



STATE OF NEW JERSEY

In the Matter of Assistant County Treasurer (C2029W), Sussex County	:	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
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		Appointment Waiver
CSC Docket No. 2020-1432	:	
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ISSUED: JULY 31, 2020 (HS)

Sussex County (County) requests permission not to make an appointment from the June 17, 2019 certification for Assistant County Treasurer (C2029W).

By way of background, the County provisionally appointed Robert Maikis, Jr., pending open competitive examination procedures, to the title of Assistant County Treasurer, effective July 9, 2018, in the Department of Finance and Library Services. This provisional appointment generated an examination announcement (C2029W) for the subject title with a closing date of October 5, 2018. Maikis and two other applicants were admitted to the examination, which was administered as an evaluation of education and experience. The resulting eligible list of three names promulgated on June 13, 2019 and expires on June 12, 2022. A veteran ranked first on the list. Maikis and the remaining eligible, both non-veterans, were tied for the second rank. A certification (OL190692) was issued on June 17, 2019 with a disposition due date of September 17, 2019 and consisted of the names of all three eligibles. The County returned the certification and requested an appointment waiver due to an ordinance adopted by the Board of Chosen Freeholders (Board) on September 25, 2019 amending the County Administrative Code specifically within the Department of Finance and Library Services. The County explained that the department was restructured to allow for the segregation of duties related to Treasury, Budget Management, and Fiscal Management. It stated that the restructuring incorporated a division head for each of these divisions in lieu of the position of Assistant County Treasurer. It is noted that the referenced ordinance was introduced for first reading on September 11, 2019. A summary of the ordinance provided for that meeting reads as follows:

This Ordinance restructures the Department of Finance and Library Services. More specifically, it segregates the duties related to Treasury, Budget Management and Fiscal Management (grants). The Library Division is unaffected by the change. The amendments to the Administrative Code were requested by the Department Administrator as part of the budget process in the goals and objectives submission.

It is noted that the County took no action to obviate the need for the examination at the time of the announcement or prior to its administration. *See N.J.A.C. 4A:10-2.2(a).* Subsequently, Agency Services referred the matter to the Civil Service Commission (Commission).

The County's request for an appointment waiver was acknowledged, and it was advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. The County provided additional background concerning the above-discussed ordinance. Specifically, the County explained that the Board had made the revision of the County Administrative Code a priority for 2019. To that end, input was solicited from County staff on April 2, 2019. Discussions were held with the County CFO/Treasurer about amending the County Administrative Code on April 17, 2019 and May 15, 2019. The County stated that revisions were received from various departments on or about May 3, 2019 and compiled into a draft document for internal review. The product of that review was the ordinance that was introduced by the Board on September 11, 2019 and adopted on September 25, 2019. In addition, the County submitted a check for the selection costs.

Agency records reveal that the County appointed Maikis to the unclassified title of County Division Head, effective September 25, 2019, and that he continues to serve in that capacity. According to the Official Sussex County Directory available on the County's website, Maikis is the Manager for the Office of Fiscal Management. Agency records indicate that the County employs two individuals in the unclassified title of County Department Head and 15 individuals, including Maikis, in the unclassified title of County Division Head. Agency records also indicate that currently there are no individuals serving in the subject title with the County.

CONCLUSION

In accordance with *N.J.S.A. 11A:4-5*, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request for a list to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and

eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as a result of the provisional appointment of Maikis. After a complete certification was issued, the appointing authority indicated that no appointment would be made, and Maikis received an appointment to the unclassified title of County Division Head. Pursuant to *N.J.S.A. 11A:3-5(l)*, the political subdivision unclassified service includes:

No more than 12 county department heads and the heads of divisions within such departments; provided that the total number of unclassified positions created by the county administrative code pursuant to this subsection shall not exceed 20.

The County's employment of two individuals in the unclassified title of County Department Head and 15 individuals in the unclassified title of County Division Head, including Maikis, is within the combined cap of 20 set by *N.J.S.A. 11A:3-5(l)*. Thus, it appears that the County's appointment of Maikis to an unclassified County Division Head position was an appropriate exercise of its statutory authority to appoint unclassified County Division Heads. Moreover, there is no one currently serving in the subject title with the County. Accordingly, based on the foregoing, there is sufficient justification for an appointment waiver.

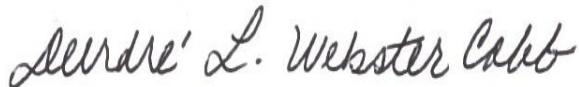
Although the appointment waiver is granted, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, effort and money to take these examinations in hopes of being considered for a permanent appointment. In the instant situation, although valid reasons exist for not making an appointment from the subject eligible list, the County has failed to provide a sufficient basis for not being charged for the costs of the selection process that produced the subject eligible list. Moreover, the County submitted a check for the costs of the selection process. Therefore, since the County has conceded that it is responsible for those costs, it is appropriate that it be assessed for the costs of the selection process.

ORDER

Therefore, it is ordered that the appointment waiver be granted. Additionally, the Civil Service Commission orders that Sussex County be assessed for the costs of the selection process but notes that the costs have already been remitted.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 29TH DAY OF JULY, 2020



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