

EDWARD E. GARVOILLE,

Appellant,

v.

Administrator, DIVISION OF
MERIT RECRUITMENT AND SELECTION,

Respondent.

Case No. 90-0379-PC

DECISION
AND
ORDER

This appeal arises from an examination. The respondent has filed a jurisdictional objection and the parties have filed briefs. The findings of fact set out below appear to be undisputed.

FINDINGS OF FACT

1. The respondent's Wisconsin City and County Testing Service (WCCTS) contracts with various cities and counties to provide testing services.
2. WCCTS contracted with Dane County to provide services in administering the examination for Dane County Employee Relations Manager. WCCTS made the arrangements for the exam site, and provided the facilities and a proctor. The development of exam questions and the selection of the panel members were handled by Dane County staff, not by WCCTS.
3. After the oral exam, WCCTS ranked all the candidates and delivered that ranked list to Dane County.
4. WCCTS did not establish a passing point or provide a civil service examination score.
5. On October 9, 1990, the appellant filed an appeal with the Commission which stated, in part, as follows:

Pursuant to Section 230.44, Wisconsin State Statutes, I am appealing an oral examination administered by the Wisconsin City and County Testing Service (WCCTS), Wisconsin Department of Employment Relations. The exam was for the position of Dane County Employee Relations Manager. This exam was administered on August 23, 1990.

* * *

My appeal concerns this oral exam in terms of its examiner composition, the conduct of the exam and question content. For example, one of the examiners, Dennis Dresang, is a member of the Dane County Civil Service Commission. Since the Employee Relations Manager and I in my current capacity serve as immediate staff to the Civil Service Commission, Mr. Dresang's serving as an examiner for this position is in direct conflict with standard merit system principles. I also have reason to believe that at least Mr. Dresang was prejudiced against me. Additionally, Mr. Dresang and his co-examiner, Hugh Henderson, Jr., have very little, if any, experience in county or municipal personnel management, but they were expected to assess candidates for the highest level personnel management position with Dane County. No opportunity was given to myself or other candidates to object to or strike examiner participation on this board. Giving such opportunity to remove oral board examiners is a standard practice and/or policy of the State, as well as Dane County.

The exam content is also questionable and, in at least one instance, contained invalid terminology. The questions also did not cover a large area of highly important skills, knowledge, and abilities needed in this position.

CONCLUSION OF LAW

The Personnel Commission lacks subject matter jurisdiction over this appeal.

OPINION

The powers and duties of the administrator of the Division of Merit Recruitment and Selection (DMRS) are set forth in §230.05, Stats., and include the following:

- (8) The administrator may provide personnel testing services to nonstate governmental units and may charge for those services.

The Commission's jurisdiction to review actions of DMRS is established in §230.44(1)(a), Stats:

- (a) *Decision made or delegated by administrator.* Appeal of a personnel decision under this subchapter made by the

administrator or by an appointing authority under authority delegated by the administrator under s. 230.05(2).

The immediate issue raised by this appeal is whether §230.44(1)(a), Stats., may serve as a basis for the Commission to review DMRS's conduct in providing "personnel testing services to nonstate governmental units." The Commission concludes that it does not, for the reasons explained below.

On its face, the language of §230.05(8), Stats., appears to simply be a specific grant of authority to the administrator of DMRS to perform a function which would otherwise be outside the administrator's role relative to the state civil service. Absent such a grant of authority, DMRS would be precluded from offering services to nonstate governmental entities for filling positions in the civil services of those entities and from receiving compensation for providing such services.

In the present case, the particular governmental unit involved was Dane County. Pursuant to §59.07(20), Stats., each county board may "[e]stablish a civil service system of selection, tenure and status." The information found in the appellant's letter of appeal indicates that Dane County has established a civil service commission under §63.01(1), Stats., thereby making the provisions of §§63.05 and .08, Stats., applicable when filling classified civil service positions for Dane County. The authority to investigate possible violations of the county's civil service system rests with the county's civil service commission. Pursuant to §63.12(1), Stats., the county civil service commission may conduct:

such investigations as the commission may deem necessary or proper in order to ascertain whether or not the provisions of ss. 63.01 to 63.16 are being carried into effect.

Based upon the above language, it is clear that the standards to be utilized when judging whether the examination for the Dane County Employee Relations Manager was properly conducted are found in ch. 63, Stats., rather than in ch. 230, Stats. With the exception of specific language found in §230.45(1)(e), Stats., the Personnel Commission's authority to hear appeals is confined to certain state civil service transactions. The fact that the administrator of DMRS has been retained to provide assistance in filling positions outside of the state civil service does not make the administrator's

actions relative to those positions reviewable by the Personnel Commission. Similarly, if the administrator had served on an interview panel for the selection of a civil service commission for the State of Illinois, the administrator's actions while serving on the panel would clearly not be reviewable by the Commission.

ORDER

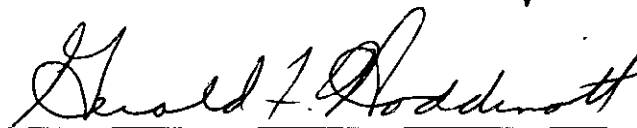
This matter is dismissed for lack of subject matter jurisdiction.

Dated: January 11, 1991 STATE PERSONNEL COMMISSION


LAURIE R. MCCALLUM, Chairperson

KMS:kms
K:D:temp-2/91 Garvoille


DONALD R. MURPHY, Commissioner


GERALD F. HODDINOTT, Commissioner

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