



The State Sanitary Code may cover any subject affecting public health, or the preservation and improvement of public health and the prevention of disease in the State of New Jersey, including the immunization against disease of all school children in the State of New Jersey. In addition thereto, and not in limitation thereof, said State Sanitary Code may contain sanitary regulations: (a) prohibiting nuisances hazardous to human health; (b) (deleted by amendment) (c) regulating the use of privies and cesspools; (d) regulating the disposition of excremental matter; (e) regulating the control of fly and mosquito breeding places; (f) regulating the detection, reporting, prevention and control of communicable and preventable diseases; (g) regulating the conduct of public funerals; (h) regulating the conduct of boarding homes for children; (i) regulating the conduct of maternity homes and the care of maternity and infant patients therein; (j) regulating the conduct of camps; (k) (Deleted by amendment, P.L.1987, c.302) (l) regulating the preparation, handling, transportation, burial or other disposal, disinterment and reburial of dead human bodies; (m) prescribing standards of cleanliness for public eating rooms and restaurants; (n) regulating the conduct of tattoo parlors; (o) regulating the conduct of body piercing; and (p) regulating the conduct of cosmetic tattooing.

The appointing authority argues that it does not follow the State Sanitary Code, but enforces Millville's Ordinances Chapter 61, Article 4, Collection and Disposal of Solid Waste (a copy of which was not provided). It explains that this position handles Solid Waste Ordinances, while another position handles Property Maintenance Ordinances, and each is responsible for half of the town. It maintains that this has been upset by the determination "because the job duties are specific to sanitation."

## CONCLUSION

*N.J.A.C.* 4A:3-3.9(e) states that in classification appeals the appellant shall provide copies of all materials submitted, the determination received from the lower level, statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered.

The definition section of the job specification for Sanitation Inspector states:

Under direction, conducts inspections and investigations to enforce codes, ordinances, and other standards related to collection and disposal of refuse and litter; does related work as required.

The definition section of the job specification for Code Enforcement Officer states:

Under the direction of a Supervising Code Enforcement Officer or other supervisory official, performs varied types of field and office work involved in seeing that residents, business establishments, and citizens comply with adopted codes, ordinances, and related rules and regulations other than the State Sanitary Code, State Uniform Construction Code, or any of its subcodes, State Uniform Fire Code or any other code for which a license, registration, or certification is required by state law; does related work as required.

At the outset, in making classification determinations, emphasis is placed on the Definition section of the job specification to distinguish one class of positions from another. The Definition portion of a job specification is a brief statement of the kind and level of work being performed in a title series and is relied on to distinguish one class from another. On the other hand, the Examples of Work portion of a job description provides typical work assignments which are descriptive and illustrative and are not meant to be restrictive or inclusive. *See In the Matter of Darlene M. O'Connell* (Commissioner of Personnel, decided April 10, 1992).

On her PCQ, Zieger indicated that for 60% of the time she drives a city vehicle through the established trash route each day observing garbage, trash, waste, etc., that is in violation of Millville's Collection of Solid Waste and Disposal Ordinance and Yard Waste Ordinance, and addresses the violations observed; for 12% of the time she communicates to residents, home owners, and landlords regarding the ordinances and how to follow them; for another 12% of the time, she receives calls from residences and homeowners regarding ordinance violations received to discuss issues and provide advice; for 5% of the time she receives calls concerning complaints regarding trash, waste, and garbage not being picked out by the current contractor waste hauler; for another 5% of the time she makes phone calls and emails to landlords regarding correction of waste ordinance violations; and for the remaining 6% of the time, she follows up on notices of violation, appears in court, attends court proceedings, contacts waste callers to pick up trash, communicates with waste truck drivers, and receives complaints. The supervisor of the position and the appointing authority agreed with the duties.

The duties of the position match exactly the definition and examples of work for Sanitation Inspector. The Examples of Work in the job specification for Code Enforcement Officer are more generic, however, the definition of that title specifically excludes enforcement of the State Sanitary Code. The State Sanitary Code covers any subject affecting public health, or the preservation and improvement of public health and the prevention of disease in the State of New Jersey and contains sanitary regulations including prohibiting nuisances hazardous

to human health. Since “The collection and disposal of garbage are so intimately associated with the public health [it is also recognized] that stringent control thereof is indispensable.” *Marangi Bros. v. Bd. of Com'rs of Ridgewood*, 33 N.J. Super. 294, 300 (App. Div. 1954). In the exercise of the police power, the State itself or municipalities which have been granted that power may enact or adopt necessary and reasonable statutes, ordinances or other regulations governing the collection, removal and disposal of garbage and other refuse. *Marangi Bros., supra*; *Township of Dover v. Witt*, 7 N.J. Super. 259 (App. Div. 1950); *Atlantic City v. Abbott*, 73 N.J.L. 281, 282-283 (Sup. Ct. 1906); 7 *McQuillin, Municipal Corporations*, § 24.242 (3 ed. 1968); Annotation, “Garbage-Regulations,” 15 A.L.R. 287 (1921), supplemented 72 A.L.R. 520 (1931) and 135 A.L.R. 1305 (1941), *Pleasure Bay Apartments v. City of Long Branch* 55 N.J. 79, 328 A.2d 593 (1974). In 1970, the Legislature provided for more direct controls by the State itself by enacting the “Solid Waste Management Act,” N.J.S.A. 13:1E-1 to 15. The purpose of the Act was to establish a framework for the coordination of solid waste collection, disposal, and utilization activity in New Jersey. *Middlesex County Dept. of Health v. Importico*, 315 N.J. Super. 397, 718 A.2d 727 (L.1998). In enacting statutes related to solid waste collection, disposal and utilization, the State preempted the field of solid waste management, subject only to the supplement to Solid Waste Management Act providing that nothing in the Act shall preclude the right of local government to adopt health or environmental protection ordinances or regulations more stringent than the Act or any rules and regulations promulgated pursuant thereto. *Southern Ocean Landfill, Inc. v. Mayor and Council of Ocean Township* 64 N.J. 190, 314 A.2d 65 (1974).

The question herein is which job specification definition do the duties of the position more closely match. Classification determinations are based on the *primary functions* assigned to the position. The job specification for Code Enforcement Officer refers to the State Sanitary Code, while the duties of the Sanitation Inspector more closely follow the Solid Waste Management Act. In this regard, the Division of Agency Services should reevaluate the job specification for Code Enforcement Officer to determine if evolving legislation requires a change in the definition which more clearly excludes codes regarding solid waste removal, if that is the intent. See N.J.S.A. 13:1E-1 *et seq.* (Department of Environmental Protection), and N.J.S.A. 26:1A-7 (Department of Health). In any event, all of the duties of the position are germane to the Sanitation Inspector title, which is the appropriate title for the position. The appointing authority has not differentiated related duties to enforcement of the Collection and Disposal of Solid Waste Ordinance as opposed to the Property Maintenance Ordinance, nor has it identified which duties of the position are outside of the enforcement of the Collection and Disposal of Solid Waste Ordinance.

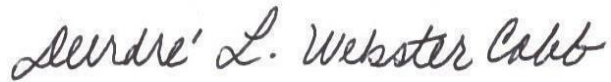
Accordingly, a thorough review of the entire record fails to establish that the appointing authority has presented a sufficient basis to warrant a Code Enforcement Officer classification of Tracey Zieger's position.

**ORDER**

Therefore, it is ordered that this appeal be denied.

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 1<sup>ST</sup> DAY OF SEPTEMBER, 2021



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