MICHAEL D. HOOVER,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Petitioner	:	
	:	
vs.	:	NO. 98-01,216
	:	
CITY OF WILLIAMSPORT,	:	
	:	
Respondent	:	1925(a) OPINION

OPINION IN SUPPORT OF THE ORDER OF MARCH 5, 1999, IN COMPLIANCE WITH RULE 1925(a) OF THE RULES OF APPELLATE PROCEDURE

Petitioner Michael D. Hoover (hereinafter "Petitioner") appeals from this Court's Order of March 5, 1999, in which his Motion for Judgment on the Pleadings was denied and Respondent City of Williamsport's (hereinafter "Respondent") Cross-Motion for Judgment on the Pleadings was granted, thereby upholding Petitioner's termination from his job as a police officer for the Respondent.

Petitioner was a member of the Williamsport Bureau of Police. On June 9, 1998, he was suspended without pay for two consecutive ten-day periods by the department chief for separate alleged incidents of misconduct. The written notice of suspension advised Petitioner that a hearing for his dismissal from the police department would be scheduled before the Williamsport City Council on June 24, 1998. Subsequent to that hearing (actually held July 8, 1998), Petitioner was dismissed from his position.[1]

Petitioner's Statement of Matters Complained of on Appeal, raises the issue of whether Pennsylvania's Third Class City Code, 53 P.S. §39408, allows a police officer to be

[1] Petitioner brought the matter before the Court of Common Pleas August 4, 1998, seeking reinstatement, back pay and other relief. Both parties' Motions for Judgment on the Pleadings were argued March 5, 1999. Following argument, this Court entered the decision now being appealed by Petitioner.

sanctioned by the dual imposition of a ten-day suspension *and* referral for termination by City Council, or whether punishment is limited to either the imposition of the suspension *or* referral for termination, but not both. This Court concluded the sanctions available to City Council and the department head as imposed in this case are not mutually exclusive under the statute.

Section 39408 reads, in pertinent part, as follows:

> All employees subject to civil service shall be subject to suspension by the director of the department for misconduct, or violation of any law of this Commonwealth, any ordinance of the city, or regulation of the department, pending action by the City Council upon charges made against any of such employes. On hearing before the City Council, where they may be represented by counsel, they may be fined or suspended for a period not exceeding thirty days with or without pay, or they may be discharged by City Council, if found guilty of the charges made against them. The director of each such department may, for misconduct or violation as aforesaid, suspend any employe of such department for a period of ten days, with or without pay, without preferring charges and without a hearing of Council; but no employe shall be suspended more than one time for the identical or same violation or act of misconduct…

53 P.S. §39408.

It is the third sentence of the statute that Petitioner believes prohibits his discharge from the Williamsport Bureau of Police. That sentence indicates the director of a department may suspend an employee with or without pay for a period of ten days without preferring charges and without a Council hearing. Petitioner argues this means Respondent, having initially imposed a suspension, was prohibited from then referring the charges to Council for termination. Further, Petitioner asserts the ten-day suspensions and subsequent discharge constitute an impermissible double penalty, violative of the statute. We disagree.

In ***Davis v. City of Connellsville***, 410 A.2d 937 (Pa.Cmwlth. 1980), two police officers were placed on suspension of indefinite length. Two years passed before Council hearings took place, resulting in the officers' discharge. The ***Davis*** Court noted the authority to suspend pending hearing is independent of the authority of a department head to impose a ten-day suspension:

> Clearly, the ten-day limitation applies only to disciplinary suspensions upon the sole authority of the major or department head as administrator, customarily labeled as "summary" suspensions because they are not dependent on confirmation by the governing body. The authority to suspend without definite limit, pending governing body consideration of a more severe penalty, is independently authorized by the authority of the first sentence.

Id. at 938. In a later case, the Commonwealth Court once again indicated the ten-day limitation applies only to disciplinary suspensions by the director of the department in "summary" suspensions, since they are not dependent on confirmation by the governing body; conversely, the authority to suspend without definite time limit, pending action by the City Council, is authorized by the first sentence of the section. ***Fatzinger v. City of Allentown***, 591 A.2d 369 (Pa.Cmwlth. 1991).

In the instant case, Petitioner would have this Court find that because the police chief suspended Petitioner for ten days (for each offense), this in some way conferred a "disciplinary" or "summary" status upon the suspension, authorized under the third sentence of the statute. This we cannot do.

Petitioner admits he was advised when suspended the matter was being referred to the City Council for a hearing on his dismissal (*see* Petition filed August 4, 1998). In so doing, the chief was acting within the authority provided by the first sentence of the statute.

Why the chief chose to impose a ten-day suspension for each incident, rather than use an "indefinite suspension" until the City Council hearing was held is unknown to this Court.[2] However, it is of no moment. The chief clearly intended to refer the issue of Petitioner's conduct to the Council for hearing, rather than handle it solely as a departmental matter. In that situation, the chief had the discretion to decide to impose a ten-day suspension or an indefinite suspension pending City Council action.

The statute adopted by the legislature in this case by allowing the chief of police to have discretion in the type of suspension imposed has a very useful and functional purpose. In the event of a police officer's misconduct it is obvious, given the responsibility that goes with that position, that when allegations of misconduct are first brought to the attention of the chief of police it might be very wise for the chief to take immediate action to suspend the officer. In such a situation, the legislature has indicated such a suspension is to be limited to not more than ten days. Upon subsequent investigation, the chief of police may learn that the facts of the incident are such that the ten-day (or less) suspension he imposed upon the officer was sufficient punishment. At the same time, it is very possible the chief may discover the police officer's actions are of a nature such that further action City Council to determine an appropriate sanction,

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[2] The June 9, 1998, Notice of suspension (*see* Exhibit "A" Petitioner's Motion of Judgment on the Pleadings filed December 4, 1998) scheduled the first ten-day suspension to begin June 15, 1998, to be followed immediately by a second ten-day suspension for the second incident. Obviously, as the date initially scheduled for the hearing was to be June 24th, the chief's view could have been that an indefinite suspension would serve no useful purpose because of the prompt hearing before City Council being afforded Petitioner.

including dismissal, is appropriate. The statute reasonably allows the chief of police at that time to indefinitely suspend the officer. However, the officer knows the suspension so imposed will ultimately be determined by City Council.[3] Thus, the statute as drafted serves a clearly functional purpose. The Court should certainly uphold legislative enactments and give reasonable and functional interpretation to their provisions, unless it is absolutely clear they are unconstitutional or unreasonable. *See, generally*, 1 Pa. C.S.A. §1922, ***Pennsylvania Assigned Claims Plan v. English***, 664 A.2d 84 (Pa. 1995). The statute makes it clear a police officer can be suspended only for ten days for each incident without a hearing. In the event the department chief believes a ten-day hearing is not sufficient discipline because of a police officer's misconduct, he must grant the disciplined officer a hearing before the governing body. In so doing, under the statute the chief may impose an indefinite suspension until such hearing is held; however, it is the governing body which determines whether more severe punishment is appropriate.

This is particularly made clear by the legislature's placement of statutory language prohibiting multiple suspensions *only* in the third sentence of the act, relating it to the ten-day suspension provisions through the use of a semi-colon, which takes the place of a conjunctive word such as "and" or "but." The location of this clause was considered in ***Kramer v. City of Bethlehem***, 289 A.2d 767 (Pa.Cmwlth. 1972), cited by Petitioner. The ***Kramer*** Court noted:

[3] Granted, the statute does not place a time limit upon when City Council must hold its hearing. The timeliness of the hearing is not an issue in this case. Nevertheless, this Court certainly believes that if a hearing date was not promptly scheduled, or scheduled for such a date so as to unduly deny the Petitioner speedy and due process rights as would relate to timeliness, the suspended officer could seek relief through appropriate petition to City Council and/or, if need be, to the Court in order to see that a timely hearing was held, or to complain if he was in fact prejudiced because of the untimeliness of such a hearing.

> It is significant that the clause limiting suspensions to one for the same act of misconduct is the second half of a sentence which deals with the authority of a director of a department to suspend without preferring charges and without a hearing of Council. This is not a case where a series of ten-day suspensions was imposed for the same act without charges being preferred and the accused was without opportunity to vindicate himself in a hearing.

Id. at 768. Similarly, this Court believes the clause limiting suspensions is purposefully placed in the third sentence in order to prevent a department chief from imposing a *de facto* indefinite suspension without affording an employee the benefit of a hearing. Petitioner has offered no authority, nor has the Court found any, which would allow this Court to disregard ***Kramer*** and apply the clause to the first sentence of the statute, regardless of the length of the suspension. Accordingly, this Court believes the Order of Court dated March 5, 1999 should be upheld.

BY THE COURT,

Date: April 29, 1999

William S. Kieser, Judge

cc: Court Administrator
J. David Smith, Esquire
Michael J. Zicolello, Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)