



City of Chattanooga

Office of the City Attorney

Phillip A. Noblett
City Attorney

July 6, 2020

Ms. Janie Parks Varnell (janie@davis-hoss.com)
DAVIS & HOSS, P.C.
850 Fort Wood Street
Chattanooga, TN 37403

Re: *Kate Farmer – Notice of Appeal*

Dear Janie:

I am in receipt of your letter dated June 26, 2020, which was not received in my office until June 29, 2020, involving a Notice of Appeal for Kate Farmer. As you have stated in your letter, action was taken by the Chattanooga City Council rescinding the appointment of Ms. Farmer as the City Treasurer on May 12, 2020. Pursuant to the Chattanooga Employee Information Guide (EIG) at p. 185, which is attached, an employee appealing from a dismissal, demotion or suspension shall file a Notice of Appeal for a hearing with the City Council Clerk within fifteen (15) days following the action taken against the employee. The Notice of Appeal dated June 26, 2020, is well beyond the fifteen (15) day period which is listed in the EIG. As such, it appears that Ms. Farmer's Notice of Appeal is time barred at this time for any hearing request before an Administrative Law Judge.

I would also request that you review Section 4 – Employment, subsection J, at p. 35 of the EIG, which clearly indicates that all civilian employees will enter into a six (6) month probationary period during which time the City of Chattanooga reserves the right to dismiss any employee without prior warning for not meeting the organization's employment standards. That section further states that new hire probationary employees shall not be entitled to any due process hearings with respect to discharge. As such, it does not appear that Ms. Farmer does not have any due process hearing rights as a probationary employee under the EIG which was revised on February 1, 2019 and approved by the Chattanooga City Council.

Yours very truly,

PHILLIP A. NOBLETT
City Attorney

PAN/kap

cc: Nicole Gwyn, City Council Clerk
Andy Berke, Mayor

Collaborative Mediation

The option for Collaborative Mediation should be filed within five (5) business days of the Executive's decision and prior to filing of a Notice of Appeal.

Notice of Appeal for Hearing and Scheduling

An employee appealing from a dismissal, demotion, or suspension shall file a Notice of Appeal for a hearing with the City Council Clerk within fifteen (15) days following the action taken against the employee. The Executive's decision letter shall be attached to the Notice of Appeal. In the event that the employee requests a hearing, the Clerk shall notify the Tennessee Secretary of State's Administrative Procedures Division (the "APD") and request assignment of an Administrative Law Judge (as the "ALJ") to conduct a hearing on the employee's Notice of Appeal for a hearing.

If the APD is not able to appoint an ALJ or if there is a conflict of interest, then the Chair of the City Council (as the "Chair") shall appoint an ALJ, who shall be a Tennessee licensed attorney, to conduct a hearing on the employee's Notice of Appeal for a hearing. A list of attorneys willing to serve in this function will be maintained by the Clerk and the Chair shall designate an attorney from the list. In the absence of or the inability of the Chair to act, the City Council Vice-Chair shall appoint an ALJ to conduct the personnel hearing.

The ALJ to whom a case is assigned may convene the parties for a scheduling conference within fifteen (15) days or as soon as practical and shall set a hearing date within seventy-five (75) days of the date the employee's written request for a hearing is filed with the Clerk unless the employee and the City agree otherwise or for good cause shown. The hearing date may be reset by agreement of the parties or for cause. The ALJ assigned to conduct a personnel hearing shall provide the Clerk with the hearing date. The Clerk shall issue notice of the hearing date to the employee, Executive, ALJ and all other interested parties. The Clerk shall make arrangements for a suitable hearing location.

Should the Executive or employee fail to appear at and participate in a scheduled hearing, the ALJ may in its discretion take such action as is warranted by the circumstances, including dismissal of the appeal, reversal of the disciplinary action, or to adjourn the proceedings to a future date.

1949; 2) Charter of the City of Chattanooga, Sections 13.63-13.64; 3) City Code Chapter 16; and 4) City Code, Chapter 2, Article III, Division 18, Sections 2-400 through 2-429 to be eligible for either reinstatement or reemployment.

The City reserves the right not to reemploy or reinstate any former City employee. Nothing herein shall be construed to limit or to increase the re-employment or reinstatement rights afforded to veterans pursuant to federal or state law. Veterans shall be afforded whatever reemployment or reinstatement rights they may be legally entitled to receive.

Nothing herein shall be construed to change any time limitations or pre-existing conditions provisions provided through any health, life or accident insurance in force. Nothing herein shall be construed to provide any contractual rights or to vest any rights in any present or former employee and shall be construed only as an internal management policy subject to change or exception at any time by the Mayor.

J. PROBATIONARY PERIOD

Immediately upon employment, all civilian employees will enter a six (6) months probationary period. During this phase of employment, employees are evaluated on their ability to become a productive City employee. Your ability to perform tasks; work and communicate with others; follows directions display a positive attitude; work with or without supervision; promptness; willingness to work; judgement, and integrity will be evaluated. Before the end of the introductory period, supervisors will review employees' job performance and advise employees' of their progress. City of Chattanooga reserves the right to dismiss any employee (without prior warning) for not meeting the organization's employment standards.

Persons employed in fire protection or law enforcement positions in the Fire and Police Departments will serve a probationary period of twelve (12) months.

Before the end of the probationary period, the supervisor shall indicate the following in writing to the Department Head and copy the Chief Human Resources Officer:

1. That he/she discussed with the employee the employee's accomplishments, failures, strengths and weaknesses;
2. Whether the employee is performing satisfactory work;
3. Whether the employee should be retained in the position;
4. Whether the employee, if a new employee, should be discharged or have his/her probationary period extended a given number of months not to exceed an additional six (6) months; or
5. Whether the employee, if on probation following promotion, should be reinstated in his/her former position, if available, or have his/her probationary period extended a given number of months not to exceed an additional six (6) months.

New hire probationary employees shall not be entitled to any due process hearings with respect to discharge and newly promoted employees shall not be entitled to due process hearings should the employee be reinstated in his/her former position or demoted to another position during the probationary period. The supervisor shall submit written documentation to the Department Head and to the Human Resources Department for inclusion in the employee's official personnel file.

K. EMPLOYEE ONBOARDING

New employees shall be required to complete or provide various documents on their first day of employment to include the following:

1. A W-4 form;
2. An Employment Eligibility Verification Form (I-9) and any supporting documents;
3. Orientation attendance form;
4. A copy of educational certification, professional license, certificate, or any other required documents to include a copy of the employee's driver's license, if the position requires driving a City Vehicle;
5. Residency Requirement Form;
6. Beneficiary designation forms; and
7. A direct deposit form.

New employees are required to attend a new employee orientation. At this orientation, employees will be provided with relevant information to assist them with the onboarding process.

L. OUTSIDE EMPLOYMENT

The City expects an employee's work for the City to take precedence over any outside employment engaged in by an employee. Employees must get prior written approval from the Department Head before engaging in other employment. The supervisor shall forward a copy of the outside employment form to the Human Resources Department for inclusion in the employees' official personnel file.

Activities and conduct away from the job must not compete with, conflict with, or compromise the City's interests or adversely affect job performance and the ability to fulfill all job responsibilities. Employees are prohibited from performing any services for customers on non-working time that are normally performed by the City. This prohibition also extends to the unauthorized use of any City tools or equipment and the unauthorized use or application of any confidential information. In addition, employees are not to solicit or conduct any outside business during paid working time.

The Fire and Police Chiefs shall establish written policies in collaboration with the Chief Human Resources Officer on any additional public safety-specific requirements for outside employment for their employees.