

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

**One Ashburton Place - Room 503  
Boston, MA 02108  
(617) 727-2293**

**WILLIAM P. WHITEHOUSE,**  
Appellant,

**CASE NO: I-12-184**

v.

**TOWN OF WAREHAM,**  
Respondent

Appellant Pro Se:

William P. Whitehouse

Respondent's Attorney:

Richard Bowen, Esq.  
Town Counsel  
P.O. Box 152  
Scituate, MA 02066

**RESPONSE TO REQUEST FOR INVESTIGATION**

This proceeding involves a request that the Civil Service Commission (Commission), acting pursuant to M.G.L.c.31, §2(a), conduct an investigation into allegations that the appointment of Richard Stanley by the Town of Wareham (Wareham) to the position of Police Chief is unlawful because Chief Stanley has not established residence in or within a ten mile radius of Wareham as required by law. The Commission held a pre-hearing conference on July 13, 2012, at which the Appellant, Wareham Town Counsel and private counsel for Chief Stanley, who filed a Motion to Intervene, appeared and was allowed to participate. At the pre-hearing, the Commission received certain information from Wareham (for in camera examination)<sup>1</sup> and from the Massachusetts Human Resources Division (HRD), and requested additional submissions from the Appellant, which was received on July 23, 2012.

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<sup>1</sup> The Commission received documentation from Wareham that provided information about Chief Stanley's current residential address. The Commission has a long-standing policy to maintain the residential address of active law enforcement personnel in confidence, on request, for security reasons.

After reviewing the information provided to the Commission, I make the findings and order set forth below.

**FINDINGS OF FACT**

1. On or about August 3, 2009, Richard Stanley was appointed provisionally to the civil service position of Wareham Police Chief.

2. At the time of this appointment, Chief Stanley held the permanent civil service position of Police Chief in the Town of North Andover, Massachusetts (North Andover) to which he had been duly promoted in 1987.

3. For some period of time, Chief Stanley divided his duties between North Andover and Wareham and maintained his permanent residence at premises in North Andover, which he still owns.

4. On April 13, 2011, Chief Stanley entered into an employment contract with Wareham, whereby he agreed to devote not less than forty (40) hours per week to his duties as the Wareham Police Chief.

5. The employment contract also required, among other things, that Wareham would provide Chief Stanley with a police vehicle for his use, which he was permitted to use for official business and “for personal reasons, since the Chief is ‘on-call’ in the event of emergency”.

6. Pursuant to the employment contract, on or about July 21, 2011, Wareham provided Chief Stanley with a 2011 Ford Taurus sedan for his use.

7. As of June 18, 2012, the Taurus had been driven 49,378 miles, which is an average of approximately 1,000 miles per week.

8. At some time in or after July 2011, Chief Stanley occupied premises in Fairhaven, MA. He did not pay rent, but did make five payments (9/26/11, 12/11/2011, 2/14/12, 4/18/12 and one

on an unspecified subsequent date) covering a total of \$1,708.98 in utility costs to the owner of the premises

9. On or about May 31, 2012, Chief Stanley changed his residence for voting purposes to the residential address in Fairhaven, Massachusetts. He also reported this change of address to the Massachusetts Registry of Motor Vehicles.

10. On July 2, 2012, the owner of the Fairhaven property received a variance from the Town of Fairhaven to tear down the structure and reconstruct a new dwelling on the property.

11. On June 25, 2012, Chief Stanley entered into a written lease for a tenancy at will for new premises. On July 2, 2012, Chief Stanley changed his residence for voting purpose and with the RMV and with the Wareham Police Department to these new premises.

12. This Commissioner takes administrative notice that the new premises rented by Chief Stanley is located in a town which shares a border with Wareham and the premises lie within a radius of less than 10 miles from the Wareham town border and, indeed, lie less than 10 miles from the Wareham Police Station.

13. Chief Stanley's elderly parents resided in North Andover and both suffered from protracted illness. His mother passed away in June 2012 and his father has been recently hospitalized. These circumstances required Chief Stanley to arrange to spend time with them when he was not on duty, for which he received approval from Steven M. Holmes, the Chairman of the Wareham Board of Selectmen.

14. The records of the Massachusetts Human Resources Division (HRD) state that the current active civil service eligible list for Police Chief established by HRD on August 15, 2011, contains only the name of Kyle Heagnney.

## CONCLUSION

G.L.c.31, §2(a) empowers the Commission “to conduct investigations at its discretion or upon written request of the governor, the executive council, the general court or either of its branches, the administrator [HRD], an aggrieved person, or by ten persons registered to vote in the commonwealth.” The Commission is allowed considerable discretion in deciding whether to conduct such an investigation. See, e.g., O’Neill v. City of Lowell, 21 MCSR 638 (2008) and cases cited, aff’d sub nom, O’Neill v. Civil Service Comm’n, 2009 WL 6442846 (Sup.Ct. 2009), further aff’d, 78 Mass.App.Ct. 1127 (2011). cf. Boston Patrolmen’s Ass’n v. Massachusetts Civil Service Comm’n, Suffolk C.A. SUCV2006-4617; SUCV2007-1220 (Mass.Sup.Ct. December 18, 2007) (Brassard, J.), affirming, Commission’s Response to Petition for Investigation Filed By Boston Police Patrolman’s Ass’n CSC Docket No. I-07-34 (2007) (“ [T]he statute certainly does not require that a petition for investigation need only be made by an aggrieved person, the statute, in my view, can only be fairly read to confer significant discretion upon the Civil Service Commission in terms of what response and to what extent, if at all, an investigation is appropriate.”); cf. Boston Police Superior Officers Federation v. Civil Service Commission, 35 Mass.App.Ct. 688,693-94, 624 N.E.2d 617, 620-21 (1993) (construing Commission’s discretion and authority to conduct a de novo hearing on a “fair test” appeal) See also McNamara v. City of Lawrence, 25 MCSR (2012); Robitaille v. Department of Transitional Assistance, CSC No. G2-10-254 (2011), request for investigation dismissed. CSC No. I-11-185, 25 MCSR --- (2012); McMahon v. Town of Brookline, 23 MCSR 159 (2010); Byrnes v. Massachusetts Parole Board, 22 MSCR 502, further considered, 22 MCSR 692 (2009).

### Chief Stanley's Residence

G.L.c.31, §58 mandates a residency requirement for civil service public safety employees.

The statute provides, in relevant part:

“[N]otwithstanding the provisions of any general or special law to the contrary, any person who receives *an appointment* to the police force . . . of a city or town shall within nine months after his appointment establish his residence within such city or town or at any other place in the commonwealth that is within ten miles of the perimeter of such city or town.”

This statute is broadly worded and, by its plain language, applies to the “appointment” of any person to a civil service position of police officer, whether on a permanent, provisional, part-time or temporary basis.

The law clearly requires that, within nine months of his appointment on or about August 3, 2009, Wareham's Police Chief, Richard Stanley was obligated to have established a residence in or within ten miles of Wareham. Thus, according to Section 58 of the Civil Service Law, he had until April 2010 to establish such residence. This, he apparently did not do, in part, because he had obligations to his ailing parents, but also because he continued to serve as the Police Chief in Andover, also a civil service appointment, so moving to Wareham would mean he would no longer reside within ten miles of Andover. This conundrum, however, no longer exists, as Chief Stanley does not now serve as Andover Police Chief. He has worked full-time solely as Wareham Police Chief since April 2011, and the (in-camera) evidence presented to the Commission demonstrates that Chief Stanley has resided within ten miles of the perimeter of Wareham for approximately the past year, beginning in September 2011.

The Commission's power to investigate is only appropriate to address and remediate violations of civil service law and rules. The Commission cannot enforce the terms of

Wareham's private employment contract with Chief Stanley, and expresses no opinion on the wisdom of the terms of that contract, except to note that the dual service for nearly eighteen months as Police Chief in two municipalities more than twenty miles apart does seem problematic under Section 58.

The clear and credible evidence, however, shows that Chief Stanley now does reside within ten miles of Wareham and is in compliance with Section 58 of the Civil Service Law. Thus, further investigation of Chief Stanley's previous non-compliance would not appear fruitful at this time. In the exercise of its discretion, the Commission will not make further inquiry into that matter. It would behoove HRD, however, to be sure there are procedures in place will assure that no repetition of this problem will occur in the future.

#### Chief Stanley's Permanency Status

The Commission has been presented with conflicting evidence concerning the actual civil service status of Chief Stanley's appointment to the position of Wareham Police Chief.

According to HRD, an active civil service eligible list exists for the position of Wareham Police Chief and Chief Stanley is not on that list. HRD's records show that the appointment of Chief Stanley was made as a provisional appointment. According to Wareham, Chief Stanley now holds permanency in the position. The basis for the change from provisional to permanent appointment has not been explained.

It seems clear that Chief Stanley could not have been appointed to the permanent position of Police Chief under G.L.c.31, §7 or §8, governing promotional appointments from certifications established after examination. A permanent appointment might be possible as a transfer pursuant to G.L.c.31,§35, but, that would require written consent from HRD which, apparently, HRD has no record of having received. It also would appear that the provisional

appointment of Chief Stanley also required HRD approval and would have to have met certain other requirements of G.L.c.31, §12 through §14.

The Commission is not in a position to speculate on whether HRD would be justified to approve an appointment and/or transfer of Chief Stanley to permanent Police Chief in Wareham. However, it does raise concern that the procedures, or at least the documentation, required by civil service law may not have been followed.

In order to clarify this separate question, Wareham and/or HRD are ORDERED to provide the Commission, on or before October 15, 2012, with:

- (1) the documentation, if any, establishing the provisional appointment of Chief Stanley to the position of Wareham Police Chief; and
- (2) the documentation, if any, establishing the permanent appointment and/or transfer of Chief Stanley to the position of Wareham Police Chief.

In sum, the Commission declines to exercise its discretion to open an investigation into the alleged violation of Section 58. Upon receipt of the information ordered above, the Commission will consider if further action or investigation is needed for the limited purpose of assuring that Chief Stanley's provisional and/or permanent appointment as Wareham Police Chief has been properly established and documented as required by civil service law.

Civil Service Commission

Paul M. Stein  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell & Stein, Commissioners) on September 20, 2012.

A True Record. Attest:

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Commissioner

Notice to:

William Whitehouse

Richard Bowen, Esq.(for Wareham

James Simpson, Esq. (for Chief Stanley)

Tsuyoshi Fukuda, Esq. (HRD)