



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Management
Specialist (C0004R)

CSC Docket No. 2014-2014

Appointment Waiver

ISSUED: **SEP 05 2014** (WR)

Monmouth County requests permission not to make an appointment from the September 10, 2013 certification for Management Specialist (C0004R).

The record reveals that on September 24, 2012, the appointing authority provisionally appointed Stewart Brown, pending open competitive examination procedures, to the subject title. As a result of the provisional appointment, an examination was announced with a closing date of January 2, 2013. The examination resulted in an eligible list of 22 individuals, which promulgated on September 5, 2013 and expires on September 4, 2016. 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. A certification was issued on September 10, 2013, listing Brown in the eleventh position. On September 13, 2013, the appointing authority returned the certification, indicating that it wished to cancel the certification due to budgetary constraints.

In its request for an appointment waiver, the appointing authority indicates that the subject position was eliminated in the interests of economic and operational efficiency and the duties of the position were distributed to other staff members. As the appointing authority observes that the subject eligible list does not expire until September 4, 2016, it states that it may wish to appoint an eligible from the list in the future. Nevertheless, the appointing authority requests that any "fine" resulting from its request for an appointment waiver be waived.

The appointing authority'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.

Agency records indicate that Brown was separated from the subject position, effective January 5, 2014. However the appointing authority appointed Brown to the non-competitive title of Clerk 1, effective March 17, 2014. Agency records also indicate that currently there are no individuals in the subject title with the appointing authority.

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 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 subject title was generated as the result of the provisional appointment of Brown. However, after a complete certification was issued, the appointing authority requested an appointment waiver due to budgetary constraints and indicated that it had reassigned the duties of the subject position to staff members serving in different titles. Moreover, Brown was separated from his employment in the subject title; effective January 5, 2014. Therefore, since there are no employees serving in the subject title with the appointing authority, there is sufficient justification for an appointment waiver.

Although the appointing authority's petition for a 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. However, the Civil Service Commission notes that the list in question will not expire until September 4, 2016 and the appointing authority indicates that it may be able to use the list in the future. Accordingly, under the particular circumstances of this matter, it would not be appropriate to assess the appointing authority for the costs of the selection process at this time. *See e.g., In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections* (MSB, decided March 22, 2006) (Not appropriate to assess the Department of Corrections for the costs of the selection process since it had indicated its intention to utilize the eligible list prior to its expiration date). Nevertheless, in the event the appointing authority fails to utilize the list by its expiration date of September 4, 2016, this matter can be reviewed to ascertain whether an assessment for the costs of the

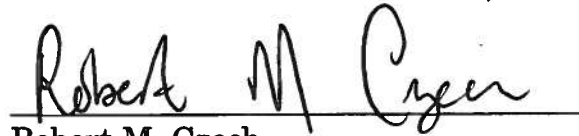
selection process should be made. See e.g., *In the Matter of Supervising Administrative Analyst (PS1837I), Department of Corrections* (MSB, decided April 11, 2007) (Costs assessed upon the expiration of the eligible list since the Department of Corrections failed to utilize the eligible list and there was no evidence that it had even attempted to utilize the eligible list).

ORDER

Therefore, it is ordered that the request for the waiver of the appointment requirement be granted and no selection costs presently be assessed.

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 3rd DAY OF SEPTEMBER, 2014**



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