

position. He further states that within a few days he discussed this situation with the personnel specialist handling the exam and was told that work outside the requisite official civil service job classification would not be considered.

The appellant states that a John Meyer was appointed to the position on February 24, 1978. The appellant made inquiry and eventually learned that Mr. Meyer had been accepted for the exam on the basis of certain experience in the private sector.

On page 4 of his appeal document the appellant requests an investigation of four matters. He then states:

"I am further requesting that Mr. John Meyer be removed from the Fiscal Supervisor 3 position and the position be filled by one of the remaining candidates; or that all appointments will be voided and new examinations be given to all employees meeting or exceeding Mr. Meyer's qualifications.

The issue is not that the highest scoring candidate was not appointed to one of the three positions, but that a person not meeting the minimum requirements was appointed.

In the opinion of the Commission the question of Mr. Meyer's appointment and the more specific question of whether it was appropriate to have admitted him to the exam is properly before the Commission pursuant to §230.44(1)(a) or (b) and (d), Wis. Stats. (1977).

With respect to the timeliness of the appeal §230.44(3), Stats. (1977), requires that the appeal be filed "within 30 days after the effective date of the action, or within 30 days after the appellant is notified of the action, whichever is later" The appeal was timely with respect to the effective date of the appointment. Looking at the question of Mr. Meyer's admission to the exam, the appellant indicates that he questioned the personnel specialists whether or not Mr. Meyer had been

accepted prior to the appointment, but that the information was refused on the grounds of confidentiality. Therefore, he would not have had notice of Mr. Meyer's acceptance for examination until Mr. Meyer's appointment.

As to the question of the appellant's standing, see Kaeske v. DHSS, Wis. Pers. Commn. No. 78-18-PC (11/22/78). Sections 230.44(1)(a)(b), and (d), Stats. (1977), do not contain any criteria for standing. Therefore, reference must be made to Chapter 227 of the statutes and its interpretation by the supreme court. The appellant here is supervised by an individual whose appointment and qualifications he challenges and these circumstances provide a sufficient basis for standing.

Since the question of Mr. Meyer's admission to the exam involves a decision of the administrator on either a direct or a delegated basis, the administrator, Division of Personnel, is an appropriate party-respondent.

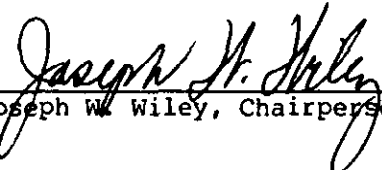
As to those matters as to which appellant requests an investigation, the Commission has no investigatory power. This power is vested in the "new" Personnel Board, see §230.07(4), Stats. (1977). However, looking at these requests as possible appeals, the first ("How was John Meyer hired") is tied in with, or is a restatement of, the main appeal discussed above and does not need to be dealt with separately. The second ("How was Gloria Grandberg hired") is clearly untimely. The third ("Who went along with Mr. Brown's request to leave the experience requirements out in the job announcement") and the fourth ("Under what circumstances did Mr. Dzikowski suddenly withdraw as candidate") are not separate appeals but may or may not be material evidence with respect to the main issue.

ORDER

The respondent's objections to the timeliness of the appeal and the appellant's standing as set forth in the prehearing conference report dated September 1, 1978, are overruled. The respondent's objections to the Commission's proceeding on an investigatory basis contained in the same report are sustained. This matter will be scheduled for hearing as a class 3 proceeding, pursuant to §230.44(1)(a)(b), and (d), Wis. Stats. The issues for hearing will be whether the appointment of John Meyer to the position of Fiscal Supervisor 3 - Chief General Accounting Section was illegal or an abuse of discretion, and whether it involved obstruction or falsification as enumerated in §230.43(1), Stats. (1977), and whether Mr. Meyer was properly admitted to the examination for said position in terms of his training and experience qualifications.

Dated: Dec 20, 1978.


STATE PERSONNEL COMMISSION



Joseph W. Wiley, Chairperson



Edward D. Durkin, Commissioner



Charlotte M. Higbee, Commissioner