

HOUSE No. 9

The Commonwealth of Massachusetts

DIVISION OF CIVIL SERVICE,
STATE HOUSE, BOSTON 02133, November 2, 1964.

To the General Court of Massachusetts.

GENTLEMEN:— In accordance with the provisions of section 33 of chapter 30 of the General Laws, as amended, recommendations for legislation are submitted herewith, together with drafts of bills embodying the legislation recommended, the form thereof having been approved by the Counsel for the House of Representatives.

Very truly yours,

W. HENRY FINNEGAN,
Director of Civil Service.

RECOMMENDATIONS.

1. AN ACT AUTHORIZING CERTAIN APPEALS TO BE HEARD BY LESS THAN A MAJORITY OF THE CIVIL SERVICE COMMISSION.

Section 2(b) of chapter 31 of the General Laws, which is the section of the law regarding the hearing of appeals before the Civil Service Commission, provides that hearings on appeals from the markings of examination papers must be held before a majority of the Civil Service Commission. The numbers of persons requiring hearings on appeals from markings of examination papers have become so great that it has been impossible, in many instances, to hear the appeals on such cases before the establishment of the eligible lists (section 12 provides that eligible lists must be established not later than six months after the date of the examination). The law (section 15, chapter 31, General Laws) further provides that provisional appointments and temporary transfers must be terminated within fourteen days after the establishment of the eligible list and certification made. It would only appear to be equitable that applicants who appeal have their cases adjudicated prior to the establishment of the eligible list. It is impossible to hear the cases and adjudicate them before the lists are established, in view of the provisions in the law requiring that appeals on markings of examination papers must be held before a majority of the Commission. The case load of hearings relative to markings of examinations has increased substantially due to the addition of thousands of more positions to Civil Service classification and the ensuing greatly increased number of appeals. It is for this reason that the attached recommendation is proposed by the Commission so that appeals on examinations may, for a limited time, be held by less than a majority of the Commission or a member assigned to hold such hearings and to report the findings of fact and recommendation to the Commission for action.

2. AN ACT REQUIRING THAT THE ANNUAL REPORT OF THE DIRECTOR OF CIVIL SERVICE BE MADE ON A FISCAL YEAR BASIS.

The present law (section 2A (k), chapter 31, General Laws) states that the Director shall, on or before December first of each year make a report to the Commission, including his recommendations,

if any. The practice has been to make a report covering the activities of the calendar year. This agreed with the dates of the fiscal year of the Commonwealth at the time of the enactment of section 2A (k). However, the fiscal year of the Commonwealth now runs from June 30 of one year to July 1 of the following year. We believe that it is advisable, therefore, that the report of the Director cover the same period.

3. AN ACT EXEMPTING CERTAIN POSITIONS FROM THE OPERATION OF THE CIVIL SERVICE LAWS.

Section 5 of chapter 31 of the General Laws is the section which provides for certain offices and positions to be exempt from the Civil Service Law and Rules. It specifies that employees of the treasurer and collector of taxes of any city, two employees of the city clerk of any city, and secretaries and confidential stenographers of the mayor of any city shall be exempt from Civil Service. It has always been considered to be the intent of the law to exempt from Civil Service such positions in towns in which positions are otherwise classified under Civil Service, unless placed under by special legislation, but this interpretation has recently been questioned. In order that there may be no misunderstanding on the matter, the recommendation attached is submitted.

4. AN ACT FURTHER REGULATING APPEALS FROM CIVIL SERVICE EXAMINATIONS.

A review of the records of the Division of Civil Service shows that a great many appeals from the results of examinations are received from applicants with very low marks. It is not unusual to get appeals on anywhere from one to thirty-five questions from applicants who receive marks ranging from one to seventy per cent. We do not believe that appeals should be accepted from applicants receiving more than twenty points below the general average passing mark. To accept such appeals in cases of such low marks needlessly increases the work of the division and adds considerably to the cost of operation of the department. Experience has shown that there is no merit to such appeals. Hundreds of appeals are received each year from applicants who do not specifically state the reason for the appeal or offer any proof as to the correctness of the answers. Appeals could be processed sooner, and eligible lists could be established in a shorter period of time, if it clearly sets

forth in the law that requests for a review of the marking of an examination shall state the authority relied upon by the applicant to support his allegations. Section 1 of the attached recommendation is proposed to cover the two points referred to in this paragraph.

5. AN ACT RELATIVE TO ELIGIBILITY IN COMPETITIVE PROMOTIONAL EXAMINATIONS FOR POSITIONS UNDER CIVIL SERVICE.

The Civil Service Law (subsection B, section 15, chapter 31, General Laws) states that competitive promotional examinations shall be open in succession to all permanent employees who have been employed after certification for at least one year "in the next lower grades" as determined by the Director of Civil Service. Oftentimes, there are persons employed in equal grades to the position to be filled and who are in the same salary level but, because of the wording of section 15B of chapter 31 of the General Laws may not be admitted to examinations for which they would otherwise qualify, and who are employed in positions for which there is strictly no "higher" grade and, therefore, have no opportunity to qualify by promotional examination for a better position. It seems only fair that such persons should be allowed to compete in examinations. The suggested recommendation will permit such action.

6. AN ACT TO PROVIDE THAT CERTAIN INFORMATION BE SUBMITTED BY APPOINTING AUTHORITIES TO INSURE COMPLIANCE WITH THE CIVIL SERVICE LAWS AND RULES.

In endeavoring to ascertain as to whether or not persons are employed in positions classified under the Civil Service Law without requisition upon and authorization by the Division of Civil Service as required by law, it has been found that appointing authorities file with the Division of Civil Service reports containing only the names of those employees who they believe would be in positions under Civil Service, but investigation has shown that many persons are employed in positions which are classified under Civil Service by law, although proper requisition was not made under chapter 31 of the General Laws.

Section 42 of chapter 41, which is the law setting forth the information which must appear on every payroll, bill or account before a treasurer or fiscal officer may pay any salary or compensation, requires (in addition to the information required by chapter 31,

section 31) that if the position is not under Civil Service that the title authorized by the appointing authority must be included.

In the greater number of cases, the experience of the Division of Civil Service has been that the appointing authority does not have full knowledge of what positions are under Civil Service and, therefore, because of a lack of such knowledge, he does not make requisition as required by chapter 31, General Laws.

We believe that considerable misunderstanding and unintentional illegal employment can be eliminated if the appointing authority is required to comply with section 31 of chapter 31 of the General Laws by filing a report containing the names of all persons who have been appointed or employed, with the title under which each has been employed, whether or not such position is under Civil Service.

7. AN ACT FURTHER DEFINING THE LAW RELATIVE TO RE-ASSIGNING CERTAIN EMPLOYEES UNDER CIVIL SERVICE.

Many times, employees, because of the location of positions to which assigned, illness or personal reasons, and with the approval of the appointing authority, request that they be assigned to less difficult tasks in a position and salary commensurate with the duties to be performed. In most cases, it is to positions which they have previously held on a permanent basis.

At the present time, because of the present wording of section 43 (a), chapter 31, General Laws, to affect such action, it is necessary that the appointing authority notify the employee of a full hearing stating the specific reasons therefor, and give him notice in writing after the hearing of the decision, even though the action is taken at the employee's request. This does not seem to be reasonable and causes much waste of time and money. In the case of transfer of a permanent employee, it is not necessary that the procedure outlined in section 43 be followed if he gives his consent. The present law, however, does not state that this consent must be in writing and the Division has had complaints from employees that they have not consented to such transfer. The attached recommendation is, therefore, submitted.

8. AN ACT TO CLARIFY THE COMPUTATION OF CERTAIN TIME LIMITATIONS CONTAINED IN THE CIVIL SERVICE LAW.

Section 43 of chapter 31 of the General Laws is that section of the law which sets forth the procedure to be followed in the case of

discharge, suspension, removal from employment, et cetera, of permanent Civil Service employees. Paragraph (g) of section 43 is the section dealing with punishment duty of police officers, and has a clause in it which reads, "In the computation of any period of time limited by this section, Saturdays, Sundays and holidays shall be excluded." This has always been interpreted, as we believe it was intended, to mean *any time* limitation referred to in the entire section 43, and not only to action under paragraph (g) referring to punishment duty. Many times, however, the question has arisen as to whether it actually refers only to paragraph (g) or if it was meant to refer to all actions necessary under section 43. The proposed legislation will remove any doubt in the matter.

9. AN ACT TO PROVIDE FOR CONFORMANCE WITH THE WELFARE COMPENSATION PLAN ESTABLISHED UNDER THE CIVIL SERVICE LAW AND RULES.

A recent court decision (John W. Simonds, et als. *vs.* John Curry, et als.) has raised questions as to the intended interpretation of sections 47C, D and E of chapter 31, General Laws, which provides generally that positions in welfare departments in cities and towns where Federal reimbursement is received must be classified under the Civil Service Law and Rules; that a Compensation Plan must be established by the Welfare Compensation Board established under section 47D of chapter 31, and that persons holding positions referred to in section 47C of chapter 31 shall be paid the salaries set forth in such plan. Chapter 402, Acts of 1941, was enacted in order that the Commonwealth and its cities and towns might receive Federal reimbursement for such positions. The emergency preamble and the title on that chapter reads as follows:

AN ACT ESTABLISHING A MERIT SYSTEM, SUBSTANTIALLY SIMILAR TO THE CIVIL SERVICE SYSTEM, FOR CERTAIN OFFICERS AND EMPLOYEES OF LOCAL BOARDS OF PUBLIC WELFARE, AND TO BE ADMINISTERED BY THE DIVISION OF CIVIL SERVICE, AND VALIDATING ACTION UNDER THE MERIT SYSTEM INSTALLED AND ADMINISTERED BY THE DEPARTMENT OF PUBLIC WELFARE AT THE INSTANCE OF THE FEDERAL SOCIAL SECURITY BOARD.

Whereas, The federal government requires, as a condition precedent to the continuance of the granting of federal funds to the commonwealth and its political subdivisions for old age assistance or aid to dependent children, that the provisions of this act or substantially similar provisions shall become operative as soon as may be, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

It seems clear from this preamble that all cities and towns must conform to the Welfare Compensation Plan established by the Director of Civil Service with the approval of the Welfare Compensation Board, consisting of the Commissioner of Public Welfare, the Chairman of the Civil Service Commission and the Director of Accounts, ex officiiis, as a condition for receiving Federal funds.

Since the court decision referred to above, the Regional Representative of the Bureau of Family Services, Neil P. Fallon, Department of Health, Education and Welfare, has sent a communication to Mr. Robert F. Ott, State Commissioner of Public Welfare, the last paragraph of which reads as follows:

The Massachusetts Local Welfare Compensation Plan, established under Sections 47D and 47E of Chapter 31 of the General Laws, has been incorporated in the approved plan for Public Assistance grants-in-aid to the Massachusetts Department of Public Welfare. Chapter 31 provides that the development and administration of this compensation plan is the responsibility of the Massachusetts State Civil Service Director and the Welfare Compensation Board. This arrangement has been found to meet the Federal Standards. From our review of the case cited above it seems that it may not be possible for the Commonwealth to comply with the existing plan. We would appreciate it if you would advise us regarding this matter. If this is the case, please advise us what steps will be taken to meet the Federal requirements.

From this it could be reasonably understood that Federal funds will be withdrawn for many hundreds of positions unless there is conformance with the Welfare Compensation Plan by all municipalities. The amount of Federal reimbursement involved in such positions is approximately \$100,000,000. To insure continuance of such funds, the attached recommendation is submitted.

10. AN ACT EXTENDING CERTAIN PROVISIONAL APPOINTMENTS AND TEMPORARY TRANSFERS FOR A LIMITED PERIOD.

Chapter 743 of the acts of 1962 amended section 15 of chapter 31 of the General Laws by placing limitations on the time for which a provisional appointment or temporary transfer could be authorized, pending the establishment of an eligible list, but provided in section that such limitations would not take effect until June 30, 1965.

The act provided that requisition to make appointments to fill a vacancy in a permanent position or in a newly-created position for which funds have been appropriated or are available on a permanent basis shall state that such vacancy is to be filled on a permanent

basis, and that arrangements shall be made to hold examinations forthwith and further that, in the case of a temporary vacancy, examinations must be held if they have been filled on a provisional basis or temporary transfer basis for a period of six months. We believe it a good personnel practice that all positions for which vacancies exist should be filled as soon as possible as a result of examination. However, sufficient funds were not given to the Division to permit the holding of the hundreds of examinations required to be held to fill the positions previously requisitioned for on a temporary basis when in fact a permanent vacancy existed, in addition to the examinations which must be held to fill new vacancies of both temporary and permanent positions. We have been able to hold examinations for all positions for which provisional appointments or temporary transfers were authorized prior to October of 1962, and to hold hundreds of other examinations to fill requisitions received subsequent thereto. However, because of the number of examinations which must be held for new vacancies and the numbers of temporary positions continually extending over a period of six months, we know it is going to be an impossibility to establish eligible lists within the time set forth in chapter 31 of the General Laws.

Several years ago, we had requested a computer system be installed in the Division and funds were appropriated in the last budget for such purpose. This system, when installed, will, we believe, result in relieving employees from many very routine tasks so that they may be assigned to the work of the Examination and Application Bureaus. Furthermore, we were successful within the last year in obtaining funds for the employment of additional examiners, for which we are now holding examinations. It is anticipated that as soon as this installation is in operation, the Division of Civil Service will be able to hold examinations for positions being filled by provisional appointments or temporary transfers in the time set forth in the Civil Service Law (chapter 31). It has been estimated that by the end of 1965, the new installation will be in workable condition and within the next year thereafter, we should be able to re-assign employees to other duties.

We are, therefore, requesting that section 7 of chapter 743 of the acts of 1962 be extended to July 1, 1967.