

B-19



STATE OF NEW JERSEY

In the Matter of Business Manager (M0653T), Lakewood Fire District

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2017-3866

Appointment Waiver

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ISSUED: November 15, 2017 (AMR)

The Lakewood Fire District (Lakewood), represented by Jay C. Sendzik, Esq. requests permission not to make an appointment from the April 6, 2016 certification for Business Manager (M0653T).

The record reveals that the Lakewood provisionally appointed Raymond Blaszak, pending open competitive examination procedures to the subject title, effective May 1, 2013. An examination was announced with a closing date of September 10, 2015 that resulted in a list of 5 eligibles with an expiration date of March 23, 2018. It is noted that Blaszak is no longer serving as a Business Manager and there are currently no employees serving provisionally pending open competitive examination procedures in the subject title with the appointing authority.

Lakewood did not return the certification and the Division of Agency Services (Agency Services) issued Notices of Violation on August 8, 2016 and April 18, 2017 advising Lakewood that it must properly dispose of the certification or seek an appointment waiver.

In response, Lakewood presents that Blaszak was appointed by the Board of Fire Commissioners to serve as Lakewood's Business Administrator. A contract of employment with the District was entered into for those services that expired on April 30, 2015. Blaszak continued to serve in the title on a month-to-month basis through March 16, 2016. Since the Board that appointed Blaszak to Business Administrator did not create the position pursuant to N.J.S.A.40A:14-81.1., the issue of Blaszak's provisional appointment and title were addressed at the it's September 8, 2015 meeting. Subsequently, no formal action was taken at this

meeting nor is there any documentation that Civil Service was contacted regarding this issue. Lakewood subsequently received a provisional appointment listing indicating that Blaszak was provisionally appointed to the title of Business Manager effective March, 2013 and the subject certification. However, the certification was received subsequent to the discontinuation of Blaszak's provisional appointment. After making an informal inquiry, it was determined that Blaszak initiated the posting and examination request for a provisional appointment to the Business Manager title on his own initiative.

Upon the termination of Blaszak, Lakewood reviewed its managerial needs and determined that the unclassified position of Fire District Administrator, and the classified position of Administrative Clerk, which requires the appropriate posting and listing for an exam, better served its operations. After interviewing qualified candidates, Vincent J. Vitiello was appointed to the position of Fire District Administrator and Yehuda Beer was provisionally appointed to the position of Administrative Clerk. Therefore, pursuant to the utilization of the title of Fire District Administrator and Administrative Clerk, the city no longer needs to maintain a position in the title of Business Manager.

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

### 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 a result of the provisional appointment of Raymond Blaszak, who is no longer serving in the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that the creation titles of Fire District Administrator and Administrative Clerk better suited its operation needs and the Business Manager position was no longer warranted. In conjunction with the fact that there are no provisionals currently serving, there is a sufficient justification for an appointment waiver.

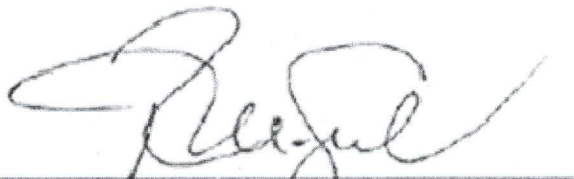
Although an appointment waiver is granted in this matter, both *N.J.S.A. 11A:4-5* and *N.J.A.C. 4A:10-2.2(a)2* state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations 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's determination that it no longer needs to maintain the position of Business Manager after it requested an examination for the subject title does not provide a basis on which to waive the selection costs. Thus, although a 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 Civil Service 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 date on 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 15th DAY OF NOVEMBER, 2017



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Civil Service Commission

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