

STATE OF WISCONSIN

PERSONNEL COMMISSION

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BARRY J. STERN,

Appellant,

v.

Administrator, DIVISION OF MERIT  
RECRUITMENT AND SELECTION,

Respondent.

Case No. 89-0144-PC

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DECISION  
AND  
ORDER

NATURE OF THE CASE

This is an appeal pursuant to §230.44(1)(a), Stats., with respect to an examination process. The parties agreed to the following statement of issue for hearing:

Whether respondent's action in announcing the vacancy and rating the examination results for the Attorney 14 - Staff Attorney - Office of the Commissioner of Securities' position was in violation of §230.16(4) or (5).

FINDINGS OF FACT

1. The following announcement (Appellant's Exhibit 1) appeared in the July 17, 1989, Current Opportunities Bulletin (COB):

Attorney 14 - Staff Attorney - Madison (Area 8)  
Job Announcement Code: 90563

Office of the Commissioner of Securities; Division of Legal Services; Madison. Starting salary is \$25,500.00 or higher depending upon qualifications and experience. Ensure that violations of Wisconsin's Uniform Securities and Franchise Investment Laws (Chapters 551, 552 and 553) are addressed by coordinating the legal aspects of staff investigations; preparing cases for civil or criminal proceedings or administrative action; serving as Division Staff Attorney and performing other related duties. Graduation from an accredited law school and admittance upon motion to the Wisconsin Bar is required. Apply with the Application for State Employment form (DER-MRS-38) and resume, describing your qualifications, to Stephanie Thorn; Office

of the Commissioner of Securities; Division of Administration, Policy and Budget; 111 West Wilson Street; P.O. Box 1768; Madison, WI 53701. NOTE: To obtain the Application for State Employment form, telephone (608) 266-3431. This position is in a certified bargaining unit. Future vacancies may be filled from this register. Deadline date for receipt of applications and resume is August 17.

2. Appellant submitted an application for this examination with an attached resume prior to the deadline stated in the announcement.

3. The Office of Commissioner of Securities (OCS) subsequently advised appellant by an undated form letter (Appellant's Exhibit 2) that he had "been selected to participate further in our selection process ...," which involved the completion of a questionnaire that elicited information concerning the applicant's background, particularly as it related to securities and franchise law, and civil or criminal litigation. Appellant completed and submitted this questionnaire.

4. Appellant's questionnaire was graded and he did not achieve a passing score or attain a rank on the register that was established. Twenty-nine of the 49 people who took the exam passed it and were placed on the register. The top six candidates ultimately were certified for the vacancy at OCS, and one of these was appointed.

5. Appellant at all material times was a graduate of an accredited law school and admitted to the Wisconsin Bar.

6. Appellant's answers to the questionnaire reflected, in summary, that,

a. Although he did "not have any formal education, training or work experience in, or an extensive knowledge of, the field of finance per se ...," he had developed an interest in finance through his work as an attorney at the Legislative Reference Bureau (LRB), which included work involving financial matters;

b. He had extensive experience in administrative rule-making and hearing processes;

c. He did not have any formal training or work experience in the areas of corporate securities and franchise law;

d. He had substantial experience in the area of civil litigation.

7. There is a possibility that the register established by this examination will be used to fill other vacancies pursuant to §ER-Pers 12.04(2), Wis. Adm. Code.

#### CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.44(1)(a), Stats.

2. The appellant has the burden of proving respondent's actions announcing and rating the examination violated §230.16(4) or (5), Stats.

3. Appellant has not sustained his burden and it is concluded that respondent's actions announcing and rating the exam did not violate §230.16(4) or (5), Stats.

#### DISCUSSION

The issue in this case is whether the announcement and the scoring of appellant's exam are in violation of §§230.16(4) or (5), Stats. These subsections provide:

(4) All examinations, including minimum training and experience requirements, for positions in the classified service shall be job-related in compliance with appropriate validation standards and shall be subject to the approval of the administrator. All relevant experience, whether paid or unpaid, shall satisfy experience requirements.

(5) In the interest of sound personnel management, consideration of applicants and service to agencies, the administrator may set a standard for proceeding to subsequent steps in an examination, provided that all applicants are fairly treated and due notice has been given. The standard may be at or above the passing point set by the administrator for any portion of the examination. The administrator shall utilize appropriate scientific techniques and procedures in administering the selection process, in rating the results of examinations and in determining the relative ratings of the competitors.

Appellant contends that because the only minimum training and experience requirements set forth in the announcement were a degree from an accredited law school and admission to the bar, anyone who met these requirements should have been considered qualified for the position and entitled to a comparative ranking vis-a-vis other qualified candidates -- i.e., to be placed on the register with a numerical ranking (e.g., 38th). The Commission cannot agree with appellant. There is nothing in the foregoing statutory language that leads to this result. Nothing in these statutory provisions equates minimum training and experience requirements with the qualifications needed to perform the job. Sections 230.16(4), Stats., requires that "examinations, including minimum training and experience requirements ... shall be job-related ..." (emphasis added) Merely because minimum training and experience requirements must be job-related (as undoubtedly was the case here) does not mean that an applicant who meets these requirements has to be deemed qualified to perform in the position in question. It only means he or she meets the minimum qualifications to be considered further by examination. Graduation from an accredited law school and admission to the bar is an obvious prerequisite to most attorney positions. However, possession of these minimum requirements does not make a person qualified to step in to any legal job in state service.

Appellant further argues that because the announcement did not specify that applicants were required to have certain training or experience

in securities regulation, respondent could not keep him off the register (i.e., could not give him a failing grade on the exam) because of lack of qualifications in securities regulation. Again, this argument distorts the concept of "minimum training and experience requirements ...." There is nothing in §230.16(4) to suggest that this term encompasses more than the base minimum requirements to be considered for the position. There is nothing in the law that requires that the announcement set forth all of the criteria that will be considered in grading the exam.

In a related vein, appellant contends that respondent violated the requirement of §230.16(5) that a standard for proceeding to subsequent steps in the exam may be established "provided that all applicants are treated fairly and due notice has been given." Appellant argues that he was treated unfairly and inadequate notice was provided because the form letter which notified him of the second phase of the exam did not provide notice that certain qualifications in securities regulation law would be needed in order to pass the second phase of the exam.

Appellant's position here suffers from two problems. First, the questionnaire that was described in the form letter was not used to establish "a standard for proceeding to subsequent steps" in the examination. The questionnaire was the last step in the exam process. Candidates who passed were ranked and placed on a register, and were eligible to be considered for appointment. Those who failed, including appellant, were not on the register and were out of the running for further consideration.


Second, even if it were assumed arguendo that the questionnaire in some way constituted "a standard for proceeding to [a] subsequent step" in the examination, the concepts of due notice and fair treatment do not require specific notice that passage of an examination for a position in the OCS

responsible for ensuring "that violations of Wisconsin's Uniform Securities and Franchise Investment Laws (Chapters 551, 552 and 553) are addressed" (announcement, Appellant's Exhibit 1) would require some knowledge of securities law. The form letter was accompanied by the questionnaire which included questions such as "[d]etail your training and work experience in the area of corporate securities and franchise law." It should have been obvious from these and other questions, as well as from the job description, that lack of qualifications in securities regulation law would be a substantial obstacle to a candidate.

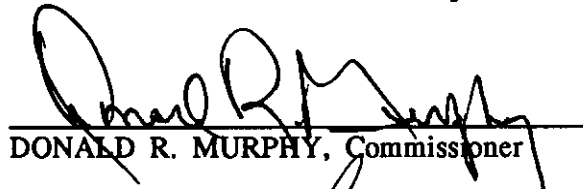
ORDER

Respondent's actions in announcing and rating this examination are affirmed and this appeal is dismissed.

Dated: August 8, 1990      STATE PERSONNEL COMMISSION

  
LAURIE R. McCALLUM, Chairperson

AJT:rcr

  
DONALD R. MURPHY, Commissioner

  
GERALD F. HODDINOTT, Commissioner

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