



**STATE OF NEW JERSEY**

In the Matter of Accountant (C0244E),  
Mercer County

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

CSC Docket No. 2024-615

Appointment Waiver

**ISSUED: December 6, 2023 (AMR)**

Mercer County requests permission not to make an appointment from the July 28, 2023 certification for Accountant (C0244E), Mercer County.

The record reveals that Mercer County requested an examination for Accountant. An examination (C0244E) was announced with a closing date of April 21, 2023, that resulted in a list of three eligibles promulgating on July 6, 2023 and expiring on July 5, 2026. It is noted that there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

The appointing authority returned the subject certification and requested a waiver of the appointment requirement, stating that on or about November 22, 2022, it sent a request to this agency for an open competitive examination announcement for an Accountant position. The examination was announced on April 1, 2023. However, the appointing authority indicates that it did not receive the subject certification until August 2, 2023. Due to the delayed response, the appointing authority maintains that the hiring department for Mercer County had already utilized the budgeted funds that were originally allotted for the Accountant position. Therefore, due to budgetary reasons, it submits that it is unable to fill the position and does not intend to fill it in the future.

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. Despite the opportunity,

the appointing authority did not provide any additional information for the Civil Service Commission (Commission) to review.

## CONCLUSION

Initially, in examining the legislative history of *N.J.S.A. 11A:4-5*, in *Local 198 of I.A.F.F. v. Atlantic City*, Docket No. A-855-88T1F (App. Div. June 14, 1989), the court stated that this agency is required to issue a certification automatically where there is a provisional appointee or a vacancy. Moreover, the court concluded that *N.J.S.A. 11A:4-5* unambiguously stated that once the examination process has been initiated due to the appointment of a provisional employee, the appointing authority must make an appointment from the eligible list if there is a complete certification. Additionally, the court found that this agency was correct in interpreting *N.J.S.A. 11A:4-5* to find that it was a clear legislative response to pervasive violations of Title 11A, and that non-compliance with this statute is not a mere technical violation, but rather it undermined the purpose and intent of the constitutionally-based merit selection system. The court found that in circumstances such as these, it was appropriate to order the appointing authority to make an appointment. Thus, there is no doubt that the appointing authority must make an appointment from this list if there is a complete certification, that is, one containing the names of at least three interested and eligible candidates. Moreover, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2*. See *In the Matter of Fiscal Analyst (M1351H), Jersey City*, Docket No. A-4347-87T3 (App. Div. February 2, 1989).

Therefore, 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, Mercer County requested an examination for Accountant. After a complete certification was issued, the appointing authority later requested an appointment waiver, explaining that due to the delay in the certification of the eligible list and the utilization of the budgeted funds by Mercer County for the Accountant position, it will not be utilizing the list. Therefore, in conjunction with the fact that there are no provisionals currently serving, there is a sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, 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 for 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, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this case, the appointing authority did not take any action to obviate the need for the examination at the time of the announcement or prior to its processing. Under these circumstances, there is not a basis on which to waive the selection costs. Therefore, although an appointment waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

### **ORDER**

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

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 6<sup>TH</sup> DAY OF DECEMBER, 2023

*Allison Chris Myers*

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Chairperson  
Civil Service Commission

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