



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Clerk 2 (M0040T),
Highlands Borough

CSC Docket No. 2017-3249

Appointment Waiver

ISSUED: August 21, 2017 (RE)

Highlands Borough requests permission not to make an appointment from the August 18, 2015 certification for Clerk 2 (M0040T).

The record reveals that Highlands Borough provisionally appointed Nancy O'Neil, pending open-competitive examination procedures, to the title of Clerk 2, effective August 21, 2013. As a result of the provisional appointment, an examination was announced with a closing date of January 26, 2015. O'Neil was separated from service on April 2, 2015, although the Civil Service Commission was not notified until February 19, 2016. A written examination was held on July 23, 2015 and resulting list of 26 eligibles promulgated on August 13, 2015 and expires on August 12, 2018. On August 18, 2015, the names of the first ten eligibles were certified from the eligible list. The appointing authority took no action to obviate the need for the examination at the time of the announcement or prior to the administration of the examination. The certification (OL151016) had a disposition date of November 18, 2015, and the certification was returned on March 3, 2016 with no appointments, and a request to cancel the list as the provisional had been terminated.

Highlands Borough'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, Highlands Borough explained that there was a newly-hired appointing authority and Business Administrator. It was explained that O'Neil was assisting with added workload following Hurricane Sandy, and she should have had a temporary appointment.

The certification disposition date passed under the authority of the prior Business Administrator, who did not address the issue. Further, it was explained that the Payroll Clerk is out of work due to a work-related accident, and the absence led to the uncovering of many human resource related issues that had been neglected. The current Business Administrator states that he is working diligently to correct these issues. Since O'Neil's separation, Highlands Borough has not had a need to fill a position as the work has been reduced to a level manageable by existing staff.

Personnel records reveals that there are no employees serving provisionally in the subject title with Highlands Borough.

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 title of Clerk 2 was generated as a result of the provisional appointment of Nancy O'Neil. Prior to issuance of a complete certification, O'Neil was separated. Highlands Borough stated that newly appointed personnel had discovered that this issue has been neglected by the prior Business Administrator, and it was working to correct various issues. Accordingly, based on the foregoing, the appointing authority has presented 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 it has no use for the list, the appointing authority indicates that this issue was neglected by the prior administration. Although O'Neil was not still serving provisionally at the time of the certification, the appointing authority had not notified the Commission of her separation nor requested a cancellation of the examination.

ORDER

Therefore, it is ordered that the appointment waiver be granted. Additionally, the Civil Service Commission orders that Highlands Borough 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 decision.

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
THE 16th DAY OF AUGUST, 2017



Robert M. Czedh, Chairperson
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