



B-8

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Research Assistant,
Criminal Information (C0144S),
Bergen County Prosecutor's Office

CSC Docket No. 2015-2005

Appointment Waiver

ISSUED: JUL 31 2015 (JET)

Bergen County requests permission not to make an appointment from the July 21, 2014 certification for Research Assistant, Criminal Information (C0144S), Bergen County Prosecutor's Office.

The record reveals that the appointing authority provisionally appointed Kenneth Koonce, pending open competitive examination procedures, to the subject title, effective January 15, 2014. The examination was announced with a closing date of February 25, 2014. The resulting list of 36 eligibles promulgated on July 17, 2014 and expires on July 16, 2017. Mr. Koonce ranked 36th on this list. It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. A certification was issued on July 21, 2014 (OL140970) which contained the names of the 36 eligibles. The appointing authority returned the certification and indicated that it would not make a permanent appointment since Koonce was no longer serving in the title. It is noted that Koonce's provisional appointment was discontinued effective November 28, 2014. The appointing authority thereafter requested a waiver from the appointment requirement since the provisional was no longer serving in the title and it did not currently have a use for the title in that jurisdiction.

The appointing authority'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. In response, the appointing authority argues that it does not currently have a use for the subject title and explains that it has submitted a request to the Division of Agency Services

(Agency Services) to consider creating three new titles that would better classify the duties of the position to be filled.¹

A review of agency records reveals that there are currently no employees serving provisionally, pending open competitive examination procedures, in the subject title with Bergen 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 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 due to Bergen County's provisional appointment of Koonce to the subject title. However, after a complete certification was issued, the appointing authority requested cancellation of the certification due to lack of use for the subject title, since it does not adequately classify the position it needs to fill, and agency records revealed that Koonce is no longer serving in the subject title. Consequently, since there is no provisional serving in the title at issue, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, 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, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this matter, the appointing authority requests that the cost of the selection process be waived. However, the fact that it does not feel that the subject title properly classifies the positions it needs to fill is not a sufficient basis to waive the examination costs, particularly since it provisionally appointed an individual to the subject title, which generated the examination process. Thus, although a

¹ It is noted that, on January 9, 2015, Bergen County submitted a request for this agency to adopt the titles of Forensic Computer Analyst, Forensic Financial Analyst, and Criminal Intelligence Analyst. Bergen County explained, among other things, that it would be of greater use to the appointing authority to utilize these titles given the significant changes to various types of crime being committed in that community and elsewhere. Agency Services has not yet issued a determination and the matter is still pending.

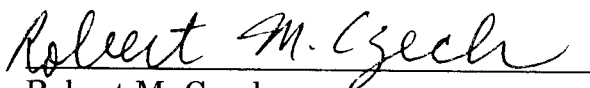
waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that the request for a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

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, 2015



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Henry Maurer
Director
Division of Appeals
and Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: John L. Molinelli
Kenneth Connolly
Joseph Gambino
Beth Wood