

ANNOTATED MINUTES

Tuesday, November 21, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:30 a.m., with Vice-Chair Sharron Kelley, Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present.

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY,
SECONDED BY COMMISSIONER HANSEN,
CONSENT CALENDAR ITEMS C-1, C-2 AND C-4
THROUGH C-8 WERE UNANIMOUSLY APPROVED.**

NON-DEPARTMENTAL

- C-1 Appointment of SUSAN OLIVER to the COMMUNITY AND FAMILY SERVICES CITIZEN BUDGET ADVISORY COMMITTEE
- C-2 Re-Appointment of KATHLEEN TODD to the NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-4 CU 8-95 Hearings Officer Decision Approving Conditional Use Request for a Single Family Dwelling Not Related to Forest Management in the Commercial Forest Use Zoning District, for Property Located at 13838 NW ROCK CREEK ROAD
- C-5 ORDER Authorizing Execution of Deed D961263 Upon Complete Performance of a Contract to Virginia M. Belozar

ORDER 95-237.

DEPARTMENT OF JUVENILE JUSTICE SERVICES

- C-6 Intergovernmental Revenue Agreement 700216 with Children's Services Division Funding Catherine Freer Wilderness Therapy Expedition Services for a Gang Involved Youth
- C-7 Budget Modification DJJS 5 Adding \$2,860 State Children's Services Division Revenue to the Office of Program Development Budget to Fund Catherine Freer Wilderness Therapy Services for a Gang Involved Youth

SHERIFF'S OFFICE

- C-8 Dispenser Class A Liquor License Renewal for CRACKER BARREL GROCERY, 15005 NW SAUVIE ISLAND ROAD, PORTLAND

NON-DEPARTMENTAL

- C-3 Re-Appointment of WINZEL HAMILTON to the DISTRICT ATTORNEY CITIZEN BUDGET ADVISORY COMMITTEE

APPOINTMENT WITHDRAWN AT APPLICANT'S REQUEST.

REGULAR AGENDA

PUBLIC COMMENT

- R-1 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

NO ONE WISHED TO COMMENT.

NON-DEPARTMENTAL

- R-2 ORDER in the Matter of the Appeal of Robert W. Burnell from the Hearings Officer's Order Denying an Application for Approval of an Adult Care Home Resident Manager

COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, MOTION TO UPHOLD THE HEARINGS OFFICER ORDER. ATTORNEY PETE KASTING EXPLANATION. COMMISSIONER HANSEN COMMENTS IN SUPPORT OF REVISITING THE ADMINISTRATIVE

RULES. COMMISSIONER KELLEY COMMENTS IN SUPPORT OF REMANDING APPEAL BACK TO THE HEARINGS OFFICER OR DIRECTING STAFF TO REVISIT THE ADMINISTRATIVE RULES. COMMISSIONER SALTZMAN COMMENTS IN SUPPORT OF HEARINGS OFFICER DECISION. CHAIR STEIN ADVISED SHE SUPPORTS THE HEARINGS OFFICER DECISION BUT WOULD BE HAPPY TO WRITE TO THE DEPARTMENT REGARDING REVISING THE ADMINISTRATIVE RULES. ORDER 95-238 APPROVED, WITH COMMISSIONERS COLLIER, SALTZMAN AND STEIN VOTING AYE, AND COMMISSIONERS KELLEY AND HANSEN VOTING NO.

R-3 RESOLUTION Approving Multnomah County's Application for SB 1145 Construction Funds and Public Safety Strategy

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-3. BILL FARVER AND PETER OZANNE EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION REGARDING SUBSTITUTE RESOLUTION CONTAINING A NEW APPENDIX AND UPDATED NUMBERS, (CONSTRUCTION COSTS \$43.4 MILLION INSTEAD OF \$47 MILLION) AND CERTAIN NON-SUBSTANTIVE LANGUAGE CLARIFICATIONS. DAN NOELLE AND TAMARA HOLDEN COMMENTS IN SUPPORT. RAY MATHIS ON BEHALF OF CITIZEN CRIME COMMISSION, TESTIMONY IN SUPPORT. LISA HORNE ON BEHALF OF THE CHIEF'S FORUM, TESTIMONY IN SUPPORT. BOARD COMMENTS IN SUPPORT. COMMISSIONERS SALTZMAN AND COLLIER WITHDREW THEIR PREVIOUS MOTION AND SECOND, AND UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER COLLIER, SUBSTITUTE RESOLUTION 95-239 WAS UNANIMOUSLY APPROVED.

CHAIR STEIN ANNOUNCED THAT COMMISSIONER GARY HANSEN WAS APPOINTED

**SECOND VICE-PRESIDENT OF THE ASSOCIATION
OF OREGON COUNTIES.**

- R-4 RESOLUTION Approving the Amended Comprehensive Plan of the Multnomah Commission on Children and Families for 1995-1997

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-4. CAROL WIRE EXPLANATION AND RESPONSE TO BOARD QUESTION. RESOLUTION 95-240 UNANIMOUSLY APPROVED.

- R-5 First Reading of an ORDINANCE Amending Ordinance No. 822, in Order to Add, Delete and Revise Exempt Pay Ranges and Titles

ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF FIRST READING. CURTIS SMITH EXPLANATION. NO ONE WISHED TO TESTIFY. FIRST READING UNANIMOUSLY APPROVED. SECOND READING THURSDAY, NOVEMBER 30, 1995.

- R-6 First Reading of an ORDINANCE Amending MCC Chapter 2.30 (County Administrative Departments) in Order to More Efficiently Align Departmental Responsibilities; Creating the Department of Management Support Services

ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF FIRST READING. COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, AMENDMENT TO CHANGE THE NAME OF THE NEW DEPARTMENT TO THE DEPARTMENT OF SUPPORT SERVICES. BILL FARVER EXPLANATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION. BOARD COMMENTS REGARDING PARKS, EXPO, BUDGET OFFICE AND EMERGENCY MANAGEMENT SERVICES. NO ONE WISHED TO TESTIFY. FIRST READING UNANIMOUSLY APPROVED, AS

**AMENDED. SECOND READING THURSDAY,
NOVEMBER 30, 1995.**

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-7 Budget Modification DES 4 Authorizing Transfer from DES to MSS Budgets to Create Positions of Manager of Information Technology and Department of Management Support Services Director; Funding Management Assistant and Administrative Secretary Positions; and Purchase Computers and Other Materials and Services, Using Salary Savings and Existing Funds

***COMMISSIONER KELLEY MOVED AND
COMMISSIONER SALTZMAN SECONDED,
APPROVAL OF R-7. BILL FARVER EXPLANATION.
BUDGET MODIFICATION UNANIMOUSLY
APPROVED.***

- R-8 ORDER Authorizing Road Drainage Maintenance of SW Collina Avenue at SW Carey Lane and SW Radcliffe Road, and SW Hedlund Avenue Between SW Carey Lane and SW Riverdale Road, Local Access Roads in Unincorporated Multnomah County

***COMMISSIONER SALTZMAN MOVED AND
COMMISSIONER KELLEY SECONDED, APPROVAL
OF R-8. CHUCK HENLEY EXPLANATION. ORDER
95-241 UNANIMOUSLY APPROVED.***

- R-9 ORDER Authorizing Execution and Acceptance of Deed of Dedication and Easements for Public Road Purposes and for a Storm Drainage Facility [Portions of NE Blue Lake Road and NE 223rd Avenue]

***COMMISSIONER KELLEY MOVED AND
COMMISSIONER COLLIER SECONDED, APPROVAL
OF R-9. JOHN DORST EXPLANATION. ORDER 95-
242 UNANIMOUSLY APPROVED.***

DEPARTMENT OF HEALTH

- R-10 Notice of Intent to Submit a Request for Funding to Local Corporations for the Students Today Aren't Ready for Sex (STARS) Postponing Sexual Involvement (PSI) Statewide Training and Evaluation Project

COMMISSIONER COLLIER MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-10. TOM FRONK AND BARBARA GLICK EXPLANATION AND COMMENTS IN SUPPORT. JUDY STRAALSUND TESTIMONY IN SUPPORT. MR. FRONK RESPONSE TO QUESTION OF COMMISSIONER SALTZMAN REGARDING CORPORATE SPONSORS AND PROJECT LOGO. NOTICE OF INTENT UNANIMOUSLY APPROVED.

- R-11 Intergovernmental Agreement 201196 with the City of Portland for Enforcement of Multnomah County Code 6.33 Regarding Ambulance/Emergency Medical Service within the City

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-11. MATT RYAN EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-12 ORDER Authorizing Exemption to Contract with Metro Community Development Corporation to Fund Weatherization Activities at Two Multi-Unit Housing Complexes to be Converted to Low Income Housing

COMMISSIONER HANSEN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-12. REY ESPAÑA EXPLANATION. ORDER 95-243 UNANIMOUSLY APPROVED.

(Adjourn as the Public Contract Review Board and convene as the Budget Committee)

BUDGET COMMITTEE

(Recess as the Board of County Commissioners and convene as the Budget Committee)

- R-13 RESOLUTION Accepting the 1995-96 Supplemental Budget and Preparing the Approved Supplemental Budget for Submittal to the Tax Supervising and Conservation Commission

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-13. DAVE WARREN, GINNIE COOPER, CRAIG CALKINS AND AMY JOSLIN PRESENTATION, EXPLANATION AND RESPONSE TO BOARD QUESTIONS. RESOLUTION 95-244 UNANIMOUSLY APPROVED.

(Adjourn as the Budget Committee and reconvene as the Board of County Commissioners)

The regular meeting was adjourned at 10:55 am and the briefing convened at 11:00 am.

Tuesday, November 21, 1995 - 11:00 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

- B-1 Patterns of Growth Inside and Outside the Urban Growth Boundary, and How that Growth is Reflected in the Housing Market. Presented by Pat Ritz of Oregon Title.

COMMISSIONER SALTZMAN, MINDY SULLIVAN, PAT RITZ AND DAVID BELL PRESENTATION AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION.

Commissioner Collier was excused at 11:45 a.m.

Chair Stein was excused at 11:58 a.m.

There being no further business, the meeting was adjourned at 12:08 p.m.

Tuesday, November 21, 1995 - 1:30 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

APPEAL HEARING

Chair Beverly Stein convened the meeting at 1:32 p.m., with Vice-Chair Sharron Kelley, Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present.

H-1 Review of the Merit System Civil Service Council Decision in the Matter of the Appeal of James Gerhardt, Robert O'Donnell and Scott Rayfield

BOARD ATTORNEY ANNA KANWIT EXPLAINED PROCESS. COUNTY COUNSEL STEVE NEMIROW PRESENTATION ON BEHALF OF EMPLOYEE SERVICES. JAMES GERHARDT, BOB O'DONNELL AND SCOTT RAYFIELD TESTIMONY IN OPPOSITION TO COUNCIL DECISION. MR. RAYFIELD RESPONSE TO A QUESTION OF COMMISSIONER SALTZMAN REGARDING PROMOTION LIST. MR. NEMIROW RESPONSE TO BOARD QUESTIONS AND DISCUSSION ON RULES REGARDING TIMELINE FOR PROMOTION LIST. MS. KANWIT RESPONSE TO BOARD QUESTIONS AND DISCUSSION ON BOARD OPTIONS TO UPHOLD, OVERTURN, OR REMAND THE COUNCIL DECISION. COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER HANSEN, UPHOLD THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE MERIT COUNCIL SYSTEM CIVIL SERVICE. CHAIR STEIN COMMENTS IN OPPOSITION TO MOTION. COMMISSIONERS COLLIER AND SALTZMAN COMMENTS IN SUPPORT OF MOTION. COMMISSIONER KELLEY COMMENTS IN OPPOSITION TO MOTION. FOLLOWING DISCUSSION, COMMISSIONER COLLIER MOVED, SECONDED BY COMMISSIONER HANSEN, MOTION IN SUPPORT OF THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE MERIT SYSTEM CIVIL SERVICE COUNCIL.

**FOLLOWING BOARD COMMENTS, MOTION
APPROVED, WITH COMMISSIONERS HANSEN,
COLLIER AND SALTZMAN VOTING AYE, AND
COMMISSIONERS KELLEY AND STEIN VOTING
NO.**

*There being no further business, the hearing was adjourned at 2:25 p.m. and
the briefing convened at 2:26 p.m.*

Tuesday, November 21, 1995 - 2:30 PM
(OR IMMEDIATELY FOLLOWING APPEAL HEARING)
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

- B-2 Update on the Activities of the Housing Authority of Portland, Expected Impacts of Federal Funding and Regulatory Changes, and Potential Opportunities for Cooperative Efforts with Multnomah County. Presented by Howard Shapiro, Housing Authority Board Chair.

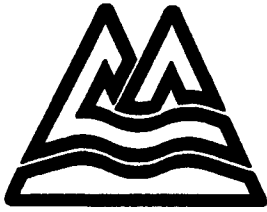
**COMMISSIONER SALTZMAN, HOWARD SHAPIRO,
DENNY WEST AND HELEN BIRNEY
PRESENTATION AND RESPONSE TO BOARD
QUESTIONS AND DISCUSSION.**

There being no further business, the meeting was adjourned at 3:11 p.m.

OFFICE OF THE BOARD CLERK
FOR MULTNOMAH COUNTY, OREGON

Deborah L. Bogstad

Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 SW FIFTH AVENUE
PORTLAND, OREGON 97204
CLERK'S OFFICE • 248-3277 • 248-5222
FAX • (503) 248-5262

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN •	CHAIR	•248-3308
DAN SALTZMAN •	DISTRICT 1	• 248-5220
GARY HANSEN •	DISTRICT 2	•248-5219
TANYA COLLIER •	DISTRICT 3	•248-5217
SHARRON KELLEY •	DISTRICT 4	•248-5213

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

NOVEMBER 20, 1995 - NOVEMBER 24, 1995

Tuesday, November 21, 1995 - 9:30 AM - Regular Meeting Page 2

Tuesday, November 21, 1995 - 11:00 AM - Briefing..... Page 5

Tuesday, November 21, 1995 - 1:30 PM - Appeal Hearing..... Page 5

Tuesday, November 21, 1995 - 2:30 PM - Briefing..... Page 5

THURSDAY, NOVEMBER 23, 1995 -HOLIDAY - OFFICES CLOSED

*Thursday Meetings of the Multnomah County Board of Commissioners are *cablecast* live and taped and can be seen by Cable subscribers in Multnomah County at the following times:*

Thursday, 9:30 AM, (LIVE) Channel 30

Friday, 10:00 PM, Channel 30

Sunday, 1:00 PM, Channel 30

Produced through Multnomah Community Television

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

AN EQUAL OPPORTUNITY EMPLOYER

*Tuesday, November 21, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 *Appointment of SUSAN OLIVER to the COMMUNITY AND FAMILY SERVICES CITIZEN BUDGET ADVISORY COMMITTEE*
- C-2 *Re-Appointment of KATHLEEN TODD to the NON-DEPARTMENTAL CITIZEN BUDGET ADVISORY COMMITTEE*
- C-3 *Re-Appointment of WINZEL HAMILTON to the DISTRICT ATTORNEY CITIZEN BUDGET ADVISORY COMMITTEE*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-4 *CU 8-95 Hearings Officer Decision Approving Conditional Use Request for a Single Family Dwelling Not Related to Forest Management in the Commercial Forest Use Zoning District, for Property Located at 13838 NW ROCK CREEK ROAD*
- C-5 *ORDER Authorizing Execution of Deed D961263 Upon Complete Performance of a Contract to Virginia M. Belazer*

DEPARTMENT OF JUVENILE JUSTICE SERVICES

- C-6 *Intergovernmental Revenue Agreement 700216 with Children's Services Division Funding Catherine Freer Wilderness Therapy Expedition Services for a Gang Involved Youth*
- C-7 *Budget Modification DJJS 5 Adding \$2,860 State Children's Services Division Revenue to the Office of Program Development Budget to Fund Catherine Freer Wilderness Therapy Services for a Gang Involved Youth*

SHERIFF'S OFFICE

- C-8 *Dispenser Class A Liquor License Renewal for CRACKER BARREL GROCERY, 15005 NW SAUVIE ISLAND ROAD, PORTLAND*

REGULAR AGENDA

PUBLIC COMMENT

- R-1 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

NON-DEPARTMENTAL

- R-2 *ORDER in the Matter of the Appeal of Robert W. Burnell from the Hearings Officer's Order Denying an Application for Approval of an Adult Care Home Resident Manager (CONTINUED FROM NOVEMBER 9, 1995)*
- R-3 *RESOLUTION Approving Multnomah County's Application for SB 1145 Construction Funds and Public Safety Strategy*
- R-4 *RESOLUTION Approving the Amended Comprehensive Plan of the Multnomah Commission on Children and Families for 1995-1997*
- R-5 *First Reading of an ORDINANCE Amending Ordinance No. 822, in Order to Add, Delete and Revise Exempt Pay Ranges and Titles*
- R-6 *First Reading of an ORDINANCE Amending MCC Chapter 2.30 (County Administrative Departments) in Order to More Efficiently Align Departmental Responsibilities; Creating the Department of Management Support Services*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-7 *Budget Modification DES 4 Authorizing Transfer from DES to MSS Budgets to Create Positions of Manager of Information Technology and Department of Management Support Services Director; Funding Management Assistant and Administrative Secretary Positions; and Purchase Computers and Other Materials and Services, Using Salary Savings and Existing Funds*
- R-8 *ORDER Authorizing Road Drainage Maintenance of SW Collina Avenue at SW Carey Lane and SW Radcliffe Road, and SW Hedlund Avenue Between SW Carey Lane and SW Riverdale Road, Local Access Roads in Unincorporated Multnomah County*

- R-9 *ORDER Authorizing Execution and Acceptance of Deed of Dedication and Easements for Public Road Purposes and for a Storm Drainage Facility [Portions of NE Blue Lake Road and NE 223rd Avenue]*

DEPARTMENT OF HEALTH

- R-10 *Notice of Intent to Submit a Request for Funding to Local Corporations for the Students Today Aren't Ready for Sex (STARS) Postponing Sexual Involvement (PSI) Statewide Training and Evaluation Project*
- R-11 *Intergovernmental Agreement 201196 with the City of Portland for Enforcement of Multnomah County Code 6.33 Regarding Ambulance/Emergency Medical Service within the City*

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-12 *ORDER Authorizing Exemption to Contract with Metro Community Development Corporation to Fund Weatherization Activities at Two Multi-Unit Housing Complexes to be Converted to Low Income Housing*
- (Adjourn as the Public Contract Review Board and convene as the Budget Committee)*

BUDGET COMMITTEE

(Recess as the Board of County Commissioners and convene as the Budget Committee)

- R-13 *RESOLUTION Accepting the 1995-96 Supplemental Budget and Preparing the Approved Supplemental Budget for Submittal to the Tax Supervising and Conservation Commission*
- (Adjourn as the Budget Committee and reconvene as the Board of County Commissioners)*
-

Tuesday, November 21, 1995 - 11:00 AM
(OR IMMEDIATELY FOLLOWING REGULAR MEETING)
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

- B-1 Patterns of Growth Inside and Outside the Urban Growth Boundary, and How that Growth is Reflected in the Housing Market. Presented by Pat Ritz of Oregon Title. 1 HOUR REQUESTED.*
-

Tuesday, November 21, 1995 - 1:30 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

APPEAL HEARING

- H-1 Review of the Merit System Civil Service Council Decision in the Matter of the Appeal of James Gerhardt, Robert O'Donnell and Scott Rayfield*
-

Tuesday, November 21, 1995 - 2:30 PM
(OR IMMEDIATELY FOLLOWING APPEAL HEARING)
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

- B-2 Update on the Activities of the Housing Authority of Portland, Expected Impacts of Federal Funding and Regulatory Changes, and Potential Opportunities for Cooperative Efforts with Multnomah County. Presented by Howard Shapiro, Housing Authority Board Chair. 45 MINUTES REQUESTED.*

MEETING DATE: NOV 21 1995

AGENDA NO: H-1

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Merit System Civil Service Council Decision Appeal Hearing

BOARD BRIEFING: _____ DATE REQUESTED: _____

AMOUNT OF TIME NEEDED: _____

REGULAR MEETING: _____ DATE REQUESTED: Tuesday, November 21, 1995

AMOUNT OF TIME NEEDED: 1:30 PM, 1 Hour

DEPARTMENT: Non-Departmental

DIVISION: Chair Beverly Stein

CONTACT: City Atty Anna Kanwit

TELEPHONE #: 823-4047

BLDG/ROOM #: 131/315

PERSON(S) MAKING PRESENTATION: Anna Kanwit for Board, Steve Neminrow for Employee Services Division (Appellant) & James Gerhardt, Rep. Petitioners

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☐ APPROVAL ☒ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Review of the Merit System Civil Service Council Decision in the Matter of the Appeal of James Gerhardt, Robert O'Donnel and Scott Rayfield

BOARD OF
COUNTY COMMISSIONERS
MULTI-NOAH COUNTY
OREGON
1995 NOV 14 PM 4:28

SIGNATURES REQUIRED:

ELECTED OFFICIAL: *Beverly Stein*
(OR)
DEPARTMENT
MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277 or 248-5222



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
1220 S.W. 5th Avenue
Portland, Oregon 97204
(503) 823-4047

November 17, 1995

INTEROFFICE MEMORANDUM

TO: Deb Bogstad
Clerk of the Board

FROM: Marianna Kanwit *AK*
Deputy City Attorney

SUBJ: Gerhardt Appeal: Memo to the Board

The Civil Service Council's Findings of Fact, Conclusions of Law and Order provide the general facts and issues of this appeal. In addition, I believe you have the memorandum from County Counsel which provides the County's arguments supporting its position in this matter. Attached is my memo to the Board.

AK/bf
pers\county\bd

SEAL OF
COUNTY COMMISSIONERS
1995 NOV 17 PM 3:47
MULTNOMAH COUNTY
OREGON



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
1220 S.W. 5th Avenue
Portland, Oregon 97204
(503) 823-4047

November 17, 1995

INTEROFFICE MEMORANDUM

TO: Board of County Commissioners

FROM: Marianna Kanwit *Marianna Kanwit*
Deputy City Attorney

SUBJ: County Appeal of Merit System Civil Service Council
Decision in Gerhardt Appeal

BOARD OF
COUNTY COMMISSIONERS
1995 NOV 17 PM 3:47
MULTNOMAH COUNTY
OREGON

The Civil Service Council's Findings of Fact, Conclusions of Law and Order provide the general facts and issues of this appeal. In addition, I believe you have the memorandum from County Counsel outlining the County's arguments in this matter. The following summarizes the standard of review and the issues you are to consider.

1. An appeal from the Merit System Civil Service Council by the Board of Commissioners is considered a Writ of Review. The Board's options are: to uphold the Merit System Council's decision; to overturn the decision; or to remand the case to the Council for further proceedings. The Board can decide to set aside or remand the Council's decision if it is not supported by substantial evidence in the record. Substantial evidence exists where the record, when viewed as a whole, would permit a reasonable person to make the same findings. The Board can also set aside or remand the Council's decision if it exceeds the Council's jurisdiction or if the Council improperly construed the applicable rules.
2. At issue in the appeal to the Board is the Council's decision that the County violated merit principles generally and MCC 3.10.180(E) specifically by extending an expired promotional list for an additional 18 months and then promoting candidates off that extended list. The Merit System principles are best expressed in MCC 3.10.015:

"Recruiting, appointing and promoting employees on the basis of their relative ability, knowledge and skills, including

open consideration of qualified
applicants for initial appointment."

The Council ordered that the eligible list was considered invalid and the appointment or appointments made from the eligible list after its expiration date are not permanent appointments.

3. The Board must consider whether the Council's decision is supported by substantial evidence in the record and/or whether the Council properly construed existing rules, specifically MCC 3.10.180(E). In addition, the Board must also consider whether the Council's order is valid, with respect to its decision that the appointments made from the eligible list after its expiration date are not permanent appointments. Unless the person or persons whose appointments are at issue were present during the hearing on the Gerhardt appeal before the Council, there may be significant due process issues in the Council's order that these appointments are no longer permanent. Essentially, the change, via the Board's order, of permanent appointments to temporary appointments would be made without adequate notice to the affected person or persons.

MULTNOMAH COUNTY
OREGON
1995 NOV - 8 AM 9:14
41 2 14 8 AM 9:14

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

JAMES GERHARDT, et al
Petitioners,
v.
MULTNOMAH COUNTY,
Respondent.

MEMORANDUM OF EMPLOYEE
SERVICES DIVISION IN
SUPPORT OF APPEAL

BACKGROUND

Gerhardt¹ asked the Merit System Council (the "Council") to declare invalid a promotion made from a certified list of eligibles. The master list had expired, but had subsequently been extended before the certified list of eligibles was transmitted to

¹ The case began as an appeal to the Council by Gerhardt, O'Donnell and Rayfield. They are referred to collectively as Gerhardt in this memorandum.

1 the hiring manager. By a split vote,² the Council decided that
2 once a list of certified eligibles expires it cannot be extended.

3 The Council's decision should be reversed. Its interpretation
4 is contrary to longstanding practice, and is inconsistent with the
5 Code. Indeed, Commissioner Price, herself a personnel officer with
6 the City, stated on the record that extending expired lists is
7 "standard procedure" at the City, just as it is at the County.

8 If upheld, the Council's decision will significantly impede
9 and unjustifiably slow down personnel actions in the County. It
10 will correspondingly increase the cost of operations.

11 PERTINENT FACTS

12 1. A promotional list was established in June, 1993.

13 A promotional list was established for Program Administrator
14 in June, 1993. The County Code provides that promotional lists
15 remain in effect for a year. MCC 3.10.180 (C). It also provides
16 that the personnel officer may extend the duration of a list
17 whenever sufficient certified candidates exist, with the consent of
18 the hiring manager. MCC 3.10.180 (E).

19 2. The list expired in June, 1994, and Employee Services
20 extended it to December, 1995.

21 In July, 1995 a need arose to fill a Program Administrator
22 position that had become vacant in Community Corrections. Colette
23 Umbras, personnel analyst, determined that sufficient certified
24 candidates remained on the master list, obtained the consent of the

25 _____
26 ² Commissioners Wight and Floyd voted to sustain the appeal,
Commissioner Price voted to deny.

1 hiring manager, and extended the duration of the promotional list
2 until December, 1995.

3 3. County practice allows the list extension.

4 In extending the list, Umbras relied on a memorandum from
5 County Counsel (copy attached) opining that a court would probably
6 defer to the County's established practice of extending expired
7 lists. Counsel advised that, while there is no express authority
8 for the renewal/extension of an expired list, the Code does not
9 prevent the practice.

10 Gerhardt does not claim the extended list contained
11 insufficient certified candidates, nor that any express provision
12 of the Code was violated by the promotion.

13 DISCUSSION

14 1. Multnomah County and the City of Portland routinely extend
15 expired lists.

16 The record is uncontroverted that the County has extended
17 eligible lists after their expiration on at least seventeen
18 occasions from 1992 to the present, according to a recent count.
19 However, this practice goes back many years, at least into the
20 1970's, and perhaps beyond. By extending lists after they have
21 expired, but when they still contain sufficient certified
22 candidates, Employee Services has been able to meet the agencies'
23 needs to fill vacant positions much more quickly than would be
24 possible if a new list had to be generated every time an old list
25 expired. To create a new list, Employee Services must post a
26 notice (or place an advertisement), screen all the applications

1 submitted, and perform initial civil service examinations for all
2 the applicants. This process is very time consuming: it takes an
3 average of eight weeks. During that time agency staffing problems
4 mount, and applicants for promotion remain in limbo.

5 Commissioner D'Norgia Price, a personnel officer with the City
6 of Portland, stated that the City of Portland has a similar
7 practice. The City routinely extends expired lists to save time
8 and money. Commissioner Price stated that Portland extends lists
9 for up to four years.

10 2. The existing practice is not prohibited by the Code, and
11 is a reasonable interpretation of the Code.

12 MCC 3.10.190 provides that upon written notice that a position
13 in the classified service is to be filled, a list of eligible
14 candidates shall be given to the hiring manager. MCC 3.10.180 (A)
15 provides that Employee Services (formerly the Department of General
16 Services) "shall establish and maintain" promotion lists. MCC
17 3.10.180 (C) provides that "[u]nless otherwise provided, promotion
18 lists shall remain in effect for one year." (see also, Personnel
19 Rule 10.09, to same effect).

20 Under MCC 3.10.180 (E) a list can be extended upon a hiring
21 manager's request, "whenever sufficient certified candidates
22 exist." The Code is silent on the timing of list extensions, but
23 the term "whenever" in the quoted section suggests that the
24 historical, flexible interpretation is warranted.

25 The Council's decision is inflexible. Moreover, it makes MCC
26 3.10.180 (E) meaningless. If a list has expired, then it cannot,

1 under the Council's decision, be extended. But if the list has not
2 expired, there is no logical reason for the Code to permit the
3 hiring manager to extend it. Plainly, an interpretation by the
4 Merit Council which makes MCC 3.10.180 (E) meaningless should be
5 reversed.

6 The uncontroverted fact is that for at least twenty years the
7 County has extended eligible lists after their expiration, and on
8 at least seventeen occasions from 1992 to the present. Given that
9 this has been County practice for years, and that the Code does not
10 expressly prohibit the practice, and that it is the standard
11 practice in the City, this Board of County Commissioners should
12 defer to the Division's reasonable interpretation and application
13 of the Code, and reverse the Council's decision.

14 3. The Merit Council's decision creates unnecessary work and
15 expense.

16 To comply with the Merit Council's decision, a new list must
17 be generated every time an opening occurs and no current list
18 exists (i.e., one less than a year old for promotions, or less than
19 six months old for new hires). There is no dispute that this will
20 cause substantial delays in filling vacant positions, and increase
21 the cost of doing so.

22 //

23 //

24 //

25 //

26 //

5 - MEMORANDUM OF EMPLOYEE SERVICES DIVISION IN SUPPORT OF APPEAL

MULTNOMAH COUNTY COUNSEL
1120 S.W. Fifth Avenue, Suite 1530
P.O. Box 849
Portland, Oregon 97207-0849
(503) 248-3138

1 CONCLUSION

2 The decision of the Merit System Council should be reversed,
3 and the appeal denied.

4 Dated this 8th day of November, 1995.

5 Respectfully submitted,

6 LAURENCE KRESSEL, COUNTY COUNSEL
7 FOR MULTNOMAH COUNTY, OREGON

8 By 
9 Steven J. Nemirow, OSB #82044
Assistant County Counsel

10
11 F:\DATA\COUNSEL\WPDATA\TWELVE\GERHARDT\APPEAL.MEM\SJN
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

6 - MEMORANDUM OF EMPLOYEE SERVICES DIVISION IN SUPPORT OF APPEAL

MULTNOMAH COUNTY COUNSEL
1120 S.W. Fifth Avenue, Suite 1530
P.O. Box 849
Portland, Oregon 97207-0849
(503) 248-3138



MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN, CHAIR
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

RECEIVED

OCT 30 1995

M-E-M-O-R-A-N-D-U-M

TO: Sheriff-elect Dan Noelle
(313/105)

FROM: Laurence Kressel *LK*
County Counsel (106/1530)

DATE: May 22, 1995

SUBJECT: Issues Arising From Recent MCSO Promotions

COUNTY COUNSEL
LAURENCE KRESSSEL
CHIEF ASSISTANT
JOHN L. DU BAY
ASSISTANTS
J. MICHAEL DOYLE
SANDRA N. DUFFY
KATIE GAETJENS
GERALD H. ITKIN
STEVEN J. NEMIROW
HELLE ROOE
MATTHEW O. RYAN
JACQUELINE A. WEBER

Facts

On May 16, 1995, the voters elected Dan Noelle as Sheriff of Multnomah County. The Sheriff-elect will take office on June 6, 1995.

On the morning of May 19, 1995, Acting Sheriff John Bunnell made a series of staff promotions: (1) Sgt. Terry Jones was promoted to Lieutenant, and (2) Deputies Dennis Fitz, Bart Whalen, James McNelly and John Blackman were promoted to Sergeant.

On the afternoon of May 19, 1995, the Employee Services Division was asked to extend the expired Sergeants' list.

The promotion of Sgt. Jones to Lieutenant was made from a civil service list that will expire November 30, 1995. The other promotions were made from a list that expired December 28, 1994.

Questions

You have inquired whether the above-described promotions are valid and binding. That inquiry raises the following questions:

1. Was Acting Sheriff Bunnell authorized to make the May 19, 1995 promotions, given that Noelle won the election for Sheriff on May 6?

Brief Answer: Yes.

2. If Acting Sheriff Bunnell had promotion authority on May 19, did the promotion of Sgt. Terry Jones to the rank of Lieutenant comply with the applicable legal rules?

Brief Answer: Yes.

3. If Jones' promotion was legal, will Sheriff-elect Noelle be legally obligated to retain Jones at the rank of Lieutenant?

Brief Answer: No. Jones must successfully complete one year of service as a probationary Lieutenant.

4. Did the promotions of Dennis Fitz, Bart Whalen, James McNelly and John Blackman from deputy to Sergeant comply with the applicable legal rules?

Brief Answer: No, because the promotion list had expired before May 19, 1995. However, the list can probably be renewed/extended. If it is renewed, the promotions can be remade by the Acting Sheriff.

5. If the promotions of Fitz, Whalen, McNelly and Blackman are remade by Acting Sheriff Bunnell from a valid list, will Sheriff-elect Noelle be legally obligated to retain the new Sergeants at that rank?

Brief Answer: No. They will be probationary Sergeants for one year.

Discussion

Authority of Acting Sheriff

A previous opinion by this office advised that, under state law, the Sheriff-elect cannot take the oath of office until June 6, 1995. The legal authority to administer the Sheriff's Office, including authority to make personnel decisions, resides in Acting Sheriff Bunnell until the new Sheriff takes office. MCC 4.30.035.

The Acting Sheriff must exercise his personnel authority within the bounds established by the County's personnel rules. The remaining questions concern those rules. Before answering, I will summarize the pertinent rules.

Promotion Procedure

1. Overview

The procedure for MCSO promotions is the same as the standard procedure for hiring and promoting non-MCSO employees in Multnomah County. In practice, and as outlined in the Personnel Rules, it is a four-step procedure: (1) the agency requests a certified list of eligible candidates, and Employee Services sends the agency a list; (2) the agency goes through its selection process (e.g. interviews, or assessment center), and chooses individuals for promotion; (3) the agency obtains the approval of the personnel officer; (4) the appointment is made.

2. Certified List of Eligible Candidates

MCC 3.10.190 provides that upon written notice that a position in the classified service is to be filled, a list of eligible candidates shall be given to the hiring manager.¹ MCC 3.10.180 (A) provides that Employee Services (formerly the department of general services) "shall establish and maintain" promotion lists. MCC 3.10.180 (C) provides that "[u]nless otherwise provided, promotion lists shall remain in effect for one year." (see also, Personnel Rule 10.09, to same effect). MCC 3.10.180 (E) provides that the personnel officer (Employee Services) may extend the duration of a promotion list, with the consent of the hiring manager.

MCC 3.10.200 provides that "[n]o person shall be appointed or promoted to a position in the classified service unless certified as eligible * * * ."² No appointment or promotion to any position in the classified service shall be made except in the manner provided in this section."

With the foregoing legal framework in mind, I turn next to the May 19 promotions described earlier.

¹ The hiring manager in this situation is the Sheriff. See Home Rule Charter Section 6.10 (3); ORS 204.635(1).

² As an alternative to the promotion of certified applicants, the Code allows for temporary promotions. 3.10.200. But such promotions are valid for only six months and temporary employees "may be discharged at any time by the appointing authority." MCC 3.10.225. The May 19 promotions at issue here were not temporary promotions.

Terry Jones

The list of certified eligible candidates for promotion to law enforcement Lieutenant was established November 30, 1994. It will remain in effect until November 30, 1995. MCC 3.10.180(C). Although Sgt. Terry Jones was ranked fourth on this list, candidates in the first three ranks had already been promoted. Thus, Jones was next in line on a valid promotion list. I conclude that his promotion satisfied the applicable rules.

The next question concerns whether the Sheriff-elect will be legally required to retain Jones at the rank of Lieutenant. The answer is no.

The Personnel Rules provide for a probationary period during which a classified employee "is required to demonstrate fitness for the position to which he/she is appointed by actual performance of the duties of that position." Rule 14.01. The probationary period for an employee appointed to be a Lieutenant in law enforcement is one year. Rule 14.02.

"An employee may have his/her probationary appointment terminated at any time during the probationary period if, in the opinion of the hiring manager, his/her continuance in that position is not in the best interests of the county." Rule 14.05.

"Probationary employees whose appointments are terminated do not have the right to appeal such actions, except for appeals alleging discrimination based on illegal factors." Rule 14.05.

Illegal factors include race, color, sex, age, religion, national origin, political affiliation, and handicap. MCC 3.10.270.

A probationary employee becomes a regular employee unless, prior to completion of the probationary period, the employee is notified in writing that the appointment will be terminated on a specified date prior to the last day of probation. Rule 14.06.

Sergeant Promotions

As already noted, the Sergeants' list applicable to this situation was established December 28, 1993. Under MCC 3.10.180(C), the list remained in effect until December 28, 1994. On May 19, 1995, when Fitz, Whalen, McNelly and Blackman were promoted, the list had long since expired.

Under the Code, a promotion list can be extended by approval of Employee Services. As noted earlier, a request to extend the Sergeants' list was made by the Acting Sheriff, but this happened several hours after the May 19 promotions.

Under MCC 3.10.180(E), a list can be extended upon a hiring manager's request, "whenever sufficient certified candidates exist." I understand from checking with Employee Services that promotion lists have been extended prior to and even after their expiration. (In the latter case, the action would be more accurately called a renewal rather than an extension.)

There is no express Code authority for the renewal/extension of an expired list. However, given that this has been County practice, and that the Code does not expressly prevent the practice, it is unlikely a court would find fault with it. I am not aware, however, of instances where an expired list has been renewed/extended so as to validate promotions that were made before the renewal/extension.

In my opinion, the renewal/extension of the Sergeants' list late in the day on May 19, even if approved at that time or thereafter,³ would not validate the May 19 promotions. This is because no valid list existed or was in effect when the promotions were made.

Rule 13.01 specifies that "[n]o person shall be appointed or promoted to a position in the classified service unless certified as eligible. . . ." Certification is expressed by inclusion on a valid, i.e. unexpired, list. Once the list expires, there is no longer a pool of "certified" candidates. See Warmus v. City of Seattle, 97 P2d 1095 (1940) (attempt to appoint a candidate from an expired list was invalid); see also State ex rel Longman v. Kachelmacher, 96 NW2d 542 (Minn. 1959); Tanzosh v. New York City Civil Service Comm., 407 NYS2d 638 (NY 1978) (once list expires appointment rights also expire).

My conclusion that the May 19 promotions violated Rule 13.01 does not mean, however, that the promotions cannot be remade. Acting Sheriff Bunnell has asked to have the Sergeants' list extended. I understand that extension requests are routinely approved by Employee Services, and in a few cases the requests have post-dated expiration of the list. A court would probably defer to this County practice of Code interpretation/application. Thus, I conclude the list can probably be renewed/extended by Employee

Sheriff-elect Dan Noelle
May 26, 1995
Page 6

Services, followed by re-execution of the promotions in question by the Acting Sheriff (during his tenure).

The final question is whether Sheriff-elect Noelle will be legally bound by the promotions if they are remade in accord with proper procedure. The answer is no, for the same reason that the new Sheriff will not be bound to retain Terry Jones at the Lieutenant rank.

cc Acting Sheriff John Bunnell
Chief Deputy Tom Slyter
Curtis Smith, Employee Services Director

F:\DATA\COUNSEL\WPDATA\WINE\591SJN.OPN\mw

CERTIFICATE OF PERSONAL SERVICE

I do hereby certify that on the 8th day of November, 1995, I personally delivered the original and one copy of the foregoing Memorandum of Employee Services Division in Support of Appeal, as follows:

DEBORAH BOGSTAD
OFFICE OF THE BOARD CLERK
1120 SW FIFTH ROOM 1510
PORTLAND, OREGON 97204

and caused to be delivered through interoffice mail a copy of the foregoing Memorandum of Employee Services Division in Support of Appeal, as follows:

JAMES GERHARDT
MULTNOMAH COUNTY INTEROFFICE MAIL
245/MTVO


Steven Nemirow



MULTNOMAH COUNTY OREGON

BEVERLY STEIN
COUNTY CHAIR

EMPLOYEE SERVICES
FINANCE
LABOR RELATIONS
PLANNING & BUDGET
RISK MANAGEMENT

(503) 248-5015
(503) 248-3312
(503) 248-5135
(503) 248-3883
(503) 248-3797

(503) 248-5170 TDD

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

MEMORANDUM

TO: Deb Bogstad, Clerk of the Board
Steve Nemirow, Assistant County Counsel
Anna Kanwit, Counsel to the Merit System Civil Service Council
James Gerhardt, Appellant

FROM: *S. Ayers*
Susan Ayers, Executive Secretary
Merit System Civil Service Council

DATE: November 3, 1995

SUBJECT: GERHARDT FINDINGS OF FACT

Attached is a copy of the final Findings of Fact, Conclusions of Law & Order in the appeal of James Gerhardt et al. signed by John Wight as Chair of the Council.

Attachment

BOARD OF
COUNTY COMMISSIONERS
1995 NOV - 6 AM 10:28
MULTNOMAH COUNTY
OREGON

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

In the Matter of the Appeal of)	
)	
JAMES GERHARDT, ROBERT)	FINDINGS OF FACT,
O'DONNELL & SCOTT RAYFIELD)	CONCLUSIONS OF LAW &
)	ORDER

Procedural Matters

On October 3, 1995, this Council heard the appeal of James Gerhardt ("Gerhardt"), Robert O'Donnell ("O'Donnell") and Scott Rayfield ("Rayfield") requesting an investigation of the process used in the hiring of the program administrator who supervises the intensive case management unit in the Department of Community Corrections. Appellants Gerhardt and O'Donnell represented themselves and Steve Nemirow, Assistant County Counsel, represented the County. Appellant Rayfield was unable to attend the hearing. Susan Ayers, secretary to the Council, made a verbatim tape recording which preserves the oral record of the hearing. The appellants and the County were provided reasonable opportunity to present evidence, witness testimony, cross-examination, and argument in this matter.

Issue Presented

Whether the County's action in declaring a promotional eligible list valid after it had expired was a violation of merit principles or Multnomah County Code regarding establishing and extending eligible lists.

Findings of Fact

1. In November, 1992, a promotional eligible list for Program Administrator positions in the Department of Community Corrections was established to fill five specific positions. Rayfield applied and was placed on this eligible list.
2. In June, 1993, a promotional eligible list for Program Administrator positions in the Department of Community Corrections was established. The announcement for this examination stated that "future Program Administrator positions will be filled from this list for one year, unless abolished sooner."
3. Rayfield did not apply for the June, 1993 exam because he was not interested in the current openings listed in the announcement and he thought he was eligible for appointment from the first eligible list until November, 1993.
4. Only County employees are eligible to apply for promotional examinations.
5. Unless otherwise provided, promotional lists shall remain in effect for one year (MCC 3.10.180 (C)). The June, 1993 promotional eligible list for Program Administrator positions was not extended prior to June, 1994 and therefore expired.

6. The personnel officer may extend the duration of employment and promotion lists whenever sufficient certified candidates exist, with the consent of the hiring manager. Each such extension shall be effective for a period of six months, unless abolished prior to that time. (MCC 3.10.180 (E)).

7. Gerhardt is an interested party and not an applicant for any of the positions.

8. In July, 1995, ~~a need rose to fill another~~ there was an opening for a Program Administrator position in the Department of Community Corrections and Colette Umbras, the Personnel Analyst, revised the expiration date of the eligible list established in June, 1993, to December, 1995. This revision constituted ~~three six-month extensions~~ an eighteen-month extension.

9. County employees hired since applications were solicited in June, 1993 were not able to be considered for the opening that occurred in July, 1995.

10. The County has extended eligible lists after their expiration dates on ~~at least seventeen other occasions from 1992 to present but this is the first time the issue has come before the Merit Systems Civil Service Council.~~

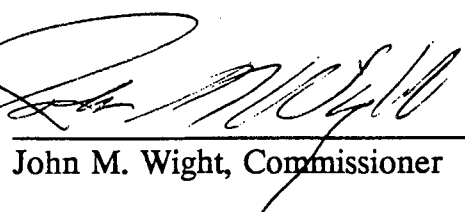
Conclusions of Law

The purpose of having an expiration date on an eligible list is to utilize having the best-qualified candidates available at the time of the appointment. The logical conclusion of the County's theory is that a list established twenty years ago could be resurrected and used to fill a position today. This is not consistent with merit principles.

Also, the County's action in "extending" lists after their expiration dates should be termed "reopening," not extension. An extension implies that it must be done before expiration. The list in question was not extended before its one-year term had expired; therefore it can not be extended.

Order

This appeal is hereby declared upheld, the eligible list is invalid, and the appointment or appointments made from the eligible list after its expiration are not permanent appointments.



John M. Wight, Commissioner

lhl

jmw\personal\jmw\doc\mccfact.doc



MULTNOMAH COUNTY OREGON

BEVERLY STEIN
COUNTY CHAIR

EMPLOYEE SERVICES
FINANCE
LABOR RELATIONS
PLANNING & BUDGET
RISK MANAGEMENT

(503) 248-5015
(503) 248-3312
(503) 248-5135
(503) 248-3883
(503) 248-3797

(503) 248-5170 TDD

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

MEMORANDUM

TO: Deb Bogstad
Clerk of the Board of County Commissioners

FROM: *S. Ayers*
Susan Ayers, Executive Secretary
Merit System Civil Service Council

DATE: October 25, 1995

SUBJECT: APPEAL OF THE DECISION ON THE GERHARDT, O'DONNELL &
RAYFIELD

Attached is the Merit System Civil Service Council record from the hearing of the above-named appeal.

Attachments

c: (without attachments)
Steve Nemirow
Anna Kanwit
James Gerhardt
Robert O'Donnell
Scott Rayfield

BOARD OF
COUNTY COMMISSIONERS
1995 OCT 26 PM 2:52
MULTNOMAH COUNTY
OREGON

MERIT SYSTEM CIVIL SERVICE COUNCIL MINUTES

October 3, 1995

The meeting was called to order with Commissioners Wight, Price and Floyd present. The minutes of the September 18 meeting were approved and signed, with two modifications.

MEETING SCHEDULED: The next meeting was set for 3:30 p.m. on Tuesday, October 17. The Margie L. Johnson appeal and the Steve Waite appeal will be on the agenda.

GAIL ROSS APPEAL: The hearing was continued from the September 18 meeting. Gail Ross appeared for herself; with her was her mother, Beverly Blair, who is a Senior Office Assistant at the Northeast Health Center. Appearing for the County were: Steve Nemirow, Assistant County Counsel; Theresa Williams, Manager of the Northeast Health Center; Robert Saum, Operations Supervisor at the Northeast Health Center; Suzanne Kahn, Human Resources Manager for the Health Department; and Susan Daniell, Personnel Analyst.

Mr. Nemirow said that the evidence showed that the rule was consistently adhered to. Ms. Kahn described a current situation where a lead worker was delegated interviewing and recommendation to hire authority for an Office Assistant 2 position. The lead worker asked for a particular individual to be on the list, conducted the interviews, and recommended the individual be hired, without telling the exempt supervisor that the individual is her daughter's domestic partner. The individual was hired with the result that the lead worker's daughter became eligible for County-paid health benefits. The individual was terminated and the lead worker is being reprimanded.

Comm. Wight said he did not find anything relating to the definition of supervision in the Local 88 contract. Mr. Saum could delegate some supervisory duties to Ms. Blair and put her in the position of supervising her daughter. Comm. Wight pointed out that the nepotism rule is a two-way street and that people cannot be discriminated for or against because of relationships. Ms. Kahn said that the relationship is not the reason why a job offer was not made. Comm. Wight said his difficulty is that Ms. Blair does not seem to be a supervisor, but the job description says she may be given supervisory duties. He wants to give due weight to the concerns expressed by management representatives, who feel strongly about this.

Ms. Williams said she feels strongly that lead workers are involved in coaching, problem solving and other activities that are a part of supervision, even if they don't meet the strict "hire/fire" definition. Comm. Wight responded that Ms. Blair's job doesn't appear to be very far down the supervision continuum or else she wouldn't need to check everything with Mr. Saum.

Comm. Floyd said the definition of supervisor is not clear and seems to vary from office to office. There is no definition of a lead worker or how that role relates to the legal definition of supervisor as it is found in collective bargaining law. She feels lead workers are not covered by the nepotism rule; i.e., they are not direct supervisors. Comm. Wight said he agrees with Ms. Williams' definition of supervision but doesn't think this situation meets the test.

Comm. Price said she feels Ms. Blair does have a lot of influence on day-to-day operations and that the nepotism rule does apply. Ms. Blair may not have a supervisory title but she does have influence. Comm. Price confirmed with Susan Daniell for the Health Department, that the Office Assistant 2 position is question is not the only option for Ms. Ross' employment.

Ms. Ross said she shouldn't be discriminated against just because her mother works at the clinic. Ms. Blair said that, for example, when she does the work schedule she puts a note on it that it's subject to change. She doesn't feel she is a supervisor and that she doesn't give direct orders.

Comm. Floyd moved that the appeal be sustained. There was no support for this motion. Comm. Wight moved to deny the appeal; Comm. Price seconded the motion and voted yes on the motion to deny. Comm. Wight declared the appeal denied on a split vote, which is appealable to the Board of County Commissioners within ten days.

RODERICK LIGHTNER APPEAL: The Secretary reported that Mr. Lightner's attorney had called and withdrawn this appeal. Steve Nemirow, Assistant County Counsel, explained that the situation concerned the promotional examination for Corrections Sergeant. The position was first announced requiring five years of service as a Corrections Officer with Multnomah County. The announcement was revised to say five years of continuous service. Mr. Lightner has five years of service, but it is not continuous because he terminated and was subsequently reinstated. (When he was reinstated, his seniority was not reinstated.) He requested reconsideration and the Sheriff's Office allowed him to apply for the examination. Now a number of other Corrections Officers who have seniority comparable and higher than Mr. Lightner but without five years of service are preparing to appeal. The Sheriff's Office position is that is a management prerogative to set reasonable qualifications for a promotional examination. They will be submitting a letter to the Council, requesting that an advisory opinion be given on this potential appeal, so that the matter can be resolved before the examination is given on November 4th. Comm. Wight said he didn't know if it was within the Council's authority to give advisory opinions, but the matter could be placed on the agenda for the next meeting.

JAMES GERHARDT, ROBERT O'DONNELL & SCOTT RAYFIELD APPEAL: James Gerhardt and Scott Rayfield appeared for themselves. Robert O'Donnell was unable to attend. Steve Nemirow, Assistant County Counsel, and Colette Umbras, Personnel Analyst, appeared for the County.

Mr. Gerhardt identified himself as an interested party, not an applicant, and said the facts were outlined in the appeal submitted to the Council. Mr. Rayfield was an applicant on an earlier exam given for Program Administrator but did not apply for the examination in question.

Colette Umbras summarized the County position. The list was originally established in June, 1993, and a number of hires were made. In July, 1995, the manager indicated the need to hire another person as soon as possible. They discussed the availability and quality of candidates on the 6/93 list and extended the list until 12/95. This constituted three 6 month extensions beyond the original one year duration of the list. Ms. Umbras presented a legal opinion prepared by County Counsel's office to address another situation. The opinion states that there is no limit to the County's ability to extend eligible lists, if the extension is done prior to the hire of the candidate. Ms. Umbras also presented a partial list of list extensions done by the County within the past few years in order to establish that this is a regular practice.

Mr. Rayfield said that he applied for the Program Administrator position when a list was established in 1992. In the letter he received regarding the results of that examination he was told that his eligibility would expire in 11/93 unless the list was abolished sooner. Less than one year later, in April, 1993, another announcement was issued. He did not receive notice of the list being abolished or of his removal from the list. He did not apply for the new examination because he was not interested in the programs listed in the announcement and thought he would be on the other list until 11/93.

Ms. Umbras responded that in 1992 there were five programs that had long-term temporary managers and the 1992 exam was geared for those positions. When a new opening occurred in 1993, it was felt that the old announcement was too specific as to program and a new announcement was issued that listed the current openings and also stated, in bold print, that "future Program Administrator positions will be filled from this list for one year, unless abolished sooner." The 11/92 list was not abolished; the candidates on that list could be considered along with those on the new list.

Mr. Rayfield said the issue was consistency; the County abolished one list before expiration but extended the new one for 26 months. Comm. Wight corrected him and said the extension was only a little more than a year past the scheduled expiration date. Mr. Gerhardt pointed out that employees hired since the application period for the 1993 list did not have a chance to be considered for the new opening.

Mr. Nemirow said that the issue was whether standard hiring procedures were followed in the most recent hire. Evidence submitted shows that standard procedures were followed. Questions about what happened in 1992 and 1993 are not timely. The Council could consider whether "sufficient certified candidates exist."

Comm. Price asked if there could be more than one list active at a time. Ms. Umbras said there could be, because lists are developed for different specialties within a classification. Comm. Floyd asked why a manager would want a list extended. Ms. Umbras said time was one consideration. Extending a list takes much less time than recruiting, examining and establishing a new list. The other consideration is the number and quality of the candidates available on the old list who already went through a valid examination process.

Comm. Wight disagreed with the legal opinion prepared by County Counsel. The purpose of an expiration date is to have a fresh list with the best qualified currently available candidates. Theoretically, a list could be extended for 20 years. Also, an extension needs to be done before the expiration; otherwise, it's a reopening not an extension. This list wasn't extended before a year was up. Ms. Umbras replied that Personnel often doesn't know what openings may be coming up so don't know which lists to extend. Extensions are generally done within 3 - 5 months after expiration and usually involve only one six month extension. Comm. Price noted that the City of Portland has some eligible lists that are four years old. If the need arises, old lists are reinstated, then extended. This saves taxpayer dollars and still allows the hire of candidates that meet the requirements of the job.

Mr. Gerhardt said the County is arguing that it is more convenient to extend a list than to create a new one. An alternative would be to hire on an acting basis, create a new list, and then see if the person chosen was the best one. The list needs to be extended before expiration and the candidates need to be notified of the extension. Mr. Rayfield pointed out that the sample extensions shown on the County's exhibit do not show any of the excessive length seen in this case. A lot of things changed in the intervening time; not only have new people been hired, but the others have gained more experience.


Comm. Wight said the Board of County Commissioners may need to decide whether to validate the County's past practice in this area. His opinion is that an extension can't be done after the list has expired. Comm. Floyd concurred in this opinion. Comm. Wight moved that the appeal be upheld, the list declared not valid, and that the County be required to create a new list in order for the appointments to be permanent. Comm. Floyd seconded and voted for the motion. Comm. Price voted against the motion. The appeal was declared upheld on a split vote which is appealable to the Board of County Commissioners.

The meeting was adjourned.

MULTNOMAH COUNTY MERIT SYSTEM CIVIL SERVICE COUNCIL

John Wight, Commissioner

D'Norgia Price, Commissioner



Carla Floyd, Commissioner

N:\DATA\EMP\SERI\WPDATA\ISJA224

BEFORE THE MERIT SYSTEMS COUNCIL
FOR THE COUNTY OF MULTNOMAH

RECEIVED
OCT 12 1995
EMPLOYEE SERVICES
MULTNOMAH COUNTY

JAMES GERHARDT

Petitioner

v.

MULTNOMAH COUNTY

Respondent.


MOTION FOR WRITTEN OPINION

Pursuant to Personnel Rule 23.03 and MCC 3.10.380(D), Respondent Multnomah County requests the Merit System Council to issue written findings of fact and conclusions of law for its decision in this matter, reached on October 3, 1995. Specifically, under Personnel Rule 23.03, the County requests the Council to specify what provisions, if any, of Multnomah County Code were violated.

Dated this 12th day of October, 1995.

Respectfully submitted,
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By


Steven J. Nemirow, OSB #86254
Assistant County Counsel
Of Attorneys for Respondent
Multnomah County

F:\DATA\COUNSEL\WPDATA\TWELVE\GERHARDT\OPINION.MOT\SJN

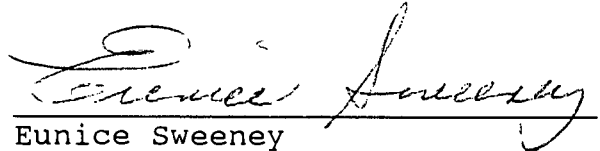
CERTIFICATE OF PERSONAL SERVICE

I do hereby certify that on this 12th day of October, 1995, I personally delivered the original of the foregoing Motion for Written Opinion as follows:

SUSAN AYERS
MERIT SYSTEMS COUNCIL
1120 SW FIFTH ROOM 1430
PORTLAND OR 97204

and caused to be delivered by interoffice mail a copy of the foregoing Motion for Written Opinion, as follows:

JAMES GERHARDT
MULTNOMAH COUNTY INTEROFFICE MAIL
245/MTVO.


Eunice Sweeney



MULTNOMAH COUNTY
ANNOUNCES A PROMOTIONAL EXAMINATION FOR

PROGRAM ADMINISTRATOR
Department of Community Corrections

SALARY: \$ 36,554 - 51,189
36,554 - 43,882 standard hiring
range, depending on experience
and qualifications

DEADLINE: May 7, 1993

THE POSITION

To plan, organize, and supervise Community Corrections programs; the planned vacancies will be in administering a Day Reporting Center and a Residential Program. Both programs are in the planning stage, effective approximately July 1, 1993. Both positions are dependent on receipt of State funding.

Duties will include planning, supervising, and reviewing the work of assigned staff; recommending and assisting in the implementation of goals and objectives; evaluating operations and activities of the assigned program; participating in budget preparation and administration; and maintaining liaison with various community groups concerned with offender issues. **Future Program Administrator positions will be filled from this list for one year, unless abolished sooner.**

TO QUALIFY

In addition to the following guidelines, applicants must be current, permanent employees of Multnomah County.

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: Three years of responsible professional community corrections or related experience. Experience in one of the above program areas preferred. One year of lead or supervisory experience is highly desirable.

AND

Training: Equivalent to a Bachelor's degree with major course work in sociology, psychology, justice administration, or a related field.

THE SCREENING AND EXAMINATION PROCESS

The application information may be used throughout the entire screening and examination process. The applications will be screened to determine if the applicants meet the minimum qualifications and have completed the supplemental application questions. The training and experience, as shown by responses to the supplemental questions, of those applicants who meet the minimum qualifications will be evaluated. Based on this evaluation, the most qualified applicants will be scheduled for an oral examination. The final examination score and placement on the eligible list will be based on the oral examination, weighted 100%.

THE APPLICATION

Applicants must complete a standard Multnomah County application form as well as submit responses to Supplemental Application questions. The supplemental questions should be submitted in the following format:

(OVER)

JOB TITLE: COMMUNITY CORR PROGRAM ADMIN

WORKING TITLE: PROGRAM ADMINISTRATOR

SALARY FROM: 18.03

EFFECTIVE: 6/24/93

EXPIRES: 6/24/94

JCN/OC: 9772 / 01

EXAM #: 932042CU
LAST BATCH: 930511PERSONNEL ANALYST: COLETTE UMBRAS *cu*

CODES	RANK	SCORE	NAME	EXPIRATION DATE	CODE	SALARY	TYPE	DATE
101	1	93	William F. Jackson					
001	2	92	Kevin S. Criswell					
---	2	92	Barbara S. Kabus					
1--	3	89	Grant D. Nelson					
11-	4	88	Carl E. Goodman					
---	5	87	Michael R. King					
-01	6	85	Nedra I. Bagley					
---	7	84	Julia D. Fullerton					
101	8	80	Glen T. Harding					
001	9	75	Jeanne M. Tichenor					
0--	10	74	Carrie F. Kirkpatrick-Bunch					
101	11	73	Jack K. Minzey					
101	11	73	Byron R. Moore					
101	12	70	David C. Paul					
01-	12	70	Dorothy A. Steele					

JOB TITLE: COMMUNITY CORR PROGRAM ADMIN EXAM #: 932042CU LAST BATCH: 930511

WORKING TITLE: PROGRAM ADMINISTRATOR

SALARY FROM: 18.03 JCN/OC: 9772 / 01 VACANCIES: 2 DEPT. CERTIFIED TO: DCC

EFFECTIVE: 06/24/93 EXPIRES: 06/24/94 INTERVIEWER: TAMARA HOLDEN

PERSONNEL ANALYST: COLETTE UMBRAS PHONE: 248 - 3701 x 0000

KEY	RANK	NAME	ADDRESS/PHONE	SCORE	CODE	SALARY TYPE	DATE
101	1	William F. Jackson.....	2562 SW Wisteria Ct. West Linn OR 97068 657 - 3362 248 - 5051	93			P 10/1/93
001	2	Kevin S. Criswell.....	4000 Carman Dr. #62 Lake Oswego OR 97035 635 - 6142 248 - 3579	92			P 9/27/93
---	2	Barbara S. Kabus.....	5325 NE Flanders Portland OR 97213 230 - 1016 248 - 5107	92			
1--	3	Grant D. Nelson.....	5424 SE Sherman Portland OR 97215 234 - 2657 248 - 3081	89			P 1/14/94
11-	4	Carl E. Goodman.....	5626 NE 38th Portland OR 97211 335 - 3164 248 - 3393	88			

CODES:

00 Selected for Appointment

01 Considered, but less qualified than selected applicant

02 Removed self from consideration, e.g., did not respond to letter or message, declined interview or job offer, or did not appear for scheduled interview

SALARY

Enter proposed hourly rate

TYPE

Enter 'N' for New Hire; 'P' for Promotion

DATE

Enter proposed appointment date

---	5	Michael R. King.....	8610 SW Cedarcrest Tigard OR 97223 244 - 1631 248 - 3236	87
-01	6	Nedra I. Bagley.....	444 NE Stafford Portland OR 97211 240 - 0865 248 - 3007	85
---	7	Julia D. Fullerton.....	5785 Aumsville Hwy SE Salem OR 97301 581 - 8217 248 - 3393	84
101	8	Glen T. Harding.....	2650 SW Orchard Hill Pl. Lake Oswego OR 97035 293 - 7000 248 - 3190 x 0242	80
001	9	Jeanne M. Tichenor.....	1828 SE 36th Avenue Portland OR 97214 235 - 0161 248 - 3653	75

P 10/1/93

REQUEST FOR ELIGIBLE JOB APPLICANTS

Job Title: Comm Cor Program Admin Number of Vacancies: 2

Department: DCC Division: Admin

Phone No: 248-3701 Bldg/Room #: 161/6

Permanent ☒ Temporary ☐ If Temporary, for how long: _____

Work Days: ☒ M-F ☐ Other _____

Work Hours: ☒ 8-5 ☐ Other _____

Work Location: varies

Replaces: new Starting Date: _____

Describe the duties of the position(s) below or attach a position description:

Describe the physical requirements of this position. Attach additional sheets, if necessary:

Hiring Manager: Jamara Holder Date: 6/21/93

Approved by: _____ Date: _____

EMPLOYEE SERVICES USE ONLY: no apps at this time

☐ Return with copies of applications

Analyst Signature: ORU Date: 6/21/93

Exam Number: _____ Batch No. _____ 2280E2/2-92

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 2042 CU Class Title: Program Administrator/Comm C

Working

Title: same

Original
Expiration

Date: 6/24/94

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 12/24/95

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst CRumbas Date 7/24/95

2743ES²/SA/ljd

MOFARPO5

MULTNOMAH COUNTY PERSONNEL DIVISION -- MASTER ELIGIBLE LIST (INTERNAL)

6/24/93
7/24/95

JOB TITLE: COMMUNITY CORR PROGRAM ADMIN

WORKING TITLE: PROGRAM ADMINISTRATOR

SALARY FROM: 18.03

EFFECTIVE: 6/24/93

EXPIRES:

12/24/95
6/24/94

JCN/OC: 9772 / 01

EXAM #: 932042CU

LAST BATCH: 930511

PERSONNEL ANALYST: COLETTE UMBRAS *CW*

CODES	RANK	SCORE	NAME	ADDRESS	PHONE	CODE	SALARY	TYPE	DATE
101	1	93	William F. Jackson	2562 SW Wisteria Ct. West Linn OR 97068	657-3362 248-5051			hired	
001	2	92	Kevin S. Critswell	4000 Carman Dr. #62 Lake Oswego OR 97035	635-6142 248-3579			hired	
---	2	92	Barbara S. Kabus	5325 NE Flanders Portland OR 97213	230-1016 248-5107				
1--	3	89	Grant D. Nelson <i>John</i>	5424 SE Sherman Portland OR 97215	234-2657 248-3081			term	
11-	4	88	Carl E. Goodman	5626 NE 38th Portland OR 97211	335-3164 248-3393				
---	5	87	Michael R. King	8610 SW Cedarcrest Tigard OR 97223	244-1631 248-3236			hired	
-01	6	85	Nedra I. Bagley	444 NE Stafford Portland OR 97211	240-0865 248-3007				
---	7	84	Julia D. Fullerton	5785 Aumsville Hwy SE Salem OR 97301	581-8217 248-3393				
101	8	80	Glen T. Harding	2650 SW Orchard Hill Pl. Lake Oswego OR 97035	293-7000 248-3190x0242				

EXAMPLES OF EXTENSIONS OF MASTER ELIGIBLE LISTS

<u>List Title</u>	<u>Original Expiration Date</u>	<u>Date of Extention Req</u>	<u>New Expiration Date</u>
Sergeant	12/28/95	5/19/95	6/28/95
Prog Dev Spec/RDI	8/24/95	9/29/95	2/24/96
Managed Care Coord	8/7/95	9/21/95	2/7/96
Clinic Health Asst	1/29/94	2/17/94	7/29/94
Research Analyst	11/11/93	11/29/93	5/11/94
Engineering Tech Aide	7/21/93	8/6/93	1/21/94
Case Mgmt Asst	8/22/93	8/26/93	2/22/94
SO Oper Tech Trainee	9/2/93	10/13/93	3/2/94
Clinic Serv Mgr	5/24/93	9/24/93	11/24/93
Clinic Health Asst	2/26/93	7/7/93	8/26/93
Case Mgmt Asst	7/?/92	10/21/92	1/?/93
Library Asst	3/9/93	5/12/93	9/9/93
Park Ranger	11/7/92	10/1/93	11/7/93
Warehouse Worker	8/31/92	10/13/93	3/1/94
Civil Deputy	1/24/93	3/16/93	7/24/93
Nutritionist	12/22/92	1/20/93	6/22/93
Program Admin	6/24/94	7/24/95	12/24/95

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 932120 SR Class Title: Sergeant

Working
Title: Sergeant

Original
Expiration
Date: 12/28/94

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 6/28/95

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Shirley Robertson Date 5/20/94

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 2386 cu Class Title: Prog Dev Spec

Working Title: Prog Dev Spec / ROI Original Expiration Date: 8/24/95

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 2/24/96

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Chlmdras Date 9/29/95

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 2384Cu Class Title: MH Consultant

Working Title: Managed Care Coordinator Original Expiration Date: 8/7/95

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 2/7/96

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst CRU Date 9/21/95

2743ES²/SA/1jd

*done
9/21/95 CRU*

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 93 206050 Class Title: Health Assistant

Working Title: Clinic Health Asst/ Spanish Original Expiration Date: 1/29/94

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 7/29/94

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Susan Daniell /md Date 2/17/94

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 932032 SD Class Title: Data Analyst

Working Title: Research Analyst (Part-Time) Original Expiration Date: 11/11/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 5/11/94

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Susan Deniell/imp Date 11/29/93

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921993DW Class Title: Engineering Technician Aide

Working Title: Engineering Technician Aide Original Expiration Date: 7/21/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 01/21/94

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Daniel Lee Wiley Date 8/16/93

~~Supervisor's Copy~~

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 922003SD Class Title: Case Management Assistant

Working Title: Case Mgmt Asst - Aging Service Original Expiration Date: 8/22/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 2/22/94

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Susan Daniell/ms Date 8/26/93

2743ES²/SA/ljd

List extended due to unable to hire until October 1993
due to funding, which is still uncertain at this time.

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921969SR Class Title: Sheriff's Operation
Tech. Trainee

Working Title: Same Original Expiration Date: 9/2/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 3/2/94

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Shirlee Robertson Date 10/13/93

Remove those crossed off in green

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921959SD Class Title: Health Services Administrator

Working Title: Clinic Services Manager Original Expiration Date: 5/24/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 11/24/93

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Susan Daniell Date 9/24/93

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921946SD Class Title: Health Assistant

Working Title: Clinic HA/Vietnamese Interpreter Original Expiration Date: 2/26/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 8/26/93

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Susan Danell Date 7/7/93

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 911825 cu Class Title: Case Management Asst.

Working
Title: _____

Original
Expiration
Date: 8/7/92

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 1/93

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst CRU Date 10/21/92

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921915 SR Class Title: Library Asst

Working Title: Library Asst Original Expiration Date: 3/9/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 9/9/93

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Shirlee Robertson/jm Date 5/12/93

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921900DW Class Title: Park Ranger

Working Title: Same Original Expiration Date: 11/07/92

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 11/07/93

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Donald H. Hunkley Date 10/1/93

~~XXXXXXXXXXXXXXXXXXXX~~

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921897SR Class Title: Warehouse Worker

Working
Title: same

Original
Expiration
Date: 8/31/92
9/1/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 3/1/94

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Shirlee Robertson Date 10/13/93

Remove 4 applicants who have been hired and Mr. Wadhwa who removed himself

2743ES²/SA/1jd

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921882SR Class Title: Civil Deputy

Working Title: Civil Deputy Original Expiration Date: 1/24/93

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 7/24/93

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Shirlee Robertson Date 3/16/93

EXTENSION/ABOLISHMENT OF MASTER ELIGIBLE LIST

Exam No. 921886SD Class Title: Nutritionist

Working Title: Nutritionist

Original Expiration Date: 12/22/92

EXTENSION OF MASTER ELIGIBLE LIST

New Expiration Date: 6/22/93

Note: Each extension shall be effective for a period of six months.

ABOLISHMENT OF MASTER ELIGIBLE LIST

Abolishment Date: _____

- Reason:
- ☐ All candidates have been interviewed and have been found unacceptable for documented, job-related reasons.
 - ☐ The list was illegally constituted.
 - ☐ The list is comprised of fewer than five candidates.

Note: When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Personnel Analyst Susan Daniell Date 1/20/93



MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN, CHAIR
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

MEMORANDUM

TO: Sheriff-elect Dan Noelle
(313/105)

FROM: Laurence Kressel *LK*
County Counsel (106/1530)

DATE: May 22, 1995

SUBJECT: Issues Arising From Recent MCSO Promotions

COUNTY COUNSEL
LAURENCE KRESSEL
CHIEF ASSISTANT
JOHN L. DU BAY
ASSISTANTS
J. MICHAEL DOYLE
SANDRA N. DUFFY
KATIE GAETJENS
GERALD H. ITKIN
STEVEN J. NEMIROW
HELLE RODE
MATTHEW O. RYAN
JACQUELINE A. WEBER

Facts

On May 16, 1995, the voters elected Dan Noelle as Sheriff of Multnomah County. The Sheriff-elect will take office on June 6, 1995.

On the morning of May 19, 1995, Acting Sheriff John Bunnell made a series of staff promotions: (1) Sgt. Terry Jones was promoted to Lieutenant, and (2) Deputies Dennis Fitz, Bart Whalen, James McNelly and John Blackman were promoted to Sergeant.

On the afternoon of May 19, 1995, the Employee Services Division was asked to extend the expired Sergeants' list.

The promotion of Sgt. Jones to Lieutenant was made from a civil service list that will expire November 30, 1995. The other promotions were made from a list that expired December 28, 1994.

Questions

You have inquired whether the above-described promotions are valid and binding. That inquiry raises the following questions:

1. Was Acting Sheriff Bunnell authorized to make the May 19, 1995 promotions, given that Noelle won the election for Sheriff on May 6?

Brief Answer: Yes.

2. If Acting Sheriff Bunnell had promotion authority on May 19, did the promotion of Sgt. Terry Jones to the rank of Lieutenant comply with the applicable legal rules?

Brief Answer: Yes.

3. If Jones' promotion was legal, will Sheriff-elect Noelle be legally obligated to retain Jones at the rank of Lieutenant?

Brief Answer: No. Jones must successfully complete one year of service as a probationary Lieutenant.

4. Did the promotions of Dennis Fitz, Bart Whalen, James McNelly and John Blackman from deputy to Sergeant comply with the applicable legal rules?

Brief Answer: No, because the promotion list had expired before May 19, 1995. However, the list can probably be renewed/extended. If it is renewed, the promotions can be remade by the Acting Sheriff.

5. If the promotions of Fitz, Whalen, McNelly and Blackman are remade by Acting Sheriff Bunnell from a valid list, will Sheriff-elect Noelle be legally obligated to retain the new Sergeants at that rank?

Brief Answer: No. They will be probationary Sergeants for one year.

Discussion

Authority of Acting Sheriff

A previous opinion by this office advised that, under state law, the Sheriff-elect cannot take the oath of office until June 6, 1995. The legal authority to administer the Sheriff's Office, including authority to make personnel decisions, resides in Acting Sheriff Bunnell until the new Sheriff takes office. MCC 4.30.035.

The Acting Sheriff must exercise his personnel authority within the bounds established by the County's personnel rules. The remaining questions concern those rules. Before answering, I will summarize the pertinent rules.

Promotion Procedure

1. Overview

The procedure for MCSO promotions is the same as the standard procedure for hiring and promoting non-MCSO employees in Multnomah County. In practice, and as outlined in the Personnel Rules, it is a four-step procedure: (1) the agency requests a certified list of eligible candidates, and Employee Services sends the agency a list; (2) the agency goes through its selection process (e.g. interviews, or assessment center), and chooses individuals for promotion; (3) the agency obtains the approval of the personnel officer; (4) the appointment is made.

2. Certified List of Eligible Candidates

MCC 3.10.190 provides that upon written notice that a position in the classified service is to be filled, a list of eligible candidates shall be given to the hiring manager.¹ MCC 3.10.180 (A) provides that Employee Services (formerly the department of general services) "shall establish and maintain" promotion lists. MCC 3.10.180 (C) provides that "[u]nless otherwise provided, promotion lists shall remain in effect for one year." (see also, Personnel Rule 10.09, to same effect). MCC 3.10.180 (E) provides that the personnel officer (Employee Services) may extend the duration of a promotion list, with the consent of the hiring manager.

MCC 3.10.200 provides that "[n]o person shall be appointed or promoted to a position in the classified service unless certified as eligible * * * *² No appointment or promotion to any position in the classified service shall be made except in the manner provided in this section."

With the foregoing legal framework in mind, I turn next to the May 19 promotions described earlier.

¹ The hiring manager in this situation is the Sheriff. See Home Rule Charter Section 6.10 (3); ORS 204.635(1).

² As an alternative to the promotion of certified applicants, the Code allows for temporary promotions. 3.10.200. But such promotions are valid for only six months and temporary employees "may be discharged at any time by the appointing authority." MCC 3.10.225. The May 19 promotions at issue here were not temporary promotions.

Terry Jones

The list of certified eligible candidates for promotion to law enforcement Lieutenant was established November 30, 1994. It will remain in effect until November 30, 1995. MCC 3.10.180(C). Although Sgt. Terry Jones was ranked fourth on this list, candidates in the first three ranks had already been promoted. Thus, Jones was next in line on a valid promotion list. I conclude that his promotion satisfied the applicable rules.

The next question concerns whether the Sheriff-elect will be legally required to retain Jones at the rank of Lieutenant. The answer is no.

The Personnel Rules provide for a probationary period during which a classified employee "is required to demonstrate fitness for the position to which he/she is appointed by actual performance of the duties of that position." Rule 14.01. The probationary period for an employee appointed to be a Lieutenant in law enforcement is one year. Rule 14.02.

"An employee may have his/her probationary appointment terminated at any time during the probationary period if, in the opinion of the hiring manager, his/her continuance in that position is not in the best interests of the county." Rule 14.05.

"Probationary employees whose appointments are terminated do not have the right to appeal such actions, except for appeals alleging discrimination based on illegal factors." Rule 14.05.

Illegal factors include race, color, sex, age, religion, national origin, political affiliation, and handicap. MCC 3.10.270.

A probationary employee becomes a regular employee unless, prior to completion of the probationary period, the employee is notified in writing that the appointment will be terminated on a specified date prior to the last day of probation. Rule 14.06.

Sergeant Promotions

As already noted, the Sergeants' list applicable to this situation was established December 28, 1993. Under MCC 3.10.180(C), the list remained in effect until December 28, 1994. On May 19, 1995, when Fitz, Whalen, McNelly and Blackman were promoted, the list had long since expired.

Under the Code, a promotion list can be extended by approval of Employee Services. As noted earlier, a request to extend the Sergeants' list was made by the Acting Sheriff, but this happened several hours after the May 19 promotions.

Under MCC 3.10.180(E), a list can be extended upon a hiring manager's request, "whenever sufficient certified candidates exist." I understand from checking with Employee Services that promotion lists have been extended prior to and even after their expiration. (In the latter case, the action would be more accurately called a renewal rather than an extension.)

There is no express Code authority for the renewal/extension of an expired list. However, given that this has been County practice, and that the Code does not expressly prevent the practice, it is unlikely a court would find fault with it. I am not aware, however, of instances where an expired list has been renewed/extended so as to validate promotions that were made before the renewal/extension.

In my opinion, the renewal/extension of the Sergeants' list late in the day on May 19, even if approved at that time or thereafter,³ would not validate the May 19 promotions. This is because no valid list existed or was in effect when the promotions were made.

Rule 13.01 specifies that "[n]o person shall be appointed or promoted to a position in the classified service unless certified as eligible. . . ." Certification is expressed by inclusion on a valid, i.e. unexpired, list. Once the list expires, there is no longer a pool of "certified" candidates. See Warmus v. City of Seattle, 97 P2d 1095 (1940) (attempt to appoint a candidate from an expired list was invalid); see also State ex rel Longman v. Kachelmacher, 96 NW2d 542 (Minn. 1959); Tanzosh v. New York City Civil Service Comm., 407 NYS2d 638 (NY 1978) (once list expires appointment rights also expire).

My conclusion that the May 19 promotions violated Rule 13.01 does not mean, however, that the promotions cannot be remade. Acting Sheriff Bunnell has asked to have the Sergeants' list extended. I understand that extension requests are routinely approved by Employee Services, and in a few cases the requests have post-dated expiration of the list. A court would probably defer to this County practice of Code interpretation/application. Thus, I conclude the list can probably be renewed/extended by Employee

Sheriff-elect Dan Noelle
May 26, 1995
Page 6

Services, followed by re-execution of the promotions in question by the Acting Sheriff (during his tenure).

The final question is whether Sheriff-elect Noelle will be legally bound by the promotions if they are remade in accord with proper procedure. The answer is no, for the same reason that the new Sheriff will not be bound to retain Terry Jones at the Lieutenant rank.

cc Acting Sheriff John Bunnell
Chief Deputy Tom Slyter
Curtis Smith, Employee Services Director

F:\DATA\COUNSEL\WPDATA\WINE\591SJN.OPN\mw

Accommodation of Handicapped Applicants

The Personnel Officer may modify the administration of an examination to accommodate a handicapped applicant who is regarded as having a physical or mental impairment which limits one or more major life activities.

Inability to Appear for Examination

In the event an applicant fails to appear at the designated time and place for an examination, the applicant must forego the competition on that examination. Where circumstances warrant, the Personnel Officer may authorize the administration of make-up examinations. For examinations that involve the use of special equipment, group exercises or the services of expert raters, make-up examinations will not be allowed because of the impossibility of duplicating the exam process. The Personnel Officer may establish and certify the eligible list prior to the administration of make-up examinations.

Late Arrivals to Examinations

The proctor of an examination is authorized to decide whether applicants who arrive late may be admitted to the examination, based upon the nature of the examination being administered.

Improper Conduct

Where improper conduct on the part of an applicant is observed by the proctor, the proctor may disqualify the applicant from further competition.

Integrity of Examinations

The Personnel Officer shall maintain examinations in a secure manner in order to prevent persons from gaining an unfair advantage in the examination process.

10.09 DURATION OF ELIGIBLE LISTS

Promotional lists shall normally expire after one (1) year; open-competitive lists shall normally expire after six (6) months.

Abolishing Lists

The Personnel Officer may abolish eligible lists prior to their normal expiration date, in the following cases:

- 1) All candidates have been interviewed and have been found unacceptable for documented, job related reasons;
- 2) The list was illegally constituted as determined by the Personnel Officer; or
- 3) The list is comprised of fewer than five (5) candidates for each vacancy.

When a list is abolished, the Personnel Officer shall so notify any applicants remaining on the list.

Extending Lists

The Personnel Officer may extend the duration of eligible lists, with the consent of the hiring manager, whenever sufficient candidates exist. Each such extension shall be effective for a period of six (6) months, unless abolished prior to that time under the rules for abolishing lists.

10.10 REVIEW OF EXAMINATIONSRequests for Review

Requests for review of examination material must be submitted not later than thirty (30) days after the establishment of the eligibility list resulting from the exam. If errors are found, the Personnel Officer shall correct any ratings which are affected.

Objective Examinations

Objective examinations are examinations that have answers which are clearly defined as right or wrong, e.g., multiple choice, true/false varieties. Review of objective examination materials will not be allowed in circumstances where the Personnel Officer has determined that such review might reduce the usefulness of examination materials or violate an agreement entered into with a test publisher, test distributor, or consultant.

Applicants who wish to challenge the appropriateness of any questions or answers on an objective examination may review a "Keyed" copy of the examination. A challenge to the appropriateness of examination materials must occur before applicants review their answers to specific questions.

Applicants who wish to view their answer sheets to confirm the fact that they have received full credit for correct answers may compare their answer sheets with a "Keyed" answer sheet without questions. Prior to seeing their own answers, applicants shall be advised that they have waived the right to challenge the appropriateness of any question.

Evaluation by Experts

Evaluation by experts occurs when the correct response cannot be clearly defined and ratings are based on the judgement of subject matter experts. The ratings assigned by such experts may be appealed only by alleging discrimination based on race, sex, religion, age, national origin, marital status, sexual orientation or handicap. When the Personnel Officer determines that discrimination based on an illegal factor has occurred, ratings of the challenged rater shall not be included in the makeup of the final scores for applicants so affected. In no instance shall the comments or ratings by expert raters be changed nor shall anyone substitute his/her judgement regarding the qualifications of an applicant for that of the rater.

10.11 RETENTION

Examination records will be retained by the Personnel Officer for a minimum of six (6) years.



MULTNOMAH COUNTY OREGON

BEVERLY STEIN
COUNTY CHAIR

EMPLOYEE SERVICES
FINANCE
LABOR RELATIONS
PLANNING & BUDGET
RISK MANAGEMENT

(503) 248-5015
(503) 248-3312
(503) 248-5135
(503) 248-3883
(503) 248-3797

(503) 248-5170 TDD

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

MEMORANDUM

TO: James A. Gerhardt
Robert O'Donnell
Scott Rayfield

FROM: Susan Ayers, Executive Secretary
Merit System Civil Service Council

DATE: September 25, 1995

SUBJECT: MEETING AGENDA

Attached is the revised agenda for the meeting of the Merit System Civil Service Council at which your request for an investigation will be heard. Also please note the change of location.

Please let me know if you have any questions.

Attachments



MULTNOMAH COUNTY OREGON

BEVERLY STEIN
COUNTY CHAIR

EMPLOYEE SERVICES
FINANCE
LABOR RELATIONS
PLANNING & BUDGET
RISK MANAGEMENT

(503) 248-5015
(503) 248-3312
(503) 248-5135
(503) 248-3883
(503) 248-3797

(503) 248-5170 TDD

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

MEMORANDUM

TO: James A. Gerhardt
Robert O'Donnell
Scott Rayfield
S. Ayers

FROM: Susan Ayers, Executive Secretary
Merit System Civil Service Council

DATE: August 23, 1995

SUBJECT: MEETING DATE

Attached is the agenda for the meeting of the Merit System Civil Service Council at which your request for an investigation will be heard. Also attached, for your general information, is a copy of the Personnel Rules

Please let me know if you have any questions.

Attachments

Rec'd 8/15/95

August 11, 1995

The Merit System Council
Attention Ms. Susan Ayers
1220 Southwest Fifth
Portland, Oregon 97204

Dear Council:

We are writing this letter to request an investigation of the process used in the recent hiring of the program administrator who supervises the intensive case management unit in the Multnomah County Department of Community Corrections. We believe such an investigation will show that a number of current employees within the department would qualify for and apply for this position if given an opportunity to do so. As the information below demonstrates, all current employees were not given an opportunity to apply for this promotional position. Therefore, we believe the rights of some Department of Community Corrections employees may have been violated by the process used when the latest vacancy was filled.


In June of 1993 a promotional job announcement for a program administrator position was published, and a hiring list was developed. In the announcement there was a statement indicating that the list would expire after one year. Therefore, the program administrator hiring list developed in June, 1993, would have expired in June of 1994. When we contacted the Multnomah County personnel office, however, we were informed that the program administrator list which was developed in 1993 was extended in July of this year at the request of the Department of Community Corrections. We understand that hiring lists normally last for a one-year period as indicated on the 1993 job announcement. We also are aware that occasionally a current hiring list is extended for an additional period of time. However, in this case it appears that the 1993 eligibility list did expire in 1994. Then, more than a year after the expiration date, the old list was extended for an additional period.


Our concern is that at least two groups of employees were not given an opportunity to apply for this promotional position. The first group is employees who chose not to apply in 1993 when the original list was developed but would have done so now. The other group includes all of the new employees hired or transferred since that original announcement.


If an investigation finds that standard procedures were not followed or that any present employee's rights were affected by the recent hiring process, we ask the Council to take appropriate action to remedy this situation so that any interested employee could apply for this promotional opportunity.

Thank you in advance for your consideration of this matter.

Very truly yours,


James A. Gerhardt
248-3680 Ext. 239


Robert O'Donnell
248-3136


Scott Rayfield
248-3710

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF MULTNOMAH

JAMES GERHARDT

Petitioner

v.

MULTNOMAH COUNTY

Respondent.

NOTICE OF APPEAL AND REQUEST
FOR HEARING

Pursuant to Personnel Rule 23.04, MCC 3.10.430,
Respondent Multnomah County appeals the decision of the Civil
Service Commission in the above-captioned matter, made on October
3, 1995 and requests a hearing on all issues of law and fact.

Dated this 12th day of October, 1995.

Respectfully submitted,
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Steven J. Nemirow
Steven J. Nemirow, OSB #86254
Assistant County Counsel
Of Attorneys for Respondent
Multnomah County

F:\DATA\COUNSEL\WPDATA\TWELVE\GERHARDT\APPEAL.NOT\SIN

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1995 OCT 12 PM 3:13

cc: ANNA KANWIT

10/19/95
MULTNOMAH COUNTY COUNSEL
1120 S.W. Fifth Avenue, Suite 1530
P.O. Box 849
Portland, Oregon 97207-0849
(503) 248-3138

10/19/95 MR GERHARDT NOTIFIED

OF 10/31/95 HEARING
10/23/95 BCC & STEVE NEMIROW NOTIFIED OF 11/21/95 HEARING
10/23/95 VOICE MAIL TO MR GERHARDT RE 11/21/95 HEARING & ANNA KANWIT & S. AYERS

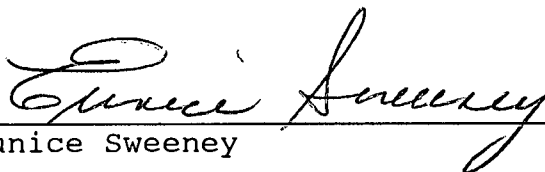
CERTIFICATE OF PERSONAL SERVICE

I do hereby certify that on this 12th day of October, 1995, I personally delivered the original and one copy of the foregoing Notice of Appeal and Request for Hearing, as follows:

DEBORAH BOGSTAD
OFFICE OF THE BOARD CLERK
1120 SW FIFTH ROOM 1510
PORTLAND OR 97204

and caused to be delivered by interoffice mail a copy of the foregoing Notice of Appeal and Request for Hearing, as follows:

JAMES GERHARDT
MULTNOMAH COUNTY INTEROFFICE MAIL
245/MTVO


Eunice Sweeney