



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Police Chief,  
Paterson

CSC Docket No. 2023-1559

Administrative Appeal

ISSUED: February 22, 2023

Paterson, represented by Aymen A. Aboushi, Esq., appeals the determination of the Division of Agency Services (Agency Services) which denied its request to appoint a Police Chief in the unclassified service pursuant to *N.J.S.A. 40:69A-60.7*.

By way of background, in its initial request dated October 20, 2022, Paterson referred to *N.J.S.A. 40:69A-60.7* for the proposition that “any City of the First Class”<sup>1</sup> may provide by ordinance that the city may appoint a Police Chief “who shall serve in the unclassified service of the civil service of the city.” Paterson noted that it “is the third most populous city in New Jersey . . . [and] a city of the First Class as a matter of law.”<sup>2</sup> Indeed, the City has an ordinance that provides for any police chief, once the city becomes a city of the First Class, to hold their position in an unclassified capacity pursuant to *N.J.S.A. 40:69A-60.7*, which is City of Paterson Ord. No. §5-76D.

<sup>1</sup> *N.J.S.A. 40A:6-4* provides:

For legislative purposes, cities shall be classified as follows based upon population as ascertained by the most recent Federal decennial census:

- a. First class -- cities having a population of more than 150,000;
- b. Second class -- cities having a population of not less than 12,000 but not more than 150,000;
- c. Third class -- all cities which are not first- or second-class cities except cities bordering on the Atlantic ocean being seaside or summer resorts;
- d. Fourth class -- cities bordering on the Atlantic ocean which are seaside or summer resorts.

<sup>2</sup> It is noted that U.S. Census Bureau data indicates that as of April 1, 2020, the population of Paterson was 159,732. See <https://www.census.gov/quickfacts/patersoncitynewjersey>.

In accordance with State Law and Paterson’s Code, the position of Police Chief is now unclassified.” Paterson further referred to *Newark Superior Officers Association v. Newark*, 98 N.J. 212 (1985), in which the court examined whether N.J.S.A. 40:69A-60.7 was special legislation enacted in violation of the New Jersey Constitution, and notes that the court determined that N.J.S.A. 40:69A-60.7 “was not unconstitutional and there were special reasons why the largest cities in New Jersey needed the flexibility and discretion to appoint and remove their police chiefs on an unclassified basis . . . .” Paterson argues that it is critical that a city of its size be able to manage its police department and affairs through an unclassified Police Chief position” Paterson further argues that “the unclassification [sic] of the position permits the immediate and orderly administration of public safety as recognized by the Faulkner Act, the Paterson Code, and relevant case law. Paterson now has the authority to appoint and remove its police chief in an unclassified manner.”

In its response dated December 1, 2022, Agency Services referred to N.J.S.A. 40:69A-60.7 (City of the first class under Mayor-Council Plan C; police chief; appointment; term of office; removal) which provides:

Notwithstanding the provisions of any other law to the contrary, the governing body of any city of the first class, which, prior to the effective date of this amendatory and supplementary act, had adopted the form of government designated as ‘Mayor-Council Plan C’ provided for in article 5 of the act to which this act is a supplement, may provide, by ordinance, that the mayor shall appoint a police chief, who shall have served as a superior police officer and possess at least 5 years’ administrative and supervisory police experience, who shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor, and who shall serve in the unclassified service of the civil service of the city and shall receive such salary as shall be fixed by ordinance.

Agency Services determined that according to the information available, Paterson is a Mayor-Council Plan D form of government. Thus, as the above statutory provision only permits unclassified appointments to the title of Police Chief in cities of the first class operating under the Mayor-Council Plan C form of government, there did not appear to be any basis to grant the request.

In its appeal dated January 4, 2023, Paterson adds that “not converting the Chief position to an unclassified one would defeat the policy goals of *Newark Superior Officers Association v. Newark*, [supra]. Indeed, while N.J.S.A. 40:69A-60.7 references a Mayor-Council Plan D [sic] form of government, that distinction falls within the portion of the statute that was overturned by the Court in *Newark Superior Officers Association v. Newark*, [supra].” In this regard, Paterson maintains:

The Court found the majority of the statute's provisions to be Constitutional . . . to the extent that the statute's provisions could be supported by the following rational basis: [sic] The Court found a rational basis for the differential treatment of police chiefs in larger cities, such as Paterson, as opposed to smaller cities . . . [However,] at no point in its entire Opinion does the Court find any rational basis found [sic] for treating 'Plan C' cities different from other cities of sufficiently large size. Thus, because the Court in *Newark Superior Officers Assoc[iation v. Newark]*, *supra*[,] at no point finds any rational basis for the statutory provision facially distinguishing between 'Plan C' municipalities and other municipalities in a similar size class, *i.e.*, over 150,000, and because the Court expressly disapproved of irrationally 'exclud[ing] any other cities from coming under the aegis of the statute in the future,' *id.* at 230, that the Civil Service Commission must . . . unclassify [sic] the Police Chief position, and approve the City of Paterson's direct mayoral appointment of a police chief.

### CONCLUSION

In local service, *N.J.S.A.* 11A:3-5 provides that the unclassified service shall be limited to those titles it specifically designates and all other titles created by other statutes or as the Civil Service Commission (Commission) may determine in accordance with criteria established by rule. *N.J.A.C.* 4A:3-1.1(a) provides that all job titles shall be allocated to the career service, except for those job titles allocated by the Civil Service Commission to the unclassified service pursuant to *N.J.A.C.* 4A:3-1.3. *N.J.A.C.* 4A:3-1.3(a) provides that a title shall be allocated to the unclassified service when:

- 1) In State service, the title is so designated under *N.J.S.A.* 11A:3-4;
- 2) In local service, the title is so designated under *N.J.S.A.* 11A:3-5;
- 3) The title is designated unclassified by another specific statute;
- 4) A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or
- 5) The Commission determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

The issue before the Commission is whether Paterson is entitled to appoint a Police Chief in the unclassified service pursuant to *N.J.S.A.* 40:69A-60.7 and 4A:3-1.3(a)3. As indicated by the court in *Newark Superior Officers Association v. Newark*, *supra*, "On August 6, 1979, *L.1979, c. 163, N.J.S.A. 40:69A-60.7*,<sup>3</sup> became effective,

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<sup>3</sup> *L.1979, c. 163* provides in pertinent part:

allowing the mayors of cities of the first class with a ‘Mayor-Council Plan C’ form of government<sup>4</sup> under the Optional Municipal Charter Law, *N.J.S.A.* 40:69A-1 to 40:69A-210, to appoint their police chiefs. The issue here is whether *N.J.S.A.* 40:69A-60.7 is special legislation enacted in violation of *N.J. Const. (1947), Art. IV, § VII, para. 9(13).*” *Id.* at 216. The court explained:

The trial court held *N.J.S.A.* 40:69A-60.7 to be unconstitutional special legislation in violation of Article IV, § 7, para. 9(13) of the New Jersey Constitution. After the trial court decision but before an appeal to the Appellate Division was filed, *N.J.S.A.* 40:69A-60.7 was amended by P.L.1981, c. 465, § 43, effective January 9, 1982, to limit the application of the law to ‘any city of the first class which, *prior to the effective date of this amendatory and supplementary act* has adopted the form of government designated as Mayor-Council Plan C.’ This grandfather clause operates to exclude from the statute all cities except Newark and Jersey City.<sup>5</sup> (emphasis added)

The Appellate Division affirmed the judgment of the trial court. Both courts held that there was no rational basis ‘for thinking that the size of the municipality and its form of government somehow impact on the relationship between the police chief and his unclassified superior in a way that requires the police chief in certain municipalities, but not in others, also to be in the unclassified service.’ *Newark Superior Officers*

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Notwithstanding the provisions of any other law to the contrary, the governing body of any city of the first class, which, has or shall hereafter adopt the form of government designated as ‘Mayor-Council Plan C’ provided for in article 5 of the act to which this act is a supplement, may provide, by ordinance, that the mayor shall appoint a police chief, who shall have served as a superior police officer and possess at least 5 years administrative and supervisory police experience, who shall serve during the term of office of the mayor appointing him, and until the appointment and qualification of his successor, and who shall serve in the unclassified service of the civil service of the city and shall receive such salary as shall be fixed by ordinance.

<sup>4</sup> As noted in *In re Shain*, 92 *N.J.* 524 (1983), “from the inception of the Faulkner Act in 1950 through January 9, 1982, the enabling statute authorized six basic plans of Mayor-Council governance, known individually as Plans ‘A’, ‘B’, ‘C’, ‘D’, ‘E’ and ‘F’. *N.J.S.A.* 40:69A-31 to 40:69A-80. The six plans, structurally identical with respect to the division of local powers, merely offered variations of the electoral aspects of the basic Mayor-Council Plan, such as the size of the Council, partisan or non-partisan elections, ward or at-large representation, and staggered or non-staggered council terms.” *Id.* at 527. The court further noted that “in 1981, the Legislature recodified the statute so that the elements of all six plans would appear under one general article of *N.J.S.A.* 40:69A-31 to -44 authorizing Mayor-Council forms of local government.” *Id.* at 527. However, *N.J.S.A.* 40:69A-60.7 was not repealed pursuant to the recodification in 1981, as noted above.

<sup>5</sup> At the time this matter was before the court in *Newark Superior Officers Association v. Newark*, *supra*, Newark and Jersey City were the only cities in New Jersey of the first class “and both had adopted the Mayor-Council Plan C form of government. Accordingly, [*N.J.S.A.* 40:69A-60.7] is applicable only to those two cities.” *Id.* at 216.

*Ass'n v. Newark*, 187 N.J. Super. 390, 402 (1982). We disagree and reverse the judgment of the Appellate Division. *Id.* at 221.

In its discussion, after noting the three general principles applicable to determining whether a statute is unconstitutional special legislation and the three-part test established in *Vreeland v. Byrne*, 72 N.J. 292 (1977) to determine whether a statute passes as general legislation,<sup>6</sup> the court indicated:

Bearing in mind the three general principles outlined above, we now apply the *Vreeland* test to the statute presented here **prior to its amendment in 1981**. [emphasis added] As indicated above, N.J.S.A. 40:69A-60.7 provides that mayors of cities of the first class operating under the 'Mayor-Council Plan C' form of government may appoint police chiefs to serve in the unclassified service of the civil service. The purpose of the Act is to provide for a police chief's greater cooperation with and accountability to the administration of cities of the first class. Next, we determine whether any municipality is excluded that should be included . . . Although the Act is applicable only to Newark and Jersey City, no other similarly situated municipality is excluded. There is no other municipality in this state that meets the population requirement of the act. . . The final inquiry is whether the Act clearly rests on a rational basis justifying the classification . . . [*Id.* at 224] We hold that the statutory classification is reasonable and that the statute is not unconstitutional. In view of the objective sought to be attained, we hold that the present legislative classification by population is based upon a rational difference in situation or condition found to exist between the municipalities of the state. *Id.* at 230.

Next, the court examined the 1981 amendment to N.J.S.A. 40:69A-60.7. In this regard, the court noted:

Effective January 9, 1982, N.J.S.A. 40:69A-60.7 was amended by L.1981, c. 465, § 43 to limit its application to 'any city of the first class, which, prior to the effective date of this amendatory and supplementary act, has adopted the form of government designated as Mayor-Council Plan C.' This grandfather clause operates to exclude any other cities from coming under the aegis of the statute in the future . . . Applying th[e] standard [provided in *Kimball v. Brick Township Hosp.*, 86 N.J. 429, 441 (1981)], we find it difficult to conceive a rational basis for excluding other municipalities that **may in the future** become first

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<sup>6</sup> See *id.* at 222-223. Specifically, the court noted that "the three part test [presented in *Vreeland*, *supra*,] is as follows: first, we consider the purpose and object of the legislation; second, we apply it to the factual situation to determine whether any one thing is excluded that should be included; third, we determine whether, as so applied, the resulting classification can be said to rest upon any rational or reasonable basis relevant to the purpose and object of the act. *Id.* at 300-01." *Id.* at 223.

class cities **operating under the ‘Mayor-Council Plan C’ form of government.** See *Fagan v. Payne*, 75 *N.J.L.* 851 (E & A 1907); *Seymour v. Orange*, 74 *N.J.L.* 549 (E & A 1906). The reasoning that supports the constitutionality of the statute prior to this amendment, see Parts II, III, IV *supra*, would apply as well to municipalities that in the future become first class cities operating under the ‘Mayor-Council Plan C’ form of government. Accordingly, we find the amendment to the statute to constitute special legislation in violation of the New Jersey Constitution. Nevertheless, we hold that the grandfather clause may be severed from the statute and the remaining valid parts sustained” (emphasis added). *Id.* at 231.

Thus, the court clearly indicates that the 1981 amendment to *N.J.S.A.* 40:69A-60.7, which replaced “has or shall hereafter adopt the form of government designated as ‘Mayor-Council Plan C’” with “*prior to the effective date of this amendatory and supplementary act has adopted* the form of government designated as Mayor-Council Plan C,” is special legislation and should be severed. However, as indicated above, the court did not determine that severing this grandfather clause would mean that *N.J.S.A.* 40:69A-60.7 would apply to any city of the first class. Rather, the court found that *N.J.S.A.* 40:69A-60.7 applies to municipalities that are or “may in the future become first class cities operating under the ‘Mayor-Council Plan C’ form of government.” Thus, *N.J.S.A.* 40:69A-60.7 remains applicable to cities of the first class that operate under the Mayor-Council Plan C form of government.

The Commission now examines whether Paterson operates under the “Mayor-Council Plan C” form of government. It is noted that the available Paterson ordinances, *i.e.*, the 1979 Revised General Ordinances of the City of Paterson, indicates in Article II, §1.6 (Definitions and Word Usage), “Charter: The provisions of the Optional Municipal Charter Law, P.L. 1950, c. 210, as amended (*N.J.S.A.* 40:69A-1 *et seq.*), applicable to that form of government provided therein known as ‘Mayor-Council **Plan D**’”<sup>7</sup> (emphasis added). Furthermore, Paterson’s website indicates that “the City of Paterson Municipal Council was created as a result of a 1974 decision to change its form of government from a 1907 statute-based form, to a Faulkner Act **Plan-D** Mayor-Council Form.”<sup>8</sup> (emphasis added) Assuming this information is accurate, Paterson’s reliance on *N.J.S.A.* 40:69A-60.7 is misplaced. Thus, Paterson’s assertion that it may appoint a Police Chief in the unclassified service pursuant to *N.J.S.A.* 40:69A-60.7 is not supported by available information.

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<sup>7</sup> See <https://ecode360.com/8548359>.

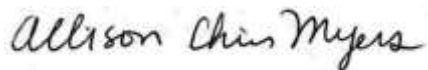
<sup>8</sup> See <https://www.patersonnj.gov/department/#:~:text=The%20City20of%20Paterson%20Municipal,%2DD%20Mayor%2DCouncil%20Form>).

**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 22<sup>ND</sup> DAY OF FEBRUARY, 2023



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