



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Governor’s Fellow

CSC Docket No. 2023-1885

Title Creation

ISSUED: March 15, 2023 (DASV)

The Division of Agency Services (Agency Services) requests the establishment of the unclassified title of Governor’s Fellow for use in State government.

As background, the Governor’s Fellows Program was established in 1986. The program provided a government management training program that encouraged talented individuals to consider careers in State government. Candidates gained skills and experience in a wide range of policy issues and management functions, preparing them for future service in State government. They were placed in the title of Governor’s Fellowship Intern. However, the program was scaled back in 1990 and eventually was discontinued, which resulted in the title’s designation as archaic in 2004 and its inactivation in 2008. In 2018, the Civil Service Commission (Commission) reactivated the Governor’s Fellowship Intern title to encourage talented individuals to consider careers in State government. Further, the title was renamed Governor’s Fellow under the new Governor’s Fellowship Program and allocated to the noncompetitive division of the career service. The positions would be post-graduate, rather than positions incumbered by candidates fulfilling credits as part of a graduate program.

In the present request, Agency Services submits that there have been recent proposed changes to the Governor’s Fellowship Program which warrant establishment of a new title for Governor’s Fellow allocated to the unclassified service. The new title will differ from the existing Governor’s Fellow in that appointees will serve a one-year term limit, instead of a trainee period. Furthermore, upon conclusion of the program term, incumbents will no longer be advanced to a

journeyman title but may be considered for appointment to other appropriate professional titles in the career service. Agency Services notes that it has developed a Job Specification for the proposed new title. A candidate would be required to possess a Master's degree and specific experience, or be able to substitute the educational requirement on a year for year basis with the experience, which may be a combination of "established excellence in academics and/or professional achievement; proven leadership ability and potential for further growth; demonstrated commitment to public service; effective written communication skills as demonstrated by writing assignment; [and/or] evidence of effective teamwork." Moreover, the incumbent would be a participant in the Governor's Fellowship Program and be closely supervised by a cabinet member or other executive official in a State department, institution, or agency, in a learning environment. The Governor's Fellow would assist in the performance of the routine functions involved in the formulation and implementation of policies relating to modern government administrative practices and procedures and their practical application. Considering the proposed changes to the program, Agency Services indicates that it would no longer be practicable to make permanent appointments under the Governor's Fellowship Program. Therefore, it recommends that the new Governor's Fellow title be assigned to the unclassified service in accordance with *N.J.S.A.* 11A:3-4(l) and *N.J.A.C.* 4A:3-1.3(a)5. Agency Services also requests that the effective date for the creation of the new title be the beginning of the first pay period following the Commission's approval.

CONCLUSION

In matters involving the question of whether a particular title should be allocated to the career or unclassified service, the starting point is the *New Jersey Constitution*, Article VII, sec. 1, par. 2, providing that:

Appointments and promotions in the [C]ivil [S]ervice of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, *as far as practicable, by examination*, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law (emphasis added).

An interpretation of Civil Service law governing the unclassified service must be made in view of this constitutional mandate and a strict interpretation is generally given in matters concerning allocation to the unclassified service. *See in the Matter of Investigator, Penal Institution, et al., Essex County* (MSB, decided September 16, 1997).

In State service, *N.J.S.A.* 11A:3-4 provides that the unclassified service shall be limited to those titles it specifically designates and all other titles as provided by law or as the Commission may determine. *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 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.

Our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career service. See *Walsh v. Department of Civil Service*, 32 *N.J. Super.* 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 *N.J.* 424, 434 (1983); *State v. Clark*, 15 *N.J.* 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 *N.J. Super.* 362, 371 (App. Div. 1981). This principle of ascertaining "merit and fitness" for promotions and appointments through an open competitive examination process is at the very heart of our merit system.

The title of Governor's Fellow is not specifically designated as unclassified by *N.J.S.A.* 11A:3-4. No specific statute states that the title is to be unclassified. Likewise, there is no statute providing for the appointment of an incumbent in the title to serve for a fixed term or at the pleasure of an appointing authority. In sum, none of these statutory preconditions for the allocation of a title to the unclassified service have been met. Thus, the real issue is whether the title requires possession of knowledge and skills and the exercise of duties and functions so unique that "merit and fitness" for the position cannot be ascertained through a competitive examination process and that a permanent appointment to the title is not appropriate, and, accordingly, allocation of the title to the unclassified service is warranted.

Ogden v. Department of Civil Service, 77 *N.J. Super.* 296 (App. Div. 1962), *cert. denied*, 39 *N.J.* 238 (1963), though not involving facts that precisely mirror those found here, is nevertheless instructive. In *Ogden*, the Appellate Division held that,

given the complex nature of the duties and the uniqueness of the position of General Superintendent and Chief Engineer of the Passaic Valley Water Commission (PVWC), it was not practicable to determine merit and fitness for the position by examination or minimum qualification requirements. In that case, the position was the highest-ranking full-time position in the employ of the PVWC, answerable only to the four Commissioners whose role was analogous to that of a governing body. Moreover, since the Commissioners themselves served only part-time in the role of trustees and lacked technical training, they necessarily relied on the General Superintendent and Chief Engineer for guidance. Additionally, concurring with the findings made by the Department of Civil Service, the court noted the many complex duties and required abilities of the General Superintendent and Chief Engineer, involving knowledge of engineering, administration, fiscal policies, expansion programs, personnel problems, and public relations. The court further underscored the importance of the confidential relationship that must exist between the Commissioners and the General Superintendent and Chief Engineer and the fact that the Commissioners leaned heavily on this individual for advice and guidance in creating and implementing policy.

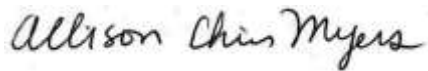
In this matter, as in *Ogden, supra*, an incumbent in the new Governor's Fellow title would work closely with an official who serves in a high government-level position, which might only be a term position. Moreover, as further indicated in the proposed Job Specification, the appointee would be expected to bring to the job a broad range of knowledge, skills, and abilities required to effectively perform the varied duties that are assigned. For example, the appointee would be required to possess knowledge of routine management principles, concepts, and techniques and their practical applications; of basic mathematical procedures; and of methods used to gather and analyze information. The appointee must also possess the ability to acquire knowledge of modern government fiscal, administrative, and personnel practices and procedures; of the rules, regulations, policies, and procedures used in government budget preparation and review; of the functions, responsibilities, organization, and operational programs of the department; and of pertinent laws relating to the department. Furthermore, the appointee must have the ability to prepare correspondence while performing official duties; to assist in the preparation of clear, accurate, and informative reports containing findings, conclusions, and recommendations; and to learn how to utilize various types of electronic and/or manual recording and information systems used by the agency, office, or related units. As these broad requirements are not easily tested for, it would be impracticable to determine merit and fitness for the position by examination. In addition, the incumbent assists in the routine functions involved in the formulation and implementation of policies and their practical application. As such, in light of this position's role in policy making and its one-year term, a permanent appointment to the title is not appropriate. Thus, good cause exists to create the new title of Governor's Fellow in the unclassified service.

ORDER

Therefore, it is ordered that this request be granted, and the title of Governor's Fellow be established in the unclassified service, effective March 25, 2023, to be utilized in State government.

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 15TH DAY OF MARCH, 2023



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