1851, am. 1883, 1912, 1944, 1968, 1994)

ORGANIZATION AND JURISDICTION OF COURT OF APPEALS.

§3 (A) The state shall be divided by law into compact appellate districts in each of which there shall be a court of appeals consisting of three judges. Laws may be passed increasing the number of judges in any district where in the volume of business may require such additional judge or judges. In districts having additional judges, three judges shall participate in the hearing

and disposition of each case. The court shall hold sessions in each county of the district as the necessity arises. The county commissioners of each county shall provide a proper and convenient place for the court of appeals to hold court.

(B)(1) The courts of appeals shall have original jurisdiction in the following:

(a) Quo warranto;

(b) Mandamus;

(c) Habeas corpus;

(d) Prohibition;

(e) Procedendo

(f) In any cause on review as may be necessary to its complete determination.

(2) Courts of appeals shall have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals shall not have jurisdiction to review on direct appeal a judgement that imposes a sentence of death. Courts of appeals shall have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

(3) A majority of the judges hearing the cause shall be necessary to render a judgment. Judgments of the courts of appeals are final except as provided in section 2(B)(2) of the article. No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

(4) Whenever the judges of a court of appeals find that a judgment upon

Chapter 2733: QUO WARRANTO

2733.01 Proceedings against a person.

A civil action in quo warranto may be brought in the name of the state:

- (A) Against a person who usurps, intrudes into, or unlawfully holds or exercises a public office, civil or military, or a franchise, within this state, or an office in a corporation created by the authority of this state;
- (B) Against a public officer, civil or military, who does or suffers an act which, by law, works a forfeiture of his office;
- (C) Against an association of persons who act as a corporation within this state without being legally incorporated.

Effective Date: 10-01-1953

2733.02 Proceedings against a corporation.

A civil action in quo warranto may be brought in the name of the state against a corporation:

- (A) When it has offended against a law providing for its creation or renewal, or any amendment thereof;
- (B) When it has forfeited its privileges and franchises by nonuser;
- (C) When it has committed or omitted an act which amounts to a surrender of its corporate rights, privileges, and franchises;
- (D) When it has misused a franchise, privilege, or right conferred upon it by law, or when it claims or holds by contract or otherwise, or has exercised a franchise, privilege, or right in contravention of law;
- (E) When any application for a license to transact business in this state filed by a foreign corporation, any articles of incorporation of a domestic corporation or any amendment to them, or any certificate of merger or consolidation which set forth a corporate name prohibited by the Revised Code, has been improperly approved and filed.

Effective Date: 06-15-1978

2733.03 Jurisdiction and venue in quo warranto actions.

An action in quo warranto can be brought only in the supreme court, or in the court of appeals of the county in which the defendant, or one of the defendants, resides or is found, or, when the defendant is a corporation, in the county in which it is situated or has a place of business. When the attorney general files the petition, such action may be brought in the court of appeals of Franklin county.

Effective Date: 10-01-1953

2733.04 Commencing quo warranto.

When directed by the governor, supreme court, secretary of state, or general assembly, the attorney general, or a prosecuting attorney, shall commence an action in quo warranto. When, upon complaint

or otherwise, either of such officers has good reason to believe that any case specified in section 2733.02 of the Revised Code can be established by proof, he shall commence such action.

Effective Date: 06-15-1978

2733.05 Bringing action.

The attorney general or a prosecuting attorney may bring an action in quo warranto upon his own relation, or, on leave of the court, or of a judge thereof in vacation, he may bring the action upon the relation of another person. If the action is brought under division (A) of section 2733.01 of the Revised Code, he may require security for costs to be given as in other cases.

Effective Date: 10-01-1953

2733.06 Usurpation of office.

A person claiming to be entitled to a public office unlawfully held and exercised by another may bring an action therefor by himself or an attorney at law, upon giving security for costs.

Effective Date: 10-01-1953

2733.07 Prosecution in absence of prosecuting attorney.

When the office of prosecuting attorney is vacant, or the prosecuting attorney is absent, interested in the action in quo warranto, or disabled, the court, or a judge thereof in vacation, may direct or permit any member of the bar to act in his place to bring and prosecute the action.

Effective Date: 10-01-1953

2733.08 Petition against person for usurpation of office.

When an action in quo warranto is brought against a person for usurping an office, the petition shall set forth the name of the person claiming to be entitled to the office, with an averment of his right thereto. Judgment may be rendered upon the right of the defendant, and also on the right of the person averred to be so entitled, or only upon the right of the defendant, as justice requires.

All persons who claim to be entitled to the same office or franchise may be made defendants in one action, to try their respective rights to such office or franchise.

Effective Date: 10-01-1953

2733.09 Leave to file petition - notice.

Upon application for leave to file a petition in an action in quo warranto, the court or judge may direct notice thereof to be given to the defendant previous to granting such leave, and may hear the defendant in opposition thereto. If leave is granted, an entry thereof shall be made on the journal, or the fact shall be indorsed by the judge on the petition, which shall then be filed.

Effective Date: 10-01-1953

2733.10 Issue of summons and service.

When the petition in an action in quo warranto is filed without leave and notice, a summons shall issue, and be served as in other cases. Such summons may be sent to and returned by the sheriff of

any county by mail. The sheriff is entitled to the same fees thereon as if it had been issued and returned in his own county.

Effective Date: 10-01-1953

2733.11 Service by publication.

When a summons in an action in quo warranto is returned not served because the defendant, or its officers or office, cannot be found within the county, the clerk of the court in which the action was brought must publish a notice for four consecutive weeks in a newspaper published and of general circulation in the county, setting forth the filing and substance of the petition. Upon proof of such publication the default of the defendant may be entered and judgment rendered thereon, as if he had been served with summons.

Effective Date: 10-01-1953

2733.12 Pleadings after petition.

The defendant in an action in quo warranto may demur or file an answer, which may contain as many several defenses as he has, within thirty days after the filing of the petition, if it was filed on leave and notice, or after the return day of the summons. The plaintiff may file a demurrer or a reply to such answer within thirty days thereafter.

Effective Date: 10-01-1953

2733.13 Court may extend time for pleading.

In an action in quo warranto an order may be made by the court, or by a judge thereof, extending the time within which a pleading may be filed. Such order does not work a continuance of the case.

Effective Date: 10-01-1953

2733.14 Judgment when office, franchise, or privilege is usurped.

When a defendant in an action in quo warranto is found guilty of usurping, intruding into, or unlawfully holding or exercising an office, franchise, or privilege, judgment shall be rendered that he be ousted and excluded therefrom, and that the relator recover his costs.

Effective Date: 10-01-1953

2733.15 Judgment when director of a corporation is illegally elected.

When an action in quo warranto is against a director of a corporation, and the court finds that, at his election, illegal votes were received or legal votes rejected sufficient to change the result, judgment may be rendered that the defendant be ousted, and of induction in favor of the person who was entitled to be declared elected.

Effective Date: 10-01-1953

2733.16 New election.

In a case under section 2733.15 of the Revised Code the court may order a new election to be held at a time and place and by judges it appoints. Notice of the election and naming such judges shall be

given as provided by law for notice of elections of directors of the corporation. The order of the court is obligatory upon the corporation and its officers when a duly certified copy is served upon its secretary personally, or left at its principal office. The court may enforce its order by attachment, or as the court deems necessary.

Effective Date: 10-01-1953

2733.17 Rights of person adjudged entitled to an office.

If judgment in an action in quo warranto is rendered in favor of the person averred to be entitled to an office, after taking the oath of office and executing any official bond required by law, he may take upon him the execution of the office. Immediately thereafter such person shall demand of the defendant all books and papers in his custody or within his power appertaining to the office from which the defendant has been ousted.

Effective Date: 10-01-1953

2733.18 Action for damages.

Within one year after the date of a judgment mentioned in section 2733.17 of the Revised Code, the person in whose favor the judgment is rendered may bring an action against the party ousted, and recover the damages he sustained by reason of such usurpation.

Effective Date: 10-01-1953

2733.19 Enforcement of judgment.

No defendant mentioned in section 2733.17 of the Revised Code shall refuse or neglect to deliver over any book or paper pursuant to a demand made under such section. Whoever violates this section is guilty of a contempt of court.

Effective Date: 10-01-1953

2733.20 Judgment when corporation has forfeited its rights.

When, in an action in quo warranto, it is found and adjudged that, by an act done or omitted, a corporation has surrendered or forfeited its corporate rights, privileges, and franchises, or has not used them during a term of five years, judgment shall be entered that it be ousted and excluded therefrom, and that it be dissolved.

When it is found and adjudged in such case, that a corporation has offended in a matter or manner that does not work such surrender or forfeiture, or has misused a franchise, or exercised a power not conferred by law, judgment shall be entered that it be ousted from the continuance of such offense or the exercise of such power.

When it is found and adjudged in such case, that any application for a license to transact business in this state filed by a foreign corporation, any articles of incorporation of a domestic corporation or any amendment to them, or any certificate of merger or consolidation which set forth a corporate name prohibited by the Revised Code has been improperly approved and filed, judgment shall be entered that the corporation be ousted from the continued use of such corporate name.

Effective Date: 10-16-1980

2733.21 Dissolution of corporation - appointment of trustees by court.

The court rendering a judgment dissolving a corporation as provided in section 2733.20 of the Revised Code shall appoint a trustee or trustees, not exceeding three in number, for the benefit of the creditors and stockholders thereof, who shall each give an undertaking payable to this state, in such sum and with such sureties as the court designates and approves, conditioned that they will faithfully discharge their respective trusts in accordance with the orders of such court or of the court to which such quo warranto proceedings may be remanded, as provided in section 2733.22 of the Revised Code, and properly pay and apply all money and other property that comes into their hands as such trustees, in accordance with such orders.

Effective Date: 10-01-1953

2733.22 Remanding to court of common pleas.

Upon the appointment and qualification of trustees under section 2733.21 of the Revised Code, the supreme court, or the court of appeals in which the quo warranto proceedings have been instituted, may remand the proceedings to the court of common pleas of the county in which the corporation has or last had its principal place of business for further proceedings. When the proceedings are remanded, the court of common pleas has full jurisdiction, and the same power with reference thereto as the supreme court or court of appeals would have had if such proceedings had not been remanded. The jurisdiction of the supreme court or court of appeals over the proceedings ceases upon such remand.

Effective Date: 10-01-1953

2733.23 Order of court.

Any party to a quo warranto proceeding against a corporation, including trustees appointed as provided in section 2733.21 of the Revised Code, may appeal from any order made in such proceedings in the same manner as in civil cases. The orders of the court in which such proceedings are instituted or to which they are remanded are binding upon the trustees, stockholders, creditors, and other persons interested in such corporation, unless reversed by appropriate proceedings.

Effective Date: 10-01-1953

2733.24 Duties of trustees as to notice of court order.

Upon the appointment and qualification of trustees under section 2733.21 of the Revised Code, they shall forthwith give notice of the order dissolving the corporation, of their appointment as trustees, and of the date of their appointment, by publication once a week for four consecutive weeks in a newspaper of general circulation in the county in which the corporation has or had its principal place of business. Such notice shall require all persons having claims against the corporation to file them with such trustees within ninety days from the date of their appointment. All claims not filed within ninety days from the date of the appointment shall be barred as against such trustees and the property of the corporation, unless the court, for good cause shown, orders otherwise.

Effective Date: 10-01-1953

2733.25 Rejected claims.

If, in the judgment of the trustees appointed as provided in section 2733.21 of the Revised Code, any

claims filed with them as provided in section 2733.24 of the Revised Code are for any reason not valid claims against the estate of the corporation, the trustees shall notify the claimants that their respective claims are rejected by written notice by registered mail, directed to the claimants' last known address. Such claimants, at any time within ninety days from the mailing of such notice of rejection, may sue such trustees for the recovery of such claims in any court of competent jurisdiction in the county in which such corporation has or had its last principal place of business. Should such suit finally terminate in favor of the claimant, the judgment therein obtained by him is entitled to share with other claims against the corporation, in the manner and to the same extent as if the claim had been allowed in the first instance by the trustees. Upon the failure of a claimant to bring suit within ninety days from the date of the mailing of the notice that it is rejected by the trustees, the claim is barred against the trustees or the property of the corporation, unless the court for good cause shown orders otherwise.

Effective Date: 10-01-1953

2733.26 Powers of trustees.

The trustees appointed as provided in section 2733.21 of the Revised Code are subject to the orders of the court appointing them or of the court to which the quo warranto proceedings are remanded, and are vested with the title to all the property, real and personal, of the corporation from the date of their appointment and qualification, and subject to the orders of the court may settle the affairs of the corporation, collect and pay outstanding debts, and divide among the stockholders the money and other property which remains after the payment of debts and necessary expenses. Said trustees may file in the court of their appointment, or in the court to which such proceedings are remanded, motions, applications for instructions or orders, and other pleadings. In the enforcement of any demands said trustees have all rights which the stockholders or creditors of the corporation might otherwise be entitled, to enforce, in addition to the rights of the corporation itself. The stockholders and creditors of such corporation may not enforce any such rights except upon the refusal of such trustees to do so within a reasonable time upon demand therefor by such stockholders and creditors.

Effective Date: 10-01-1953

2733.27 Demands by trustees.

Trustees, upon their appointment and qualification as provided in section 2733.21 of the Revised Code, shall forthwith demand all money, property, books, deeds, notes, bills, obligations, and papers of every description within the custody, power, or control of the officers of the corporation or any other persons, belonging to the corporation, or in any way necessary for settlement of its affairs or for the discharge of its debts and liabilities. Such trustees, without leave of court, may sue for and recover in the name of such trustees the demands and property of the corporation, and they are severally liable to the creditors and stockholders to fully and faithfully administer their respective trusts, in accordance with the orders of the court.

Effective Date: 10-01-1953

2733.28 Report to court.

The trustees shall, as soon as possible after their appointment under section 2733.21 of the Revised Code, prepare and report to the court a statement of assets and liabilities of the corporation. At such times as are ordered by such court, the trustees shall report to it their proceedings as such trustees.

Upon collecting such assets as are collectable and disbursing them to the approval of such court, the trustees and their sureties, by order of such court, shall be discharged from any further liability in the premises.

Effective Date: 10-01-1953

2733.29 Prohibition against refusing to deliver property of corporation to trustees.

No officer of a corporation shall refuse or neglect to deliver over money, or other things, pursuant to a demand made by the trustees as provided in section 2733.27 of the Revised Code. Any officer violating this section is guilty of contempt of court. Such officer is also liable to the trustees for the value of all money, or other things, so refused or neglected to be surrendered, together with the damages sustained by the stockholders and creditors of the corporation in consequence of such neglect or refusal.

Effective Date: 10-01-1953

2733.30 Costs.

If, in an action in quo warranto, judgment is rendered against a corporation, or against a person claiming to be a corporation, the court may render judgment for costs against the directors or other officers of the corporation, or against the person claiming to be a corporation.

Effective Date: 10-01-1953

2733.31 Order to deliver property enforced.

In an action in quo warranto, when judgment is rendered against the defendant, the court may make an order directing him forthwith to deliver over the books, papers, property, money, deeds, notes, bills, and obligations to the persons entitled thereto, or to the trustees appointed to receive them, and may send a transcript of the proceedings, including a copy of such order, to the court of common pleas of the proper county, with a special mandate directing such court to carry it into effect. On complaint being made to such court of common pleas, by affidavit, of a neglect or refusal to comply with such order, that court shall direct an attachment to issue for the defendant, returnable forthwith, who may be required to answer under oath touching the premises. If it appears that the defendant neglects or refuses to comply, the court shall render judgment for penalty or imprisonment, or both, such as the court making the order might have rendered.

Effective Date: 10-01-1953

2733.32 Injunction in certain cases.

A stockholder, or stockholders, owning not less than one fourth of the capital stock of a banking association actually paid in, or entitled to the beneficial interest therein, pending proceedings in quo warranto against such association, may have an injunction restraining the directors thereof from making any disposition of the assets of such association prejudicial to the interests of such stockholders, or inconsistent with their duties as directors.

Effective Date: 10-01-1953

2733.33 Court may require bank directors to give security.

Upon satisfactory proof that the directors of a banking association mentioned in section 2733.32 of the Revised Code have violated or are about to violate any of its franchises, the court, or a judge thereof in vacation, may require the directors to give security to the stockholders, to the satisfaction of the court or judge, for the proper discharge of their duties and the management and security of the assets. Such court or judge may enjoin the directors from incurring any additional liabilities except for the payment of the necessary services of the officers and employees of the banking association, the amount of which, while the quo warranto proceedings are pending, shall be under the control of the court.

Effective Date: 10-01-1953

2733.34 Enjoining directors from borrowing or issuing money.

On petition, the court or judge may enjoin the directors of a banking association mentioned in section 2733.32 of the Revised Code from borrowing or issuing, directly or indirectly, any of the money or assets of such bank, for their individual benefit, while the quo warranto proceedings are pending.

Effective Date: 10-01-1953

2733.35 Limitations.

Actions in quo warranto against a corporation for forfeiture of its charter shall be commenced within five years after the act complained of was done or committed. No action in quo warranto shall be brought against a corporation for the exercise of a power or franchise under its charter, which it has used and exercised for a term of twenty years. No action in quo warranto shall be brought against an officer to oust him from his office, unless it is brought within three years after the cause of such ouster, or the right to hold the office, arose.

Effective Date: 10-01-1953

2733.36 Action for damages against officers of ousted corporations.

When, in an action in quo warranto, judgment of forfeiture and ouster is rendered against a corporation because of misconduct of the officers or directors thereof, within one year thereafter a person injured thereby, in an action against such officers or directors, may recover the damages he has sustained by reason of such misconduct.

Effective Date: 10-01-1953

2733.37 Remedies cumulative.

Sections 2733.01 to 2733.39, inclusive, of the Revised Code do not restrain a court from enforcing the performance of trusts for charitable purposes, at the relation of the prosecuting attorney of the proper county, or from enforcing trusts or restraining abuses in other corporations, at the suit of a person injured.

Effective Date: 10-01-1953

2733.38 Disposition of fines.

Fines collected under section 2733.99 of the Revised Code shall be paid into the treasury of the proper county for the use of the schools as provided in section 3315.32 of the Revised Code.

Effective Date: 10-01-1953

2733.39 Actions to have precedence.

Actions in quo warranto have precedence over other civil business. If the matter is of public concern, on motion of the attorney general or prosecuting attorney the court shall require as speedy a trial of the merits of the case as is consistent with the rights of the parties.

Effective Date: 10-01-1953

2733.99 Penalty.

(A) Whoever violates section 2733.19 or 2733.29 of the Revised Code shall be fined not more than ten thousand dollars and imprisoned in the county jail until he complies with the order of the court, or is otherwise legally discharged.

Effective Date: 10-01-1953

737.051 City auxiliary police unit - city parking enforcement unit.

(A) The legislative authority of a city may establish, by ordinance, an auxiliary police unit within the police department of the city, and provide for the regulation of auxiliary police officers. The director of public safety shall be the executive head of the auxiliary police unit, shall make all appointments and removals of auxiliary police officers, subject to any general rules prescribed by the legislative authority by ordinance, and shall prescribe rules for the organization, training, administration, control, and conduct of the auxiliary police unit. Members of the auxiliary police unit shall not be in the classified service of the city.

(B)

(1) The legislative authority of a city may establish, by ordinance, a parking enforcement unit within the police department of the city, and provide for the regulation of parking enforcement officers. The director of public safety shall be the executive head of the parking enforcement unit, shall make all appointments and removals of parking enforcement officers, subject to any general rules prescribed by the legislative authority by ordinance, and shall prescribe rules for the organization, training, administration, control and conduct of the parking enforcement unit. The director may appoint parking enforcement officers who agree to serve for nominal compensation, and persons with physical disabilities may receive appointments as parking enforcement officers.

(2) The authority of the parking enforcement officers shall be limited to the enforcement of ordinances governing parking in handicapped parking locations and fire lanes and any other parking ordinances specified in the ordinance creating the parking enforcement unit. Parking enforcement officers shall have no other powers.

(3) The training the parking enforcement officers shall receive shall include instruction in general administrative rules and procedures governing the parking enforcement unit. The role of the judicial system as it relates to parking regulation and enforcement, proper techniques and methods relating to the enforcement of parking ordinances, human interaction skills, and first aid.

Effective Date: 07-13-1990

742.01 Police and fire pension fund definitions.

As used in this chapter:

(A)

(1) "Police department" means the police department of a municipal corporation.

(2) "Member of a police department" means any of the following:

(a) Any person who receives an original appointment as a full-time regular police officer in a police department from a duly established civil service eligible list or pursuant to section 124.411 of the Revised Code, or who is described in section 742.511 of the Revised Code, or who transfers from the public employees retirement system to the Ohio police and fire pension fund pursuant to section 742.513 of the Revised Code, or who is appointed pursuant to section 737.15 or 737.16 of the Revised Code as a full-time regular police officer and is paid solely out of public funds of the employing municipal corporation;

(b) Any person who, on October 1, 1965, was contributing four per cent of the person's annual salary to a police relief and pension fund established under former section 741.32 of the Revised Code;

(c) Any person who commences employment on or after September 16, 1998, as a full-time police officer with a police department in a position in which the person is required to satisfactorily complete a peace officer training course in compliance with section 109.77 of the Revised Code.

(B)

(1) "Fire department" means a fire department of the state or an instrumentality of the state or of a municipal corporation, township, joint fire district, or other political subdivision.

(2) "Member of a fire department" means all of the following:

(a) Any person who commences employment after November 8, 1990, as a full-time firefighter with a fire department, in a position in which the person is required to satisfactorily complete or have satisfactorily completed a firefighter training course approved under former section 3303.07 or section 4765.55 or conducted under section 3737.33 of the Revised Code;

(b) Any person who has elected under section 742.515 of the Revised Code to be transferred from the public employees retirement system to the Ohio police and fire pension fund;

(c) Any full-time firefighter who, on November 8, 1990, is a member of the Ohio police and fire pension fund.

(C) "Employee" means any person who is a member of a police department or a member of a fire department.

(D) "Employer" means the government entity by which an employee is employed and paid.

(E) "Member of the fund" means any person, except an other system retirant as defined in section 742.26 of the Revised Code, who is contributing a percentage of the person's annual salary to the Ohio police and fire pension fund or who is receiving a disability benefit or pension from the fund as a result of service in a police or fire department. A person, other than an other system retirant, who is

contributing a percentage of the person's annual salary to the fund and is dismissed, resigns, or is granted a leave of absence from a police or fire department shall be considered a "member of the fund" for a period of twelve months after the first day of the dismissal, resignation, or leave of absence, provided the sum deducted from the person's salary and credited to the person's account in the fund remains on deposit in the fund.

A member of the Ohio national guard, the Ohio military reserve, the Ohio naval militia, or a reserve component of the armed forces of the United States who is absent from employment due to active military duty because of an executive order issued by the president of the United States or an act of congress shall be considered a member of the fund for the duration of the active military duty.

(F) "Year," for the purpose of determining benefits, means any twelve consecutive calendar months of active service as a member of the fund, or, in the case of a member whose salary is paid weekly or biweekly, fifty-two consecutive weeks of active service as a member.

(G) "Average annual salary" means the highest average annual salary of a member of the fund during any of the number of years of contributions specified in section 742.37 or 742.39 of the Revised Code, as appropriate, and determined by dividing the member's total salary as an employee during those years by that number.

For the purpose of determining average annual salary for members who, as of July 1, 2013, have fifteen or more years of service credit, "salary" has the same meaning as in division (L)(2) of this section, except that it does not include any amounts that exceed the salary benchmark, determined as follows:

- (1) Divide by three the total of the member's salaries for the contiguous three-year period immediately preceding the contiguous three-year period immediately prior to the member's effective date of retirement under section 742.37 or effective date of participation in a deferred option retirement plan under section 742.44 of the Revised Code;
- (2) Multiply the amount determined under division (G)(1) of this section by one hundred ten per cent;
- (3) Multiply the amount determined under division (G)(2) of this section by one hundred ten per cent;
- (4) Multiply the amount determined under division (G)(3) of this section by one hundred ten per cent;
- (5) The amount determined under division (G)(4) of this section is the salary benchmark.

(H) "Normal service pension benefit" means the pension benefit payable to a member of the fund under division (C)(1) of section 742.37 of the Revised Code upon attainment of the applicable age listed in that section.

(I) "Retirement allowance" means the total pension benefit or disability benefit to which a member of the fund may be entitled under division (C) of section 742.37 or section 742.39 of the Revised Code.

(J) "Fiduciary" means a person who does any of the following:

- (1) Exercises any discretionary authority or control with respect to the management of the system, or with respect to the management or disposition of its assets;
- (2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) Has any discretionary authority or responsibility in the administration of the system.

(K) Except as provided in rules authorized by section 742.013 of the Revised Code, "terminal pay" means the following payments made by an employer to an employee regardless of whether the payments are made before or after termination:

(1) Payments for accrued but unused leave, including sick leave, vacation, personal leave, and compensatory time;

(2) Payments deferred more than one year compensating the employee for holidays worked or for longevity;

(3) Payments for overtime worked that are not included in the payroll for the period in which the overtime is worked or the payroll for any period ending not later than sixty days after the overtime is worked;

(4) Other payments that are not compensation for services rendered in the last pay period in which services were rendered and are designated as terminal pay by rule of the board of trustees of the Ohio police and fire pension fund. The board shall not designate as terminal pay payments deferred one year or less compensating an employee for holidays worked or for longevity.

(L)

(1) Except as otherwise provided in this division or in rules authorized by section 742.013 of the Revised Code, "salary" means all compensation, wages, and other earnings paid to an employee by reason of employment, but without regard to whether compensation, wages, or other earnings are treated as deferred income for federal income tax purposes. "Salary" includes payments for overtime that are included in the payroll for the period in which the overtime is worked or the payroll for any period not later than sixty days after the overtime is worked.

(2) "Salary" does not include any of the following:

(a) Compensation for services outside the scope of an employee's regular employment;

(b) Reimbursement of expenses;

(c) Terminal pay;

(d) Payments for accrued but unused sick leave or personal leave, or vacation pay covering periods for which salary, compensation, or benefits are paid;

(e) Payments made under division (B), (C), or (E) of section 5923.05 of the Revised Code, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;

(f) Payments made to or on behalf of an employee that are in excess of the annual compensation that may be taken into account by the fund under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. 401(a)(17), as amended.

(3) The board shall determine by rule whether any compensation, wages, or earnings not enumerated in this division is salary, and its decision shall be final.

(M) "Actuary" means an individual who satisfies all of the following requirements:

- (1) Is a member of the American academy of actuaries;
- (2) Is an associate or fellow of the society of actuaries;
- (3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

Amended by 129th General Assembly File No. 145, SB 340, §1, eff. 1/7/2013.

Effective Date: 12-13-2001

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Editor's note:

Changes to the Charter are indicated by histories following the changed sections. Unless so indicated, the sections derive unchanged from the Charter adopted November 5, 1918, and effective January 1, 1920. Dates appearing in parentheses following a section heading indicate that those provisions were subsequently amended, adopted or repealed on the date given.

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SECTION 72. - REMOVAL OF OFFICERS AND EMPLOYEES.

SECTION 72a. - APPEAL.

SECTION 73. - RELIEF OF POLICEMEN AND FIREMEN.

SECTION 74. - BUILDING INSPECTION.

SECTION 75. - WEIGHTS AND MEASURES.

SECTION 67. - GENERAL POWERS AND DUTIES.

The Department of Public Safety shall consist of the following divisions: Police, Fire, Building Inspection and Regulation, Weights and Measures, and such others as Council may from time to time prescribe, which said divisions shall be under the immediate supervision of the Mayor, who shall make all rules necessary for the regulation and discipline of the same. With the approval of Council, the Mayor shall make such rules and regulations as he shall deem expedient to govern the movement of all vehicles and pedestrians upon the public thoroughfares. He shall have exclusive authority, unless otherwise provided by ordinance, to issue all permits and licenses directly or indirectly concerned with the control of traffic upon the streets and sidewalks, but in the event the office of the Mayor may be closed for business, the Chief of Police shall have the authority to issue such temporary or emergency permits as may be necessary to prevent destruction of life or property. Such temporary or emergency permits in all cases shall be surrendered to the Mayor not later than two hours from and after the time the office of said Mayor shall have been reopened for business.

Ord. 2011 April 19th 2011 Amended 2011 11 1921

SECTION 68. - DIVISION OF POLICE.

The police force shall consist of a Chief of Police and such officers and employees as may be provided for by the Council. For any vacancy in the position of Chief of Police which exists after November 7, 2000, the Mayor shall appoint the Chief of the Division of Police who shall serve in the classified service for an initial term of four (4) years. A Chief so appointed may be reappointed in the classified service for an additional term of four (4) years, with no limit on the number of re-appointments. The Chief of the Division of Police shall be in immediate charge of said Division, shall have jurisdiction over the Police Station and any substation which may be hereafter established, and shall have control over the stationing and transfer of all patrolmen and other employees constituting the Division of Police, under such rules and regulations as the Mayor may prescribe. No special detectives or other special officers shall be employed except upon written authority from the Mayor, and such authority shall be exercised only under the direction and control of the Chief of Police, and for a stipulated time. The Mayor shall have the right, whenever authorized by Council, to appoint substitute or special patrolmen who shall not be considered to be in any sense regular members of the Police Division and who need not be in the classified service. In case of riot or other serious

emergency, or at time of elections or for other similar occasions, the Mayor or in his absence, the Chief of Police, may appoint, for the period of the emergency only, additional patrolmen and officers, who need not be in the classified service.

(Section 70 of Article 10, Chapter 2 of the City of Hialeah Ordinance adopted by electorate 11-4-80; Amendment adopted by electorate 11-4-80)

SECTION 69.

(Repealed; V 44 p 311; Approved by voters Nov. 5, 1935)

SECTION 70. - DIVISION OF FIRE.

The fire force shall consist of a Chief and such officers and employees as may be provided for by Council. For any vacancy in the position of Chief of the Division of Fire which exists after November 7, 2000, the Mayor shall appoint the Chief of the Division of Fire who shall serve in the classified service for an initial term of four (4) years. A Chief so appointed may be reappointed in the classified service for an additional term of four (4) years, with no limit on the number of re-appointments. The Chief of the Division of Fire shall be in immediate charge of the fire force and shall have control of the stationing and transfer of all firemen and other employees constituting said fire force, under such rules and regulations as the Mayor may prescribe. In case of riot, conflagration or other like emergency, the Mayor or in his absence the Chief of the fire force, may appoint, for the period of the emergency only, additional firemen who need not be in the classified service.

(V 44 p 311; Approved by voters Nov. 5, 1935) (Amendment adopted by electorate 11-4-80; Amendment adopted by electorate 11-4-80)

SECTION 70a. - POLICE AND FIREMEN PERSONNEL AND COMPENSATION.

The compensation for each higher rank in the Police and Fire Departments shall be sixteen percent (16%) greater than the compensation for the next lower rank.

(V 40 p 100; Approved by voters Nov. 5, 1935) (Amendment approved by electorate 11-6-80)

SECTION 71. - REMOVAL OF DIVISION HEADS.

The Mayor shall have the exclusive right to suspend, reduce in rank or dismiss the Chiefs of the Divisions of Police or Fire for incompetence, inefficiency, abuse of chemical substances, disorderly or immoral conduct, discourteous treatment of any citizen or of the public at large, insubordination, neglect of duty or for any other just and reasonable cause. In case of such suspension, reduction in rank or dismissal, the Mayor shall forthwith certify the fact, together with the cause therefor, to the Civil Service Commission, who within thirty (30) days from the date of such certification or a later date if agreed to by the Chiefs of the Divisions of Police or Fire shall proceed to review such charges and render judgment thereon, which judgment may affirm, disaffirm or modify the judgment of the Mayor.

(Amendment adopted by electorate 11-6-80; Amendment adopted by electorate 11-6-80)

SECTION 72. - REMOVAL OF OFFICERS AND EMPLOYEES.

The Mayor shall have the right to suspend, reduce in rank or dismiss any officer or employee in the Division of Police and Fire and the Chiefs of the Divisions of Police and Fire shall have the right to suspend and/or recommend the reduction in rank or dismissal of any officers or employees in the

SECTION 104. - OFFICERS AND EMPLOYEES OF THE COMMISSION.

The Civil Service Commission shall designate one of its members as President and shall appoint a Personnel Director.

The Personnel Director shall be a person thoroughly familiar with the application of merit and sound business principles and methods in the administration of personnel.

The Personnel Director shall be appointed by the Civil Service Commission for a term of three (3) years, subject to reappointment and shall at all times be under the direction of the Civil Service Commission.

The Personnel Director shall appoint all employees of the Personnel Department to such positions as may be established by the Council.

The salary of the Personnel Director shall be fixed by the Civil Service Commission subject to the approval of Council.

The Personnel Director cannot become a candidate for public office in the City of Akron while filling the office of Personnel Director.

(As approved by voters Nov. 7, 1976) (Amendment adopted by electorate 11-4-80)

SECTION 105. - CLASSIFICATION.

The civil service of the City is hereby divided into the unclassified and the classified service.

- (1) The unclassified service shall include:
 - (a) All officers elected by the people.
 - (b) The Director and Deputy Directors of the Department of Public Service.
 - (c) The Director and Deputy Directors of Finance.
 - (d) The Director of Law, the Deputy Directors of Law and the Assistant Directors of Law.
 - (e) The Director and Deputy Directors of Planning and Urban Development appointed after November 15, 1990.
 - (f) The members of all appointed boards or commissions, and advisory boards.
 - (g) The Secretaries and assistants to the Mayor.
 - (h) The Deputies to the Mayor.
- (2) The classified service shall comprise all positions not specifically included by this Charter in the unclassified service.

(As approved by voters Nov. 7, 1976) (Amendment adopted by electorate 11-4-80) (Amendment adopted by electorate 11-6-90)

SECTION 105a. - UNCLASSIFIED SERVICE—RESIDENCY REQUIREMENT.

No person shall retain any position in the unclassified service unless he be a resident citizen of the City of Akron within six months of his appointment and remain a resident for the period during which he occupies said position in the unclassified service, provided, however, that the provisions of this Section shall not be applicable to persons occupying said positions in the unclassified service on June 8, 1976.

(Approved by voters June 8, 1976) (Amendment adopted by electorate 11-6-90)

Budget and Finance

(4)

IB
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SAT

CBC/TLK/krr 12/10/12
Requested by the Department of Finance

2012 DEC 10 PM 12:11

Offered by JONES

ORDINANCE NO. 409 -2012 creating, establishing, and recognizing departments, offices, bureaus, divisions and positions in the classified service of the City of Akron; requiring that only budgeted funded positions be filled; and declaring an emergency.

BE IT ENACTED BY THE Council of the City of Akron:

Section 1. That the following departments, offices, bureaus, divisions and positions are hereby created, established, and recognized:

1. Office of the Mayor
 - a. Administration
 - b. Community Relations Division
 - c. Economic Development Division
 - d. Labor Relations Division
 - e. Public Utilities Commission
2. Office of Council Administration
3. Department of Finance
 - a. Administration
 - b. Accounting Division
 - c. Audit and Budget Division
 - d. Employee Benefits Division
 - e. Income Tax Division
 - f. Information Technology Division
 - g. Purchasing Division
 - h. Treasury Division
 - i. Business Services Division
4. Department of Health
5. Department of Law
 - a. Civil Division
 - b. Criminal Division
6. Department of Neighborhood Assistance
 - a. Administration
 - b. 311 Call Center Division
 - c. Housing Division
 - d. Nuisance Compliance Division
 - e. Recreation Bureau
7. Department of Personnel

8. Department of Planning and Urban Development
 - a. Administration
 - b. AMATS Division
 - c. Comprehensive Planning and Zoning Divisions
 - d. Development Services Division
 - e. Strategic Initiatives Division

9. Department of Public Safety
 - a. Communications Division
 - b. Safety Communications Division
 - c. Fire Division
 - d. Police Division
 - e. Building Inspection and Regulation Division
 - f. Weights and Measures Division

10. Department of Public Service
 - a. Service Director's Office
 - b. Engineering Bureau
 1. Construction Division
 2. Design Division
 3. Environmental Division
 4. Operations Support Division
 5. Plans and Permits Division
 6. Traffic Engineering Division
 - c. Public Works Bureau
 1. Administration
 2. Building Maintenance Division
 3. Highway Maintenance Division
 4. Motor Equipment Division
 5. Parks Maintenance Division
 6. Sanitation Services Division
 7. Street Cleaning Division
 - d. Sewer Bureau
 1. Sewer Maintenance Division
 2. Water Pollution Control Plant Division
 - e. Water Supply Bureau
 1. Water Distribution Division
 2. Water Plant Division
 3. Watershed Division

DEPARTMENT OF PUBLIC SAFETY

BUILDING INSPECTION AND REGULATION DIVISION

COMMUNICATIONS DIVISION

Communications Manager
Cable & Line Utilityworker
Communications Supervisor
Communications Technician I
Communications Technician II
Radio Communications Supervisor
Radio Technician II
Secretary II
Secretary III
Signal Line Foreman
Signal Lineworker
Wireless Services Coordinator

Seasonal

TIME

(S) Student Intern..... School Schedule

DEPARTMENT OF PUBLIC SAFETY (continued)

FIRE DIVISION

RANKS:

Fire Chief
Fire Deputy Chief
Fire District Chief
Fire Captain
Fire Lieutenant
Firefighter/Medic

SUPPORT:

EMS Quality Coordinator
Fire Equipment Foreman/Master Fire Equipment Foreman
Fire Equipment Mechanic/Master Fire Equipment Mechanic
Fire Equipment Supervisor/Master Fire Equipment Supervisor
Secretary II
Secretary III
Secretary IV
Storekeeper II
Stores Clerk

Seasonal

TIME

(S) Laborer/Semi-Skilled Laborer 9-1 to 5-30
(S) Student Intern School Schedule

DEPARTMENT OF PUBLIC SAFETY (continued)

POLICE DIVISION

RANKS:

Police Chief
Police Deputy Chief
Police Captain
Police Lieutenant
Police Sergeant
Police Officer

SUPPORT:

Account Clerk II
Account Clerk III
Accounts Analyst III
Crime Analyst II
Crime Analyst III
Health Education Specialist III
Law Enforcement Planner I
Law Enforcement Planner II
Police Records Supervisor
Safety Communications Technician
Safety Communications Technician I
Safety Communications Technician II
Safety Communications Supervisor
Secretary II
Secretary III
Secretary IV

Seasonal or Temporary

	TIME
(S) School Crossing Guard	School Schedule
(S) Student Intern	School Schedule
(T) Police Cadet	270 days

DEPARTMENT OF PUBLIC SAFETY (continued)

SAFETY COMMUNICATIONS DIVISION

Police Deputy Chief
Applications Analyst
Applications Programmer
Database Administrator
Safety Communications Supervisor
Safety Communications Technician
Safety Communications Technician I
Secretary II
Secretary III

WEIGHTS AND MEASURES

MANUAL OF RULES AND REGULATIONS

REVISED
1991



DONALD L. PLUSQUELLIC
MAYOR
CITY OF AKRON, OHIO



PHILIP G. BARNES
CHIEF OF POLICE
AKRON POLICE DIVISION

**DEFINITION OF TERMS USED IN POLICE DIVISION
RULES AND REGULATIONS, MANUALS, PROCEDURES, AND ORDERS**

UNITS:

- 1.01 **Beat:** a designated area to which an officer is assigned; to be patrolled on foot.
- 1.02 **Bureau:** a unit within a Subdivision
- 1.03 **Department of Public Safety:** made up of the following divisions: Police, Fire, Building Inspection, Weights and Measures, Communications, and Akron Corrections Facility.
- 1.04 **Detail:** members of the Police Division grouped together for the accomplishment of a specified mission in a continuing operation.
- 1.05 **District:** a designated area to which an officer(s) is assigned; to be patrolled by motor vehicle.
- 1.06 **Division:** one unit of the Department of Public Safety. Normally replaced in common usage by the word "department." Example: Police Department
- 1.07 **Headquarters:** Harold K. Stubbs Justice Center, 217 South High Street, Akron, Ohio 44308
- 1.08 **Section:** a unit within a bureau.
- 1.09 **Sector:** an area containing two or more beats, districts, or posts; supervised by a police sergeant.
- 1.10 **Shift:** the period within a day when an officer or other unit is on assigned duty.
- 1.11 **Special Detail:** one or more officers assigned to accomplish a specified mission; not a continuing operation.
- 1.12 **Subdivision:** a unit commanded by a Deputy Chief who is directly responsible to the Chief of Police; subdivisions are organized by purpose and/or task. There are three subdivisions in the Akron Police Division: Uniform, Investigative and Services.
- 1.13 **Unit:** members of the Police Division grouped together, under one commander, for the purpose of accomplishing one specified police purpose.

COMMAND:

- 2.01 **Chain of Command:** the unbroken line of authority from the Chief of Police downward through a single subordinate at each level of command to the level of execution.
- 2.02 **General Order:** permanent written orders issued by the Chief of Police. They are in effect until modified or cancelled by the Chief of Police.
- 2.03 **Line Supervisor:** the supervision by a ranking officer of a subordinate under his direct command.
- 2.04 **Official Channels:** through the hands of the ranking officers in the chain of command.
- 2.05 **Order:** an instruction or directive, either oral or written, given by an officer of higher rank to a subordinate.
- 2.06 **Shall/Will:** the words "shall" and "will" as used in orders, rules, regulations, procedures, manuals, and other official written documents, shall mean that the action required is mandatory.
- 2.07 **Special Order:** written orders issued by the Chief of Police relating to some specific circumstances or situation.
- 2.08 **Staff Supervision:** the supervision by a ranking officer of a subordinate not under his direct command.

PERSONNEL CLASSIFICATION:

- 3.01 **Acting:** serving temporarily in a position to which a member is not ordinarily assigned, usually in a position of higher rank. All the authority, responsibilities and duties of the position rest with the acting member.
- 3.02 **Captain:** officer in charge of a bureau, section, detail, or other such unit or shift as the Chief of Police may direct.
- 3.03 **Chief of Police:** the executive head of the Police Division.
- 3.04 **Commanding Officer:** a supervisor above the rank of Sergeant who command a subdivision, bureau, section, shift, unit or special detail of the Police Division.
- 3.05 **Deputy Chief of Police/Major:** serves as commander of a police subdivision and can assume the duties of the Chief of Police if assigned to do so during the absence of the Chief of Police.
- 3.06 **Detective:** an officer assigned to the Investigative Subdivision or similar investigative function in one of the other subdivisions. The designation of "Detective" is an assignment, not a promotion.
- 3.07 **Employees:** those persons in the Police Division who do not have the police power. The term is applied without regard to sex, rank, duty, or subdivision. For purposes of these rules and regulations, the absence of the word "employee" from any applicable rule or regulation shall not exempt the employee from the obligation of adhering to that rule.
- 3.08 **Grade:** officers are in "grade" according to their pay step or length of service.
- 3.09 **Lieutenant:** officer in charge of a bureau, section, detail, or other such unit or shift as the Chief of Police may direct.
- 3.10 **Officer:** those persons in the Police Division that have police powers. The term is applied without regard to sex, rank, duty, or subdivision.
- 3.11 **Police Officer:** regularly appointed officer below the rank of supervisory officer. Normally does not have supervisory responsibility over a group of other officers.
- 3.12 **Police Reserve Officer:** trained civilian volunteers with full police authority under the control of the Police Division who are available for emergency duty.
- 3.13 **Rank:** the order of position in the job classification of the Police Division. The titles of the ranks are:
- Chief of Police
 - Deputy Chief of Police/Major
 - Captain
 - Lieutenant
 - Sergeant
 - Police Officer
- 3.14 **Ranking Officer:** the officer having the highest rank or grade. Officers of the same grade shall rank according to their appointment date. Those officers with the same appointment date shall rank according to their relative position on the original appointment list. When two or more officers are on-duty together, the officer of the highest rank is in command and shall be held responsible for the operation.
- 3.15 **Seniority:** established first by rank and secondly by time served in rank.
- 3.16 **Sergeant:** first level of supervision, has immediate charge of subordinates assigned to him, instructs and assists them in their duties and is responsible for their general appearance, good order, performance, and discipline.
- 3.17 **Subdivision Commander:** a Deputy Chief, or his/her designated replacement, assigned by the Chief of Police to command a subdivision.

- 3.18 **Supervisor or Supervising Officer:** officer above the rank of police officer who has supervisory responsibilities.
- 3.19 **Table of Organization:** a table showing the number and rank of officers, and other employees assigned to each unit.

PERSONNEL/ADMINISTRATION TERMINOLOGY:

- 4.01 **Annual Leave:** the vacation leave granted to all members/employees to the Police Division each year.
- 4.02 **Appointment:** the designation of a person by the appointing authority to any position within the Police Division. The Mayor is the appointing authority for all positions.
- 4.03 **Days Off:** those days, determined by the Chief of Police with the approval of the Mayor, on which an officer/employee is excused from duty.
- 4.04 **Disability Leave:** the period of time during which an officer/employee is excused from duty, with the approval of the Chief of Police, by reason of having incurred an on-duty injury.
- 4.05 **Off-Duty:** the state of an officer/employee during his/her day off or annual leave when he/she is free of the responsibility of performing his/her usual routine duties. Technically a police officer in on duty and subject to call at all times.
- 4.06 **On-Duty:** the state of an officer/employee during the period of the day (shift) when he/she is actively engaged in the performance of his/her duties.
- 4.07 **Promotion:** a change in the employment status of an officer/employee to a position in a higher classification.
- 4.08 **Sick Leave:** the period of time during which an officer/employee is excused from active duty by reason of illness, or injury sustained while off-duty; or the period of time during which an officer/employee is excused from active duty by reason of a death in his/her immediate family.
- 4.09 **Special Duty:** police service, the nature of which requires that an officer be excused from the performance of his/her regular duties.
- 4.10 **Tour of Duty:** the shift during which an individual officer/employee is on assigned duty.

OTHER TERMINOLOGY:

- 5.01 **Daily Bulletin:** the official daily publication of the Police Division which contains information regarding crime types and locations, wanted or missing persons, incidents or special locations calling for police attention, stolen vehicles and stolen or missing license plates, and special notices. All directives contained in the Daily Bulletin have the force and effect of Police Division Orders.
- 5.02 **He/She/Him/Her/His:** used without regard to gender.
- 5.03 **Immediately:** the term "immediately" is to be constructed to mean as soon as possible and practicable.
- 5.04 **May/Should:** the words "may" or "should" as herein used shall mean that action indicated is permissive.
- 5.05 **Notebook:** a book in which officers are required to record an account of their work and official action and required information provided at roll calls.
- 5.06 **Off the Air:** in service but not available for radio communication.
- 5.07 **On the Air:** in service with radio equipment in operation, and available for radio communication.

- 5.08 **Out of Service:** not available for service because of the breakdown of the vehicle or when withdrawn from active service for some special assignment; not available for radio communication.
- 5.09 **Patrol Car/Cruiser:** a passenger type vehicle used by uniformed officers to assist in the performance of their duties.
- 5.10 **Patrol Wagon:** a special conveyance used to transport arrested persons.
- 5.11 **Procedure:** the official method of dealing with any given situation.
- 5.12 **Procedural Manual:** a manual prepared under the direction of the Chief of Police to outline in detail the standard operating procedures of the Police Division.
- 5.13 **Report:** a written communication unless otherwise specified, relating to police matters.
- 5.14 **Rules and Regulations:** directions issued by the Chief of Police, with the approval of the Mayor, defining the police purpose, duties, and conduct of all members and employees of the Police Division.
- 5.15 **Solo/Motorcycle:** a two wheeled motorcycle.
- 5.16 **Three-Wheeler:** a three wheeled motorcycle; servi-car.
- 5.17 **Training Bulletin:** bulletins distributed by the Police Division designed to keep officers abreast of information, practices and procedures in law enforcement.
- 5.18 **Suspension:** the act of temporarily denying an officer/employee the privilege of performing his/her duties in consequence of dereliction of duties or other violations of Police Division regulations. Suspension is either the first step in the disciplinary process or the penalty assessed.

CHAPTER 300

- 300.01 Officers shall not carry or use, either on or off-duty, any ammunition not issued or approved by the Police Division. A violation of this section is a major offense of the third degree.
- 300.02 The regulation firearm shall be a blue all-steel, or armaloy or stainless steel, Smith & Wesson or Colt revolver chambered for .38 caliber special ammunition with a 4" barrel; or Smith & Wesson semi-automatic 9mm pistol, Model #5906, or other Smith & Wesson 9mm semi-automatic models as issued or authorized by the Chief of Police.
- a) The regulation firearm shall be carried by all officers of the Police Division with the exceptions noted in Rule 300.13.
 - b) Nothing in this rule shall prohibit Police Division weapons of other types from being assigned.
 - c) A violation of Section 300.02 is a major offense of the first degree.
- 300.03 Officers shall maintain and use firearms only with due regard for the safety of the public and other officers. No officer shall:
- a) Discharge weapons except where it is reasonably believed that said officer or any other person is in danger of death or great bodily injury or to apprehend a fleeing felon reasonably known to be armed with a deadly weapon or reasonably known to have committed a felony involving great bodily injury. A violation of Section 300.03 is a major offense of the first degree.
- 300.04 The firing of warning shots is prohibited. A violation of this section is a major offense of the third degree.
- 300.05 The firing of an unintentional shot(s) by an officer shall be a minor offense of the third degree.
- 300.06 Officers shall, in addition to those situations set forth in Section 300.03 of these rules, be permitted to fire weapons:
- a) To kill a dangerous animal or one that is posing a threat to officers or persons nearby.
 - b) For target practice on the Police Division range or other established shooting range.
- 300.07 Officers are required to report any deliberate or unintentional discharge of firearms as follows:
- a) Oral Report
 1. On-Duty Incident: Immediately, or as soon as is practical, the officer shall orally report the incident to his/her immediate supervisor, who shall conduct a thorough investigation of the incident.
 2. Off-Duty Incident: Immediately, or as soon as is practical, the officer shall orally report the incident to the on-duty shift commander of the Uniform Subdivision who shall cause a thorough investigation of the incident to be conducted.

b) Written Report – On or Off Duty

1. A written report, describing in full the circumstances of the incident, shall be submitted by the police officer(s) involved, directed to his/her subdivision commander, prior to the end of the shift during which the firearm was discharged.
 2. A written report, describing in full the circumstances of the incident, shall be submitted by the investigating supervisor, directed to his/her subdivision commander, prior to the end of the shift during which the firearm was discharged.
- c) Failure to report the discharge of firearms as required by Section 300.07 is a major offense of the third degree.
- d) This rule does not apply to rounds fired as instructed during regular practice on a target range.

300.08 When death or injury has resulted from the use of a firearm by a police officer, that officer shall as soon as practical be relieved from field duty by his/her shift or unit commander pending a full investigation into the incident by the Police Division.

- a) During the period of time an investigation into the incident is being carried on, the Chief of Police shall assign the police officer to duty inside the station house.
- b) Such relief from duty shall not be considered a suspension or disciplinary action taken against the police officer, but rather an administrative course of action for the purpose of:
 1. Relieving the police officer from further performance of field duties while undergoing the emotional stress of having used deadly force; and,
 2. Permitting the Police Division time to conduct an objective investigation into the matter.
- c) The length of time a police officer shall be relieved from field duty shall be determined by the Chief of Police.

300.09 There shall be established within the Police Division a board consisting of three (3) subdivision commanders, or in the event they are not available, their designated replacements, which shall have the responsibility of reviewing each incident in which a firearm is discharged deliberately or unintentionally by a member of the Police Division and report their findings and recommendations to the Chief of Police.

- a) The senior subdivision commander present shall be chairman of this board.
- b) This board shall be convened by the Chairman of the Board within ten (10) working days subsequent to any incident reported for a review of such incident.
- c) In any incident resulting in the death or injury of a person, the identity of the officer or officers involved shall not be made public until such time as the Chief of Police decides to make such identity public, In making his decision, his consideration shall include, but shall not be limited to:
 1. Completion of all aspects of the investigation; and
 2. The safety of the officer and his/her family.

d) Only the Chief of Police or his authorized representative shall make such identity public.

300.10 Officers shall never display firearms unnecessarily or draw their firearms in a public place except in the line of duty. A violation of this section is a major offense of the third degree.

300.11 Officers who unnecessarily use their firearm in any manner against a fellow officer(s) are subject to disciplinary action. A violation of this section is a major offense of the first degree.

300.12 Officers may carry firearms when off-duty but are not required to do so. In the event that a weapon is carried by an officer while not on-duty:

a) Proper police identification shall be carried by the officer.

300.13 In addition to weapons described in Rule 300.02, officers may carry optional firearms, as described in this rule:

1) A Smith & Wesson or Colt revolver chambered for .38 special ammunition but with a barrel at least 2" long, or a Smith & Wesson 9mm semi-automatic pistol may be carried.

a) While on assigned uniform duty in the station house.

b) While assigned to plainclothes duty.

c) While off-duty.

d) As a second weapon securely concealed on the person while on-duty;

1. The division neither encourages nor discourages the practice of carrying a second handgun while on-duty. If carried, it is understood that this is an emergency weapon to be used only if the primary gun becomes inoperable or for use if the officer becomes disarmed.

2) Other personal firearms of a different make, model or configuration may only be carried on or off-duty with the specific and individual written permission of the Chief of Police.

3) A violation of Section 300.13 is a major offense of the third degree.

300.14 Officers are required to register with the Police Division the serial number and descriptions of all firearms they carry either on or off-duty and be range qualified with said weapons. A violation of this section is a major offense of the third degree.

300.15 Violations of this Chapter, which are not otherwise defined as being either major or minor offenses, shall be considered informal offenses as defined by Section 1300 of this manual.

CHAPTER 500

500.01 Any officer/employee receiving a written communication for transmission to a higher command shall in every case forward such communication.

500.02 An officer/employee receiving a communication from a subordinate directed to a higher command shall endorse it indicating approval, disapproval or acknowledgement.

500.03 No officer/employee of the Police Division shall forward correspondence of a division nature over a signature other than that of the Chief of Police or a subdivision commander except when such officer/employee has been specifically authorized to do so by the Chief of Police or his/her subdivision commander.

500.04 Officers/employees shall not use Police Division letterheads for private correspondence, nor shall any member or employee sue the address of the Police Division for private purposes.

500.05 Officers/employees are required to answer questions by, or render material and relevant statements to, a supervisor in a Police Division personnel investigation when so directed. A violation of this section is a major offense of the third degree.

500.06 Officers/employees shall submit all reports required by the performance of their duties:

- a) Prior to completing their tour of duty, or
- b) Prior to completing secondary police jobs, or
- c) As directed by supervisory officers
- d) Investigative report shall be submitted as soon as practical consistent with efficient police operations.

A violation of Section 500.06 is a minor offense of the third degree.

500.07 Upon receipt of an order conflicting with any previous order or instruction, the officer/employee affected will advise the person issuing the new order of the conflict.

- a) Responsibility for countermanding the original order or instruction rests with the person issuing the new order.
- b) Responsibility for notifying the person who issued the previous order or instruction rests with the person issuing the new order.
- c) When so directed by a supervisor, the officer/employee who receives a conflicting order or instruction shall carry out that order or instruction after informing the supervisory officer of the conflict. No officer/employee shall be found guilty of any improper conduct for following a conflicting order after he/she has notified the person issuing the order of the conflict.
- d) Conflicting orders shall only be issued when circumstances make it reasonably necessary to carry out the required task.

500.08 Officers/employees shall treat supervisors, subordinates and fellow employees with respect; they shall be courteous and civil at all times in their relationships with one another. A violation of Section 500.08 is a minor offense of the first degree.

500.09 When on-duty and addressing a supervisor, particularly in the presence of other officers/employees, or the public, supervisors should be referred to by rank and surname.

500.10 An order from a supervisor to a subordinate shall be given in clear, understandable language, civil in tone, and issued in pursuance of Police Division business.

500.11 Any order posted on a Police Division bulletin board over the signature of the Chief of Police shall have the same effect as these Rules and Regulations.

500.12 No officer/employee shall:

a) Ridicule or criticize and order given him/her by a supervisor.

b) Ridicule or criticize a supervisor, whether in or out of his/her presence.

1. A violation of Sections 500.12 (a) or (b) constitutes insubordination, a minor offense of the first degree.

c) Deliberately refuse to obey a lawful order.

1. A violation of Section 500.12 (c) constitutes insubordination, a major offense of the first degree.

d) Fail to obey a lawful order.

1. A violation of Section 500.12 (d) constitutes insubordination, a major offense of the first degree if serious physical harm as defined by ORC 2901.01 (e) or death occurs to any person; otherwise, this is a minor offense of the first degree.

500.13 No supervisor shall knowingly issue any order, which is in violation of any law, ordinance, or any Police Division Rule or Regulation.

a) Obedience to an unlawful order is never a defense for an unlawful act.

1. No officer/employee is required to obey any order which is contrary to Federal or State law, or to an ordinance of the City of Akron

2. Responsibility for the refusal to obey any order, which is contrary to Federal or State law, or to an ordinance of the City of Akron, rests with the officer/employee and he/she shall be strictly required to justify his/her action.

3. No officer/employee shall be held responsible for failure to obey an order when it has been determined that the order was contrary to Federal or State law, or to an ordinance of the City of Akron.

4. A violation of Section 500.13 (a) is a major offense of the first degree if serious physical harm as defined by ORC 2901.01 (e) or death occurs to any person; otherwise, it is a major offense of the third degree.

b) An officer/employee who has been given an order, which he/she feels, is unjust, improper, or contrary to the Rules and Regulations of the Police Division must first obey the order to the best of his/her ability and then proceed to appeal the order through the chain of command.

1. A violation of this section constitutes insubordination and is subject to the provisions of Section 500.12 (c).

c) An officer/employee who receives an unlawful, unjust, or improper order shall, at his/her first opportunity, report said order in writing to his/her subdivision commander and the Chief of Police through official channels. Any such reports submitted to the concerned subdivision commander and Chief of Police shall contain all of the facts pertinent to the incident and a description of the actions taken by the officer/employee in complying, or not complying with the order.

1. A violation of Section 500.13 (c) is a major offense of the third degree.

500.14 A member temporarily filling the position of a supervisor in an acting capacity shall be vested with the authority and responsibility of the supervisory officer whose position he/she is filling.

500.15 Violations of this Chapter which are not otherwise defined as being either major or minor offenses shall be considered informal offenses as defined by Section 1300 of this manual