

STATE OF WISCONSIN

PERSONNEL COMMISSION

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VERNE KNOLL,

Appellant,

v. *

PERSONNEL BOARD,

Respondent.

Case No. 79-103-PC

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OPINION
AND
ORDER

NATURE OF THE CASE

This case arose out of an appeal filed under §230.44(1)(a), Stats. The appellant alleges that the State Personnel Board violated §§230.16(4)(5) and 230.20(2), Stats. in its conduct of the examination and certification of a register for the position of administrator of the Division of Personnel, pursuant to §15.173(1)(b), Stats. The Board has moved to dismiss the appeal on the ground that the Personnel Commission does not have subject-matter jurisdiction.

The facts in this matter are undisputed as they relate to the jurisdictional issue.

In 1978, a vacancy was announced for the position of administrator of the Division of Personnel. Under §15.173(1)(b), Stats., the Personnel Board is required to "prepare and conduct an examination for the position of administrator according to the requirements for classified positions under Subchapter II of Chapter 230." The administrator is "nominated by the governor, and with the advice and consent of the senate appointed for a 5-year term, under the unclassified service from a register

certified by the Personnel Board." Section 15.173(1)(b), Stats.

Verne Knoll applied for the position of administrator. He successfully completed preliminary screening requirements and he was one of 18 persons who were orally interviewed by the Board. In the last week of March 1979, Knoll received formal notice that he was not one of the five persons whose names were certified to the Governor.

On April 24, 1979, Knoll filed an appeal with the Personnel Commission alleging that the Board violated state civil service law.

A prehearing conference on the appeal was conducted by the Commission on May 14, 1979. The Board moved to dismiss the appeal on the ground that the Commission has no jurisdiction to hear Knoll's appeal. That is the only issue before the Commission at this time.

CONCLUSIONS OF LAW

1. The primary source used in construing a statute is the language of the statute itself. Wis. Environmental Decade Inc. v. PSC, 81 Wis. 2d 344, 350 (1978).

2. Any reasonable doubt of the existence of an implied power of an administrative body should be resolved against the existence of such authority. State ex rel Farrel v. Schubert, 52 Wis. 2d 351, 357, (1971) and State v. DILHR, 77 Wis. 2d 126 136 (1977).

3. The burden of proof is on the appellant. Van Laanen v. Wettengel and Schmidt, 74-17, 1/2/75.

4. The appellant has not carried his burden of proof. He has not established that the Personnel Commission has jurisdiction to hear this appeal in the absence of either express language in the relevant statutes

or any power reasonably implied therefrom.

5. The motion of the Personnel Board to dismiss this appeal should be granted.

OPINION

The appellant contends that the Commission has jurisdiction to hear this appeal under §§230.44(1)(a), and 230.45(1)(a), Stats., arguing that the word administrator should be liberally construed in these circumstances to include the Personnel Board. Appellant cites §230.02, Stats., to the effect that the statutes applicable to the department (DER) shall be construed liberally in aid of the purposes declared in §230.01, Stats.

Section 15.173(1)(b), Stats., provides:

The administrator of the division of Personnel in the department of employment relations shall be nominated by the governor, and with the advice and consent of the senate appointed for a 5-year term, under the unclassified service from a register certified by the personnel board. The personnel board shall prepare and conduct an examination for the position of administrator according to the requirements for classified positions under subch. II of ch. 230.

Section 230.44(1), Stats., provides:

APPEALABLE ACTIONS AND STEPS. (a) Decision of administrator. Appeal of a personnel decision of the administrator, including but not limited to a refusal to examine an applicant or certify an eligible under §230.17, orders by the administrator under §230.05(4) and actions and decision of the administrator under §230.09, shall be to the commission.

Section 230.45(1)(a), Stats., provides:

The commission shall:

(a) conduct hearings on appeals under §230.44.

The cardinal rule in interpreting statutes is that the purpose of the whole act is to be sought and is favored over a

construction which will defeat the manifest object of the act. Student Asso., U. of Wis. - Milw. v. Baum, 74 Wis. 2d 283, 295; 2A Sutherland Statutory Construction, Section 46.05, pp. 56-7, 4th edit., 1973.

In construing a statute, the primary source used is the language of the statute itself. Nekoosa-Edwards Paper Co. v. Public Service Commission, 8 Wis. 2d 582, 591, 99 N.W. 2d 821 (1959). When a statute is ambiguous, it is permissible to look to the legislative intent, which is to be found in the language of the statute in relation to its scope, history, context, subject matter, and object intended to be accomplished. State ex rel. Arnold v. County Court, 51 Wis. 2d 434, 439-40, 187 N.W. 2d 354 (1977). A statute is ambiguous if, looking at the language of the statute, a well informed person could have become confused. The ambiguity, however, may arise from the interaction of separate statutes. Cziacki v. Czaicki, 72 Wis. 2d 9, 14, 242 N.W. 2d 214 (1976).

Wis. Environmental Decade, Inc. v. PSC, 81 Wis. 2d 344, 350 (1978).

As in Wis. Environmental Decade, all of Chapter 230 Stats., together with §15.173(1)(b), should be considered in determining whether or not §230.45(1)(a) is ambiguous. The Commission finds neither confusion nor ambiguity in reading these statutes. As appellant points out, §15.173(1)(b) specifically provides that the Personnel Board shall act according to the requirements for classified positions under Subchapter II of Chapter 230 as to how it should proceed in examining candidates for the unclassified position of administrator.

However, the absence in either Chapter 15 or Chapter 230 of equally explicit language providing for appeals from the personnel decisions of the Board or authorizing the Commission to hear such appeals does not render the meaning of the statute ambiguous; it merely evidences a failure to provide for such an appeal. Absent explicit language making the provisions of §230.44(1)(a), Stats., applicable

to this decision of the Personnel Board, any implied power of the Commission to hear such an appeal "must be such as is by fair implication and intendment incident to and included in the authority expressly conferred." State ex rel Farrell v. Schubert, 52 Wis. 2d 351, 358 (1971). Any reasonable doubt of the existence of an implied power of an administrative body should be resolved against the exercise of such authority. Ibid. See also: State (DOA) v. DELNR Dept., 77 Wis. 2d 126, 136 (1977); Racine Fire and Police Comm. v. Stanfield, 70 Wis. 2d 395, 399 (1975).

In the instant case the Commission concludes that it is reasonably doubtful that its authority to hear appeals from this decision of the Personnel Board is incident to and included in the authority expressly conferred by §230.45, Stats.

Appellant cites the report of the Study Commission whose recommendations became the basis of the Civil Service Reform Act, Chapter 230 Stats., 1977, in support of legislative intent to provide such an appeal. No such intention is manifest from the reading of the study commission's recommendations. In fact, the appointment process for the administrator of the Division of Merit Employment, as the Division of Personnel was denominated by the study commission, is substantially different from the one ultimately specified by the Legislature in §15.173(1)(b); and there is neither an express recommendation nor any implication of appeal rights or procedures. Wisconsin Civil Service, p. 15.

The Commission concurs with the respondent's argument in its reply brief, p. 6:

What Report does make clear is that the purpose of creating a separate Board and Commission was to establish

'an appeals structure that is distinct from rule-making and management structures' (Report, p. 17). There is no indication in the Report that there was any intent to make the new Board more accountable for its §15.173, Stats., functions. Since it must be presumed that the legislature was aware prior to enactment of the Civil Service Reform Act that there was no civil service appellate remedy from the old Board's actions in the selection of a director, and since the Act does not expressly make the comparable actions of the new Board subject to appeal, §§16.174 and 230.44(1), Stats., it must be concluded that the exercise of its §15.173, Stats., responsibilities fall outside the appellate jurisdiction of the Personnel Commission."

As to the appellant's argument that §230.44(1)(a), Stats., whether ambiguous or not, must be construed to authorize his appeal because otherwise he would be without a remedy to contest the Board's actions, the Commission rejects such reasoning. In DHSS v. State Personnel Board, 84 Wis. 2d 675 the court held that the old Personnel Board did not have jurisdiction to hear the appeal of an employee who had worked for nearly three years in another state agency prior to promotion. Pertinent to the instant case is the court's comment on page 682-3:

We agree that the statutory interpretation discussed here offers no civil service safeguard to an employee who accepts an inter-departmental promotion. Nevertheless, the specific statutory mandate is unambiguous and more general policy considerations can not control.

ORDER

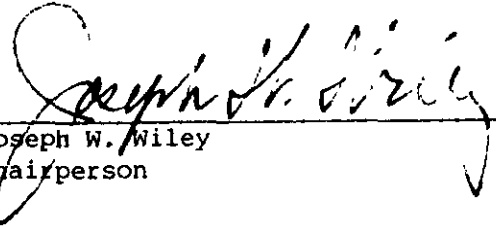
The respondent's motion to dismiss this appeal on the ground
that the Personnel Commission does not have subject-matter jurisdic-
tion is granted.

Dated: _____

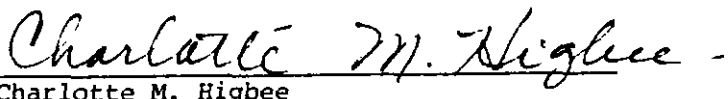
Oct 12

, 1979.

STATE PERSONNEL COMMISSION



Joseph W. Wiley
Chairperson



Charlotte M. Higbee
Commissioner

CMH:jmg