



The *Gwosdz*
Law Firm, PLLC

Executive Misconduct

Investigating Allegations at the
Highest Level

Thomas A. Gwosdz
The Gwosdz Law Firm, PLLC

First Things First.

Do you need an independent external investigator?

- Direct Supervisor
- Internal Affairs Officer
- Human Resources Professional

However:

- To protect the public trust?
- To avoid conflicts of interest?
- To provide a qualified, experienced investigator?

Garrity Warnings

- “Garrity” warnings are often issued to employees at the beginning of an interview.
 - Garrity was warned:
 - (1) that anything he said might be used against him in any state criminal proceeding;
 - (2) that he had the privilege to refuse to answer if the disclosure would tend to incriminate him; but
 - (3) that if he refused to answer he would be subject to removal from office.

“...the protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office.”

Garrity v. State of N.J., 385 U.S. 493, 500 (1967)

Garrity Warnings

- “Garrity” warnings are often issued to employees at the beginning of an interview.
 - *Garrity* is about the criminal process, not employment rights
 - Failure to warn does not:
 - Void the employment investigation process
 - Abrogate 14th amendment rights

Garrity Warnings

- “Garrity” warnings are often issued to employees at the beginning of an interview.
 - Police officers often expect a *Garrity* warning.
 - Nervous employees may be reassured.
- Not the same as Garrity’s warning.

Chapter 614

- Procedural protection for law enforcement officers.
 - Not including collective bargaining or meet-and-confer.
- An officer may not be indefinitely suspended or terminated based on a complaint unless
 - The complaint is investigated
 - There is evidence to prove the allegation of misconduct.

Chapter 614

- A “complaint” must be
 - In writing and signed
 - Before the complaint may be considered by the chief. *(614.021)*
 - Delivered to the officer.
 - Within reasonable time. *(614.023)*
 - Before disciplinary action can be taken. *(614.021)*

Chapter 614

- The person making the complaint need not be the victim.
- Applies to internal complaints.
- Does not apply to at-will terminations.
 - Where chief observed misconduct. *Paske v. Fitzgerald*, 499 S.W.3d 465.
 - Poor performance evaluations (?)

Contract Employees

- Generally, only the City Manager.
- TCMA Sample Contract
 - <https://www.tcma.org/DocumentCenter/View/155/Sample-Employment-Agreement-PDF>
 - <https://www.tcma.org/DocumentCenter/View/156/Sample-Employment-Agreement-with-Benefit-Options-PDF>
- ICMA Model Employment Agreement
 - <https://tcma.org/DocumentCenter/View/154/Model-Employment-Agreement-PDF>

Contract Employees

TERMINATION EVENTS. This Agreement shall terminate upon any of the following:

- a. Mutual agreement of the Council and Manager in writing and signed by them;
- b. Retirement or death of the Manager;
- c. Termination of Manager's Employment for "good cause" (as defined in Paragraph 6.2 below);
- d. A Unilateral Severance (as defined and set forth in Section 6.3 below); or,
- e. Expiration of the term of this Agreement.

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Public Officials

- City Council Members
 - Home rule city – check the charter

Forfeiture of Office. The Mayor or a Councilmember shall forfeit his/her office if he/she:

- (1) Lacks, at any time during the term of office for which elected, any qualification for the office prescribed by this Charter or by State Law;
- (2) Intentionally violates any express prohibition of this Charter, as determined by a majority vote of all remaining members of the City Council;

Public Officials

- City Council Members
 - Home rule city – check the charter
 - General law – removal by district court
 - incompetence;
 - official misconduct; or
 - Felony conviction “operates as an immediate removal from office.”
 - alcoholic “intoxication on or off duty.”

Public Officials

- Employees in general law cities
 - Type A: secretary, treasurer, assessor and collector, municipal attorney, marshal, municipal engineer
 - Other officers as appointed by the governing body.
- Removal by council in Type A
 - Majority vote - incompetency, corruption, misconduct, or malfeasance
 - 2/3 Supermajority – lack of confidence



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