



STATE OF NEW JERSEY

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

In the Matter of Secretary
Board/Commission (M0670S),
Holmdel

Appointment Waiver

CSC Docket No. 2017-3040

ISSUED: SEPTEMBER 22, 2017 (CSM)

Holmdel requests permission not to make an appointment from the March 26, 2015 certification for Secretary Board/Commission (M0670S).

The record reveals that Holmdel provisionally appointed Loretta Agosta¹, pending open competitive examination procedures to the title subject title, effective July 17, 2014. An examination was announced with a closing date of August 27, 2014 that resulted in a list of 24 eligibles with an expiration date of March 25, 2018.

The appointing authority returned the certification indicating that a permanent appointment would not be made from the subject list because the provisional appointee was no longer serving. Specifically, it explained that at the time of Agosta's appointment, it was not aware of the right of the Zoning Board to appoint an unclassified Secretary Board/Commission. Therefore, since Agosta had the required experience interacting with the Zoning Board, the appointing authority appointed her to the unclassified title of Secretary Board/Commission in accordance with *N.J.S.A. 11A:3-5(i)*. It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. *See N.J.A.C. 4A:10-2.2(a)1.*

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.

¹Now Loretta Coscia.

A review of agency records indicates that there are currently no employees serving provisionally pending open competitive examination procedures 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 Agosta to the subject title. However, after a complete certification was issued, the appointing authority requested an appointment waiver, explaining that at the time of Agosta's appointment, it was not aware of the right of the Zoning Board to appoint an unclassified Secretary Board/Commission. Therefore, since Agosta had the required experience interacting with the Zoning Board, the appointing authority appointed her to the unclassified title of Secretary Board/Commission in accordance with *N.J.S.A.* 11A:3-5(i). In conjunction with the fact that there are no career service Secretary Board/Commissions provisionally serving with the appointing authority, 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 regard, the inadvertent use of a career service title to fill a position that can be appropriately filled utilizing an unclassified title is insufficient to support a waiver of the costs of the selection process. 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 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 20TH DAY OF SEPTEMBER, 2017



Robert M. Czedo, Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and
Regulatory Affairs
Civil Service Commission
Written Record Appeals Unit
P.O. Box 312
Trenton, New Jersey 08625-0312

c: Donna M. Vieiro
Kelly Glenn
Beth Wood