



STATE OF NEW JERSEY

In the Matter of Legal Assistant,
Essex County

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

CSC Docket No. 2019-2687

Administrative Appeal

ISSUED: MAY 14, 2019

(SLK)

Essex County (County), represented by Robin Magrath, Esq., petitions the Civil Service Commission (Commission) to allow it to appoint employees to the unclassified title of Legal Assistant.

By way of background, the County approached the Division of Agency Services (Agency Services) to update the County and Municipal Personnel System to make sure that the titles of its employees matched information in the system. Specifically, it indicated that it was only allowed 12 unclassified Legal Assistants by statute, however, there are 23 unclassified Legal Assistants entered in the system, and the County currently employs 46 unclassified Legal Assistants. It presented to Agency Services that as part of bail reform and the changing needs of the Prosecutor’s Office, a Superior Court Assignment Judge for the County (Assignment Judge) ordered, pending Board of Chosen Freeholders (Freeholders) approval, that the County be authorized to increase the number of unclassified Legal Assistants to 55. Further, it submitted the Freeholders’ approval of the increase. In response, Agency Services denied the County’s request. Agency Services stated that this agency is only able to approve 12 unclassified Legal Assistant (06323) appointments by statute. Agency Services highlighted that there is an active competitive career service title of Legal Assistant (02275) that the County could use to properly classify its employees.

In its petition, the County states that while *N.J.S.A. 2A:158-18.1* limits the number of appointments of unclassified Legal Assistants in a first class county to 12, *N.J.S.A. 2A:158-18.2* provides that every appointment of such Legal Assistant shall be made subject to the approval of the Freeholders or the Assignment Judge. The

County submits the previously returned Assignment Judge's order, dated January 8, 2016, that authorizes the increase of the County's maximum number of Legal Assistants to 55. It also attaches the Freeholders' February 17, 2016 resolution approving the increase to 55 Legal Assistants. The County presents that *N.J.S.A. 2A:158-18.1* only limits that number of Legal Assistants for first class counties of 800,000 or less. It highlights that this statute became effective in 1953. The County asserts that its population is greater than 800,000¹ and it requires additional Legal Assistants to meet the demand of its workload. It argues that it will be detrimental to the County Prosecutor's Office if it were only allowed to appoint 12 Legal Assistants.

CONCLUSION

N.J.S.A. 2A:158-18.1 provides, in pertinent part, that in counties of the first class having a population not in excess of 800,000, the office or position of Legal Assistant to the County Prosecutor shall be in the unclassified service of the Civil Service. The Prosecutor may appoint, not in excess of 12 and at salaries not less than \$6,000 nor more than \$9,000 annually. Every such Legal Assistant shall serve at the pleasure of the County Prosecutor and be subject to removal by such Prosecutor.

N.J.S.A. 2A:158-18.2 provides that every appointment of such a Legal Assistant and their salary shall be made subject to the approval of the Board of Chosen Freeholders or the Superior Court Assignment Judge of the County. Such approval shall not be required in the filling of vacancies.

Initially, it is noted that it is unclear if *N.J.S.A. 2A:158-18.1* is applicable in this matter. This statute concerns counties that have populations not in excess of 800,000. The County submits an *estimate* that indicates that the County's population in 2017 was 808,285. However, the last official Census indicates that the 2010 population for Essex County was 783,969. Further, the County's number is just an estimate and the next official Census count shall be in 2020.

Additionally, *N.J.S.A. 2A:158-18.1* became effective in 1953 and there have not been any revisions to this statute. Further, the Commission has been unable to find any legislative history, case law or other authority that provides guidance on the legislative intent underlying the passage of this statute. For example, the statute does not indicate why a county is limited to 12 unclassified Legal Assistants and how many unclassified Legal Assistants a county that has a population in excess of 800,000 may appoint. It is also noted that there is an active competitive career service Legal Assistant title, which is not covered in the statute.² The Commission is

¹ The County references www.worldpopulationreview.com, which indicates that the County's population in 2017 was estimated to be 808,285 based on United States Census Bureau data.

² Although, as indicated, the statute specifies that Legal Assistants to the County Prosecutor are to be in the unclassified service. Thus, based on the information provided, that all of the requested

concerned that the legislature may have imposed a limit on the number of unclassified Legal Assistants a county could appoint as it did not want to create a framework that could be used to circumvent the Civil Service system by allowing for unlimited patronage or other inappropriate types of appointments. Moreover, Census data indicates that the County had a population of 905,949 in 1950 and it was the only county at that time that had a population greater than 800,000. Without any legislative history, the Commission is unable to identify why the statute was written in a manner that apparently excluded the County at that time and whether the reasons for that exclusion are still relevant today. It is also noted that the latest Census data estimates that Bergen and Middlesex Counties have populations over 800,000.

Finally, at least some of the statute's language is antiquated. Specifically, the statute indicates that salaries for Legal Assistants shall be between \$6,000 and \$9,000 annually, which is clearly a provision that is not practical in today's economic environment and is undoubtedly being violated.

Considering this background, the Commission shall approve the appointments of the 46 unclassified employees currently in the title of Legal Assistant with the County based on its stated need for these positions. However, if this statute remains in effect without any revisions that would authorize the Commission otherwise, the Commission shall not approve the appointments of any new or replacement unclassified Legal Assistants for the County while the County employs more than 12 unclassified Legal Assistants. Similarly, absent specific legislative guidance the Commission shall not approve any new or replacement unclassified Legal Assistant for any other county that has more than 12 unclassified Legal Assistants.

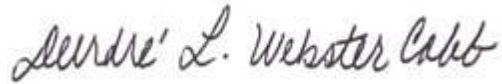
ORDER

Therefore, it is ordered that this petition be granted in part and the 46 unclassified current appointees in the unclassified title of Legal Assistant in Essex County be approved.

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

appointees are either already working in or will be working in the County Prosecutor's Office, such career service appointments would not be permitted.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9th DAY OF MAY, 2019



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