

1975 O. A. G.

OFFICIAL OPINION NO. 31

November 25, 1975

Honorable Otis R. Bowen, M.D.
Governor of Indiana
206 State House
Indianapolis, Indiana 46204

Dear Governor Bowen:

This is in response to your request for my official opinion concerning the following questions:

"1. If a town has a board of metropolitan police commissioners, who has the ultimate authority in appointing the chief of the police force and in appointing, removing and advancing individuals on the police force?

"2. Given the ultimate authority, what procedure should be followed?"

ANALYSIS

The questions you have raised are answered by Indiana Code of 1971, Section 19-1-25-2, which provides the following:

"The board of metropolitan police commissioners of any town of this state shall have the power to appoint, subject to the approval of the town board, as many persons as necessary to serve on the police force of such town, one [1] of whom shall be appointed to serve as the chief of the police force. Insofar as is consistent with the standards and prerequisites of employment determined by the commissioners, not more than half [$1\frac{1}{2}$] of such persons shall be members of the same political party. The commissioners shall also have the power to appoint such other employees as are necessary to carry on the work of the police department, including merchant and special patrolmen as provided in chapter 59 [19-1-33—19-1-33-13] of the acts of 1897, as amended. Such commissioners shall

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fix and determine the compensation to be paid to members of the police force and other employees in such amount as will be just and reasonable and in compliance with any law of the state of Indiana governing such compensation or salary. All persons so appointed shall serve during good behavior, [and] shall be of good moral character. *Such commissioners shall have the power for cause assigned on a public hearing and on due notice according to rules to be promulgated by them to remove or suspend from office, or for a definite period, deprive of pay any member or officer of the police force:* Provided, however, That any member of such police force who shall be dismissed or suspended therefrom for any period in excess of thirty [30] days shall have the right of appeal to the circuit or superior court of the county in which such town is located from such decision of dismissal or suspension by said board, all as provided in chapter 282 [18-1-11-3] of the Acts of 1935 of the General Assembly of the state of Indiana. *Such commissioners shall have the power to make general and special rules and regulations for the government and discipline of said police force and to make and promulgate special and general orders to said force through the chief of the department who shall be the executive head of the department.*" (Emphasis added)

The board of metropolitan police commissioners (commissioners) thus has the power to organize the police force and appoint members to that force. The power to appoint members to the police force, however, does not rest exclusively with the commissioners because the town board must approve these appointments. This town board approval of commissioner appointments applies also to the appointment of the chief of the police force.

Code Section 9-1-25-2 further expressly authorizes the Commissioners to remove or suspend members of the police force. This statute also authorizes the commissioners to enact rules and regulations for the government and discipline of the police force; and it is under that authority that the

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commissioners may provide a program concerning promotions and advancement. Removal, suspension, promotion, or advancement procedures do not require town board approval.

With respect to your final question concerning procedures generally, it is true that the statute does not itself supply specific guidelines. However, it does give the commissioners rule-making power. The commissioners accordingly should prescribe specific procedures applicable to the appointment, removal, suspension, promotion, and advancement of members of the police force. Of course, the procedures adopted by the commissioners must take into account that the town board has the final approval for initial appointments.

CONCLUSION

It is, therefore, my Official Opinion that the ultimate authority or power to appoint both the chief and individual members of a town police force operating under a board of metropolitan police commissioners rests with the town board in the exercise of final approval of appointments. The removal, suspension, promotion, and advancement of members of the police force, however, are *not* subject to the approval of the town board and are within the exclusive power of the board of metropolitan police commissioners.

The specific procedures for appointment, suspension, promotion, and advancement should be prescribed by the Commissioners pursuant to their rule-making power. With respect to appointments, approval of the town board must be included.