

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 *
 JAMES L. GREENE, *
 *
 Appellant, *
 *
 v. *
 *
 DEPARTMENT OF ADMINISTRATION *
 and BUREAU OF PERSONNEL, *
 *
 Respondent. *
 *
 Case No. 76-264 *
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INTERIM
DECISION

NATURE OF THE CASE

This is an appeal of what appears to be the voiding of a register containing appellant's name. The respondents have moved to dismiss the Division of Personnel as a party and to dismiss the appeal for lack of jurisdiction. This interim decision will address these motions. There has been no hearing on this case and the following findings are based on matter in the file which appears to be uncontested and these findings are limited to the purpose of deciding these motions.

FINDING OF FACT

1. The appeal letter in this case was dated December 23, 1976, and was filed the same date with the State Personnel Board.
2. The appeal letter purports to appeal a decision contained in a letter dated December 10, 1976, from the DOA Personnel Manager to the appellant voiding a register for a career executive position.

CONCLUSIONS OF LAW

1. Pursuant to §129(5), Chapter 196, Laws of 1977, this case must be decided under the law as it existed prior to the effective date of

Chapter 196, Laws of 1977.

2. The authority to void a career executive register is vested in the Director of the Division of Personnel.

3. Action taken to void a register by an appointing authority is appealable directly to the Personnel Board pursuant to §16.03(2), Stats. (1975).

OPINION

The respondents argue that the decision not to use the register was made by the appointing authority (DOA), that the Bureau of Personnel was not involved in this decision, and the Personnel Board had no jurisdiction under the then-existing law over post-certification actions of the appointing authority.

The problem perceived by the Commission with this argument is that authority to void such a register seems to be vested in the Director of the Bureau of Personnel. If DOA had been delegated the authority to handle this selection process by the Director, then the act of voiding the register would have been an action of the Director on a delegated basis, and regardless of whether DOA felt it was acting as the appointing authority or on behalf of the Director in so doing. As a delegated action of the Director it would have been appealable pursuant to §16.03(2), Stats. (1975).

Chapter 30 of the Wisconsin Administrative Code does not state explicitly who has the authority to void a career executive register. However, §Pers. 30.01(2) provides:

"The career executive program is an integral part of the civil service system of the state of Wisconsin and subject to all statutes and the rules of the Director, State Bureau of Personnel as published in the

Wis. Adm. Code. In accordance with the provisions of section 16.19, Wis. stats. where other statutes and rules conflict with section 16.19, Wis. Stats., and the rules promulgated to effect such statute, the provisions of section 16.19, Wis. Stats., shall take precedence."

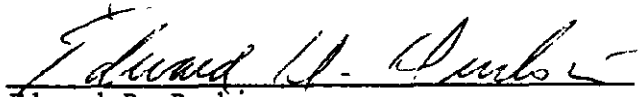
Under general civil service rules, control of registers is vested in the Director. See §16.20, Stats. (1975), and §Pers. 11.01(1), WAC,: The Director shall establish and maintain employment registers...." This includes the power to void registers. See Pulliam & Rose v. Knoll, Wis. Pers. Bd. No. 75-51 (7/22/77). This authority is not inconsistent with that contained in chapter Pers. 30. The Director is responsible for career executive examination, §Pers. 30.04(1); for requiring additional examinations of applicants to maintain their eligibility on registers, §Pers. 30.04(2); for reactivating or extending candidates' eligibility on registers, § Pers. 30.04(3); and for certifying additional candidates outside the classified service at the request of the appointing authority accompanied by supporting information, §Pers. 30.05(2). There is nothing in chapter Pers. 30 that would give the appointing authority the authority to void a register or which is inconsistent with the continued vesting of that authority with the Director.

While the Commission believes it must deny the respondents' motions at this time, it also is aware that it may not be cognizant of all the relevant facts. It might be, for example, that DOA never had been delegated by the Director authority for the selection process in question, although on the basis of the documents in the file it appears that it was. Therefore, the denial of these motions will be without prejudice to renewal by the respondents if they have additional facts.

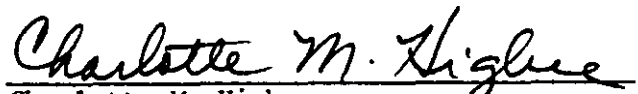
ORDER

The motions to dismiss the Division of Personnel as a party and to dismiss the appeal for lack of subject matter jurisdiction are denied without prejudice to renewal on the basis of additional material factual matters.

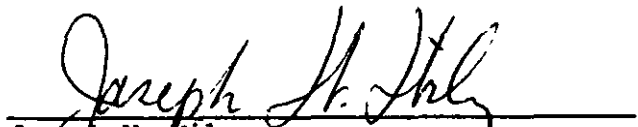
Dated: 10/27, 1978


Edward D. Durkin
Commissioner

Dated: Oct. 27, 1978


Charlotte M. Higbee
Commissioner

Dated: Oct 27, 1978


Joseph W. Wiley
Chairperson