

630612.1

CIVIL SERVICE: Eligibility lists.

POLICEMEN: Civil service.

CITIES: Police and firemen.

A person retiring within one year is eligible to take a promotional examination for a position above the rank of patrolman.

Civil service commission has a duty to establish an eligible list within a reasonable time after a vacancy occurs in a position in the service which the appointing power intends to fill and for which no eligible list exists.

No. 4158

June 12, 1963.

Honorable James H. Karoub
State Representative
The Capitol
Lansing, Michigan

You recently requested my opinion on certain questions relating to Act 78, P.A. 1935, as amended,¹ which provides for the creation of a civil service system for fire and/or police departments.

Your questions have been restated as follows:

1. Is a person retiring within one year eligible to take a promotional examination for a position above the rank of patrolman?
2. Must there be an eligible list at all times? If not, how much time may elapse after the eligible list expires before a new list must be established.

With regard to the first question, section 12(b) of Act 78 sets forth the eligibility requirements of the applicant to take the promotional examination for a position above the rank of patrolman. These requirements do not include any relating to the length of time before the applicant is eligible for retirement. In 1958 the Attorney General in Opinion No. 3305² stated:

“Your second question is whether the Civil Service Commission may, by rule and regulation, impose other eligibility requirements upon applicants for the competitive tests or examinations in addition to the requirements of time in rank and departmental service prescribed by the legislature in Section 12(b) of Act 78.

“Subsection (b) deals with competitive promotional examinations for the purpose of establishing a register to be used in filling vacancies in positions in the fire and police departments above the rank of fireman or patrolman. The position of each applicant on the promotional register is to be determined by the competitive tests or examinations. The eligibility requirements of the applicant to take the test or examination are prescribed by the statute as years in rank

¹ C.L. 1948 § 38.501 et seq; M.S.A. 1958 Rev. Vol. § 5.3351 et seq. Section 11 was last amended by Act No. 162, P.A. 1956, and Section 12 by Act No. 15, P.A. 1951, which amendments were without significance as to the issues here presented.

² O.A.G. 1957-58, Vol. II, p. 283.

and in departmental service. No other eligibility requirement is imposed or authorized and the Civil Service Commission is without authority to add additional requirements, such as age, since the legislature has not granted authority to the Commission to impose additional conditions of eligibility."

It follows that the answer to your first question is "yes."

In reply to the first part of question 2, that is, must there be an eligible list at all times, it is clear that the answer is "no." Section 11(c) of Act 78 states:

"Whenever there are urgent reasons for filling a vacancy in any position in the fire or police department *and there is no list of persons eligible for appointment* the appointing officer may nominate a person to the civil service commission for a non-competitive examination; and if such nominee shall be certified by the said commission as qualified, after such non-competitive examination, he may be appointed temporarily, to fill such vacancy until a selection and appointment can be made after a competitive examination, and in the manner prescribed in this act; but such temporary appointment shall not continue for a longer period than 3 months, nor shall successive temporary appointments be made to the same position, under this provision. In the event of an emergency due to a war in which our country is involved, the civil service commission may make temporary appointments to fill vacancies, when appointments cannot be made under the provisions of this act, such appointments to be temporary, and only during hostilities, and 6 months thereafter." (Emphasis added)

A plain reading of the statute is persuasive of the conclusion that the legislature has not imposed a duty upon the civil service commission to provide an eligible list for a position at all times. On the contrary, the legislature has recognized that no eligible list may exist and has provided a procedure for filling a vacancy under such circumstances.

In Opinion No. 3292³ the Attorney General said:

"* * * it is one of the functions of the civil service commission to maintain lists of eligible persons for use in the usual course of filling vacancies. Your attention is directed to Section 11(c) of said Act 78, which provides for a method of filling vacancies in the absence of a list of eligible persons. This section also permits temporary appointments in the event of an emergency due to war in which our country is involved."

Turning now to the last part of question 2, that is, how much time may elapse after the eligible list expires before a new list must be established, I point out that the civil service commission's duty to establish an eligible list is not dependent on the date upon which the last preceding list expires. Rather, its duty to establish a list arises when a vacancy occurs in a position in the service which the appointing power wishes to fill and for which no eligible list exists. Thus, when the appointing officer in accordance with

³ O.A.G. 1957-58, Vol. II, p. 306.

section 11(b) notifies the civil service commission of a vacancy in the service which he desires to fill and requests the certification of eligibles, the civil service commission is under a duty to forthwith certify from the eligible list the name of the person who received the highest average at preceding examinations held under the provisions of this act within a period of two years next preceding the time of such appointment. If no eligible list exists, then the civil service commission must issue notice of an examination to be given for the vacant position in accordance with section 12(a) so that an eligible list may be established and certified to the appointing officer.⁴

Since Act 78 does not specify how long the civil service commission has after receiving the notice and request from the appointing officer in which to establish a list, if none exists, it is my opinion that the civil service commission has a reasonable time after receiving the notice and request from the appointing officer in which to establish the eligible list. In determining what is a reasonable time, consideration must be given to the fact that section 12(a) requires that notice of an examination be given two weeks preceding the examination, and also that a temporary appointment made in accordance with section 11(c) cannot continue for a longer period than 3 months.

FRANK J. KELLEY,
Attorney General.

630617.3

MICHIGAN HIGHER EDUCATION AUTHORITY: Power to charge fees.

The Michigan Higher Education Authority is without power to impose fees upon students securing loans from financial institutions, which are guaranteed by the Authority under the provisions of Act 77, P.A. 1960.

No. 4132

June 17, 1963.

Hon. Lynn M. Bartlett, Chairman
Michigan Higher Education Authority
State Capitol
Lansing, Michigan

You have requested my opinion on the following question:

Does the Michigan Higher Education Assistance Authority have the power to charge a fee to college students receiving guaranteed loans made possible by Act 77, P.A. 1960?

The legislature, by means of the provisions of Act 77, P.A. 1960, M.S.A. 1961 Cum. Supp. § 15.2097(1), has created the nonprofit authority to be known as the Michigan Higher Education Assistance Authority.

Section 7 of the act provides as follows:

"The authority may:

(a) Guarantee not more than 80% of any loan of money, upon such terms and conditions as the authority shall prescribe, to persons

⁴ See also O.A.G. No. 2948, 1957-58, Vol. I, p. 124.