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Opinion No. 86-363

January 28, 1987

The Honorable Max Howell
Senator, 26th District
211 Spring Street
Little Rock, Arkansas 72201

Dear Senator Howell:

This is in response to your letter requesting an opinion regarding:

- 1) The legality of the action by a Civil Service Commission disciplining an assistant police chief by reducing him in rank to captain;
- 2) Whether the promotion rights of current lieutenants in subject police department are infringed in that the demoted police chief has never taken the examination for rank of captain, and
- 3) The authority to promote as distinguished from the authority to demote.

Ark. Stat. Ann. §19-1603 provides that the Board of Civil Service Commissioners shall prescribe and enforce rules and regulations governing police departments. That statute provides at "11" for the Commission to prescribe a method for "reduction in rank or compensation." Included in these rules is a provision that in the event an employee is discharged or reduced in rank that such employee shall have the right within ten days from the date of notice of reduction in rank to apply in writing for a hearing. Thus, a Civil Service Commission has the authority to discipline police department employees by reducing them in rank.

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Since it is assumed that the individual was qualified as Assistant Police Chief it must also be assumed that the individual was qualified for the lesser rank of captain. The various aspects of promotion and reduction in rank or compensation are discussed in Ark. Stat. Ann. §19-1603, a copy of which is attached for your convenience. This provision provides for both promotion and demotion. The authority granted to an employing entity to make and execute personnel decisions is generally comprehensive, as is that granted to a Civil Service Commission in this statutory scheme. The Commission, in prescribing such rules for promotion must follow the statutory language and, of course, it should not take action violating the federally given civil rights of employee. Thus, the answer to your second question is probably "no". The above discussion was also intended to address your third question.

The foregoing opinion, which I hereby approve, was prepared by Special Assistant Attorney General George A. Harper.

Sincerely,


STEVE CLARK
Attorney General

JSC:GAH:ble

Att.