WORKING PAPERS ON THE IOWA CITY CIVIL SERVICE LAW

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Application of Civil Service Law by City Size

Review of Present State of the Law as it relates to City Size

Cities that have a population of 8,000 or more that also retain paid police and fire personnel must appoint 3 civil service commissioners and otherwise comply with the provisions of Chapter 365 of the code.

Cities that have a population of less than 8,000 may by ordinance adopt the provisions of Chapter 365 and hence establish civil service for themselves. The city council in these communities may either appoint a civil service commission to administer civil service or retain this function for themselves. These options are not available to cities that have a population of 8,000 or more.

Cities that have a population of less than 15,000 and are required by law to adopt a civil service system by virtue of having a population of 8,000 or more with paid police and fire or have adopted civil service by ordinance because their population numbers less than 8,000 can only extend civil service coverage to police and fire personnel and no other city employees.

Cities that have a population of 15,000 or more are required to extend civil service coverage, with certain specific exceptions, to all appointive municipal officers and employees, including police and fire personnel.

Current Application of Law

Cities that are presently restricted to civil service for only police and fire personnel number at least 16 and are: Ankeny; Boone; Carrol; Charles City; Creston; Estherville; Fairfield; Fort Madison; Grinnel, Indianola; Keokuk; Le Mars; Oskaloosa; Spencer; Storm Lake; Urbandale; and Webster City.

Cities that are required by law to extend full civil service coverage by virtue of having populations exceeding 15,000 number 21 and are: Ames, Bettendorf, Burlington, Cedar Falls, Cedar Rapids, Clinton, Council Bluffs, Davenport, Des Moines, Dubuque, Fort Dodge, Iowa City, Marion, Marshalltown, Mason City, Muscatine, Newton, Ottumwa, Sioux City, Waterloo, and West Des Moines.

Suggested Revision

The law's major defect as to city size application is that it denies cities that have a population of less than 15,000 from acquiring full civil service coverage for its employees even if it has a felt desire and need for it. This restriction is not compatible with the principle that guides home rule, that municipalities should not be irrationnally deprived of the freedom to satisfy their needs in a manner as they see fit. More essentially it denies the municipalities affected the freedom to base their selection and promotion of city employees other than police and fire on merit principles. As a consequence of the deleterious effect of this restriction it is suggested that it be abolished and replaced with a provision that enables municipalities under 15,000 by ordinance and at their option to have the same civil service coverage required of municipalities that have a population of 15,000 or more. Such a provision would not require municipalities under 15,000 to extend the same civil service coverage that in cities of 15,000 or more, it would only enable them to do so if they so desired - something they cannot presently do.

This paper will examine the present law regarding examinations, both original entrance and promotional, for municipal civil service employment. As a result of this examination suggested changes in the law will be recommended for reasons soon to be cited.

Original Entrance Examinations

Iowa law requires that C.S. Commission hold examinations for entrance level C.S. positions and those middle and upper C.S. positions which cannot be otherwise filled by promotion of persons previously subordinate to those positions. These examinations must be held at least once a year, in April, and at other times the commission finds necessary. The commission must prescribe rules regulating and governing these examinations, including within them details as to time, manner and place of these examinations. Such rules must be published and posted in city halls in advance of the conducting of the examination. The law also requires that the examination be practical in character (365.8).

None of these aspects of the law relating to original entrance examinations are unreasonable or undesirable in and of themselves. They probably are just the opposite. Requiring a fixed time for exams as the law does, at least every April, guarantees they will be held at all and adequately provides applicants with notice of such so they can prepare accordingly. The requirement that the commission prescribe, publish and post rules governing these examinations serves to benefit the public in so far as it opens the examination procedure to public scrutiny and hence forces the commission to deliberate more assiduously on this function and come up

with an unabashed and rationally organized examination process. Requiring exams be practical in character limits them to proper function of simply determining applicants' qualification for employment and expediently filling civil service positions.

It seems then that generally the substance of the Iowa law relating to original entrance examinations cannot be faulted. However there is a major defect in this law that begs for correction.

The commission is exclusively vested by law with the responsibility of preparing, administering and evaluating examinations. Because there is no expressed statutory enabling it to do so the commission cannot delegate or employ others to perform these duties in whole or in part. Consequently the commission must prepare, administer and evaluate examinations over a wide range of technical areas for which it may not have the time or any special competence, without the assistance of other city officials and agencies within the municipality or private professional expertise in the preparation, administration and evaluation of original entrance exams. Also the commission may not involve itself, because there is no express statutory authority to do so, in cooperative efforts with other municipalities and state agencies in the sharing of research and development costs for modern examinations. For the same reason involvement is prohibited in the sharing of testing services in general including accepting the examination results obtained from these other governmental bodies to determine applicant eligibility without unnecessarily duplicating valid examinations already given in other places to the convenience of both applicant and examining municipality.

These problems can be easily solved by the inclusion in the present law or any new civil service law reformulation of expressed statutory authority which enables the commission (or any other body with its functions under new C.S. laws) to 1) delegate its authority in the preparation and evaluation of exams to appropriate municipal officials and agencies; 2) to be able to seek outside assistance in performance of this function; and 3) to be able to cooperate with other municipalities and state governmental agencies in the sharing of testing services. To meet these ends legislation phrased as follows, or similarly, is recommended:

1. The commission (or any other municipal body vested with the same authority) may provide that the personnel officer, or any other municipal official or agency it deems advisable, be delegated, to whatever extent is deemed necessary, the duty to prepare, administer and evaluate original selection examinations.

2. The commission may contract with the civil service commission of any city, any legislative body of any city or county in the state, any state department, or any private person, corporation, association or partnership for:

   (a) The conducting of competitive examinations to ascertain the fitness of applicants for positions and employment in municipal civil service

   (b) The performance of any other service in connection with personnel selection and administration

Number 1 gets by the delegation problem. Number 2 allows the commission to seek outside assistance relating to the performance

of examinations duties from the governmental bodies, persons, and other entities enumerated therein. Number 2 also opens the door for cooperative efforts in performance of exam services between a municipality under civil service with the other parties enumerated in number 2.

Thus it is recommended that Iowa in the manner previously mentioned, or in a manner somewhat similar, remove the prohibition implied in the civil service law that prohibits the commission from delegating its original examination functions, seeking outside assistance for such examinations or from cooperating in the sharing of examination services with other governmental bodies.

Promotional Examinations

365.9 deals with promotional examinations under civil service and requires passing these examinations as a condition precedent before a person is deemed eligible for promotion under civil service. It imposes the same standards for the preparation and administration of promotional examinations as 365.8 does for original selection examinations except that promotional exams are required to be held at least biannually, every April, rather than yearly. 365.9 also has the same major defect as 365.8, i.e., the commission because there is no expressed statutory provision for such events 1) delegate its duties in the preparation, administration and evaluation of promotional examinations to other city officials or agencies; 2) seek outside professional assistance for these duties; 3) engage in cooperative efforts with other government entities in the area of sharing examination services. These difficulties can be easily remedied by incorporating promotional examinations under the purview the revisions heretofore proposed in the original examination area.

The promotional examination provision is deficient in another way independent of the problem mentioned above. This deficiency relates to the requirement contained in 365.9 that preference for the filling of vacancies above the lowest civil service grade be given to persons subordinate to the vacant positions who qualify as eligible by virtue of passing promotional examinations. These vacancies may not be filled by any other means, such as, determining eligibility for appointment to vacancies by examination open to all comers who wish to fill them, when there are persons available who have passed the promotional examinations for vacant positions and are therefore available.

There are both advantages and disadvantages that wherein the law's preference for filling vacancies above the lowest civil service grades by promotion. One advantage is that it serves both as an incentive and guarantee to employees that diligence and improvement at work will be rewarded by promotion. Prompting such behavior on the part of employees has a beneficial result upgrading the entire municipal civil service system. Of course, the ultimate beneficiary of this is the public itself which is better served when any aspect of municipal government improves. The most obvious disadvantage to the preference is that it restricts the selection ability of the municipality for filling vacancies. According the municipality with the widest range of applicants possible from which to choose for any one vacancy results in that vacancy being occupied by the best person available. The ultimate benefit of this again accrues to the public which is advantaged by filling any and all civil service positions with the best people.

In requiring this promotional preference for the filling of vacancies the law sets personnel selection policy in an area that could be better handled by the municipalities. Notwithstanding the advantages and disadvantages of a promotional preference it would seem that the best judge as to its appropriateness to a municipality's personnel needs is the municipality itself. It would seem apparent that a municipality is more sensitive and knowledgeable as to its selection needs and objectives and consequently should determine the selection policies required to cope with them. If a municipality feels the public is or isn't benefited by the inclusion of this preference in any number of instances, then as the representative of the public let it so determine.

It is therefore recommended that the promotional preference be discarded from state law and be replaced with a provision vesting discretion with the municipal civil service commission to ascertain if, when and where such a preference should be exercised under the local civil service systems.

Appeals

Chapter 365.18-27 of the Iowa Code defines the appeals procedure which ensues upon the summary suspension, discharge, or demotion of a municipal civil service employee. In the main this appeals procedure is comprehensive, fair, and meaningful, and so should be retained in its essentials in any reformulation of the law. However, the portions of the law describing the procedure are badly drafted, making the law both difficult to read and, more important, ambiguous in certain respects. Hence, we recommend that the appeals procedure be retained essentially as is, but that the description of it in law be re-drafted for purposes of clarity.

The present law allows summary suspension, demotion or discharge of a civil service employee for the following reasons and only for them: neglect of duty, disobedience of orders, misconduct, or failure to properly perform assigned duties. The sole power to suspend, demote or discharge an employee rests with the person or body which had the authority under Chapter 365 to appoint that employee. In commission plan cities this is the superintendent of the department in which the employee is employed. In council manager cities it is the city manager and in all other cities it is the city council. Police and fire personnel may be displaced not only by those authorities but also by the chiefs of their respective departments. It should be noted that our revision contemplates allowing Iowa municipalities the option to delegate the appointing authority where it presently vests to municipal department heads outside the police and fire. Cities which might exercise this option would vest in the department heads the authority to discharge, demote or suspend civil service

employees. The simple rationale for this recommendation is that if departments heads can hire they should also be able to fire.

When a police or fire chief suspends, demotes or discharges personnel they must within 24 hours file a written report specifying the reasons for such action with the following applicable authorities: the superintendent of public safety in cities with the commission form of government; the manager in cities under the manager form, unless the displacement is made by the manager, in which case the manager shall report to the city council; the mayor in all other cities. A copy of this report must also be promptly filed with the clerk of the civil service commission. The authority who receives the police or fire report may either affirm or revoke the initial displacement of the affected employee, the latter course of action resulting in that person's reinstatement.

It should be noted that the report requirement only applies in the situation where a police or fire employee has been demoted, discharged or suspended by a police or fire chief or the city manager. These reports are not required of other authorities who discharge, demote, or suspend non-police or fire personnel. One problem with the law as written (or as miswritten) is discerning to whom the report requirement applies to, for it is ambiguous. 365.19 literally read places this requirement with police and fire suspension, discharges and demotions by police and fire chiefs with the city manager. 365.20-22 sensibly interpreted implies that the report requirement is vested in all city officials with employee displacing authority. This ambiguity seriously distorts understanding the law's requirements pertaining to appeals procedures as they relate to the applicable times for initially bringing appeals, giving

notice and when hearings obtain. If reports are required these aspects of the appeals procedures occur at times different than if they were not. A careful reading of the law favors the view that reports are only required in the police and fire situation. For if these reports were required of all discharging authorities other than the police and fire chiefs a ridiculous result would arise, since the discharging authorities required to make reports are also the authorities the reports are made to. This means they would be reviewing their own initial decision to displace the affected civil service employee. This paradox and the other problems that arise in the law because of its ambiguity in respect to reports will be remedied by redrafting the law to say what it intends clearly and precisely.

Under the current law if the applicable authority to whom police or fire employee displacement reports are made affirms the initial displacement decision the affected employee may within 20 days of the affirmance appeal it to the civil service commission. Although the law is unclear in this matter, it seems that displaced employees in departments other than police or fire personnel are required to bring their appeal within 20 days after their displacement. The right to appeal is not only reserved to displaced employees, the police and fire chiefs and city manager may appeal the decision of the applicable authority not to affirm the displacement of an employee under their direction. This appeal can only be brought if the affirmation does not ensue within 5 days of the displacement of an affected employee. It should be noted that employer appeals can only be brought by police and fire chiefs and city managers who displace police and fire personnel under their

direction. It is not given to authorities who displace persons other than police and fire personnel.

The law requires that a hearing by the civil service commission must be provided upon any appeal timely brought and that suspension, demotion or discharge can only be upheld by a majority vote of the commission. When the commission reverses a ruling from which an employee has appealed, it must order the employee reinstated as of the date of his suspension, demotion or discharge. Generally, the commission has the authority to affirm, modify or reverse any case on its merits.

The law also provides that notice of the appeal be filed with the clerk of the commission by the person challenging suspension, demotion or discharge. The displacing authority appealing a disaffirmance of a suspension, demotion or discharge of a police or fire employee must also do the same with further requirement that this notice be served by the commission to the employee affected.

Within five days of service of the notice of the appeal, the person or body which suspended, demoted or discharged the employee must file with the commission a written specification of the charges and the grounds upon which the ruling to displace the employee was based. If this is not done, the employee may present his case to the commission by affidavit, setting forth the facts, then the commission must enter an order reinstating the employee at once for want of prosecution.

If written specifications are filed, however, the commission must, within ten days fix the time and place - not less than five nor more than twenty days thereafter - for hearing the appeal. The commission must notify the parties in writing of the time and

place determined for the hearing. This notice must also contain a copy of the specification of charges that were filed.

The civil service commission sitting on the appeal has quasi-judicial powers. The chairman of the commission has broad authority relating to the discovery of evidence pertinent to the commission's deliberations of an appeal. He has the power to subpeona such witnesses, books and papers as either party may request. He also has the power to administer oaths in the same manner and having the same effect as administered in a criminal or civil court. He also can find duly subpeonaed witnesses in contempt.

One of the most important requirements of the law in this area is that hearings on all appeals be public. This exposes the entire process to public scrutiny and hence is a check on potential abuse of the hearing process by the commission. Equally important to the integrity of the appeals process and for the protection of the litigants is that legal counsel may represent the parties.

The determination of the commission of an appeal can be appealed from by either the employee affected or the city. Civil service law gives both the right to appeal, if either so chooses, to the district court from the decision of the commission. If the court rules favorably for the affected employee the city is required to immediately reinstate that person and compensate that person for lost wages from the date of the suspension, demotion or discharge.

In conclusion, the current just reviewed law as it relates to the appeals process will be retained under the revision except for cosmetic changes resolving some of its ambiguities and changes consistent with changes contemplated by the revision in other portions of the law.

Chapter 365.17 of the Iowa Code specifies, among other things, those requirements which, when met, would qualify a person for a city position under civil service. It is the purpose of this paper to examine the legal and policy issues that arise from this particular portion of the Iowa civil service law. It is difficult to reconcile the present law's (365.17) strict prescription applicant qualifications for city civil service positions with modern employment practices and needs, and the spirit of Iowa's new Home Rule legislation.

Iowa cities differ in a variety of ways. The most obvious differences are those of governmental structures, physical size, and population. Related to these easily perceived differences are some that are not so apparent, but very real and important. One of these is the peculiarly individualized employment needs of each Iowa city. Demanding each city to enforce identical requirements qualifying an individual for employment under civil service, as state law does, seems to deny recognition of these differences. Further, such a denial seems contrary to the spirit of Iowa's recent Home Rule legislation. The purpose of Home Rule is to offer Iowa municipalities maximum independence in conducting their civic business, predicating this notion on the recognition of the unique differences and needs which arise. Hence the constraints that 365.17 poses on the municipal civil service hiring process by the delineation of requirements for employment qualification for civil service positions is directly antagonistic to the spirit of the Home Rule concept. Specific instances of this will be cited when we later examine 365.17 in detail.

365.17 is also contrary to good personnel administration. Today the aim of employee recruitment and selection is directed toward the goal of creating and maintaining an effective and responsive civic work force. This aim is inhibited whenever initial employment selection is constrained. The qualification requirements of 365.17 obviously inflict constraint on the personnel selection process by defining those criteria for employment selection which would seem more appropriately placed in the hands of those local officials who are most likely to know the personnel needs of their locale.

The most apparent weakness of 365.17 is the patent unconstitutionality of some of its qualification requirements when viewed in the light of recent court decisions. This issue will now be illustrated along with those earlier presented as we examine 365.17 in detail.

Eight requirements must be satisfied by an applicant for a civil service position before he can qualify for employment. The person must:

1. Be a citizen of the United States who meets "such other and further residence requirements as the council may by ordinance provide."

2. Be of good moral character.

3. Be able to read and write English.

4. Not be a liquor or a drug addict.

5. Not have been convicted of a felony.

6. Not have borne arms against the United States government.

7. Not have claimed exemption from military service as a conscientious objector.

8. Be a resident of the state at the time he or she begins

working for the city, and remain a resident during employment therewith. City employees are not required to be residents of that city, but the city may establish maximum distances from the city that firemen, policemen, and other "critical" employees may live.

The first requirement restricting civil service employment to citizens is clearly unconstitutional in that it is a denial to aliens of equal protection as guaranteed by the 14th Amendment. A provision of the New York civil service law, similar to our law, was found unconstitutional on these grounds in Sugarman v. Dougall, 41 L.W. 5138 (6-26-73).

Although the 3rd requirement is not constitutionally impermissible, it is an impediment to the establishment of municipal programs directed toward minorities, especially Mexican-Americans. For example, a city department whose employees fall under civil service may endeavor to establish a program directed toward the Mexican-American community and wish to hire a member of that community who may be illiterate in the English language, yet in possession of the human relations skills that are desirable for the job. The inflexibility of this standard prevents the hiring of such a person in this situation, and may result in other difficulties in the establishment and staffing of minority programs in the future.

Requirement 5, excluding felons from civil service, is not unconstitutional and seems to be in most instances reasonable. However, there are some situations where it could result in the exclusion of qualified personnel in social programs a city may seek to undertake. E.g., A city may wish to follow the example of the federal government in setting up drug rehabilitation and counseling programs. Unlike the federal government, it would not be able to staff such a program, if it fell under civil service, with convicted,

yet rehabilitated, drug addicts who might often possess the very skills essential to such an effort. This, like requirement 3, is another example of how an inflexible standard may hinder the development of social action programs by a municipality.

Requirement number 7 is unconstitutional, both on First and Fourteenth Amendment protection grounds. Most C.O.'s acquire C.O. status because of their religious beliefs. Free expression of religious beliefs in a multiplicity of contexts is expressly protected in the First Amendment. This qualification requirement completely and unconditionally penalizes the conscientious objector for exercising the First Amendment right to freely express religious belief through his conduct by denying this individual eligibility for public employment under the civil service system. Equal protection guarantees prohibit such a discrimination, as certainly does the First Amendment.

Number 8, requiring the applicant to be a resident of the state at the time of employment, is not constitutionally impermissible. However, it may be a hindrance to Iowa border municipalities who wish to recruit otherwise qualified employees from adjacent communities across the state line. For example, Council Bluffs may find just the right person for a particular job who resides in Omaha, but not be able to hire such a person if he or she is unwilling to give up their out-of-state residence. This requirement restricts Iowa border cities' ability to fully exploit the labor pool in their immediate area according to what they perceive their employment needs to be. Such a restriction certainly does not conform with the spirit of Home Rule, or recognize the needs of these particular cities.

For number 2, requiring the applicant to be of good moral character, and number 6, barring employment of those who have borne arms against the U.S., there have been no direct court decisions finding them constitutionally void. Yet, even though these requirements are not constitutionally impermissible, they, like all the requirements heretofore mentioned, seem to be placed in the wrong hand as to their determination. It seems that in congruence with the purpose of Home Rule, and in recognition of the unique personnel needs of each of our municipalities, that the function of determining employee qualifications under a civil service system should rest in the hands of the municipalities themselves, and not in state law as it presently does.

You asked me to devise a legal framework that would enable municipalities to determine for themselves the form and content of municipal civil service. As you know the present law -- Chapter 365 of the Iowa Code -- precisely and absolutely determines the shape and substance of municipal civil service. The only way to enable localities to structure their own civil service systems as they see fit is to abolish those portions of the present law that impede them from doing so and replace them with statutory provisions that allow them to do so. This means an almost complete revision of the present civil service law, with it being replaced by the kind of legislation suggested below.

First the state should not completely leave municipal service regulation. State law should require that each municipality operate under civil service. It should provide that municipalities adopt a civil service system by ordinance. This ordinance should designate what departments and employees will be included under civil service. State law should require that the ordinance at lease provide for minimum standards of employment and qualifications for various classes of employment. The ordinance should also make explicit and devise rules generally governing the selection, employment, classifications, advancement, suspension, and discharge of employees under civil service and provide for a fair and meaningful procedure to handle appeals of suspended or discharged employees.

This revision of state law would allow the municipality to do what it can't do under the present law, shape its own civil service system in a manner it sees fit. For instance the present state law defines the qualifications applicants to civil service must meet to be eligible for it. As noted in an earlier paper some of

these qualification requirements are either unconstitutional or antithetical to effective personnel selection, yet municipalities are bound to accept them. The suggested revision would end this situation and among other things allow the municipality to define what qualifications for employment it deems appropriate. Other things this law would enable the municipal to do which it cannot presently do, is determine what kinds of employment classes would fall under civil service, and the mode and manner in which advancement, suspension and discharge will be handled.

Secondly, a revised civil service statute would require the local legislative body to provide by ordinance either for a civil service commission or personnel officer to administer the system and to delegate to whomever administers it those powers and duties in relation to that system it deems advisable. As you know the present law absolutely requires a civil service commission to administer civil service and also specifically defines its composition, powers, and duties. The suggested revision would allow a city to determine for itself whether the administration of civil service is better placed with a civil service commission or personnel officer, and if the former the qualifications and composition of its commission. Also this revision would allow the municipality to determine for itself the powers and duties of its civil service administrator. One problem with the present law is that the civil service commission cannot delegate its responsibility to prepare and administer civil service exams. Under the proposed revision if the commission decided to hold examinations the city could either provide for such a delegation when it defines and delegates the duties and powers of the commission by ordinance.

The only restraint state law should place on a municipal civil system created by ordinance would be to prohibit the withdrawal of departments, or employees from civil service by subsequent ordinance unless it has been approved by public ballot. This prohibition would prevent whimsical juggling of jobs in and out of civil service and dissuade political manipulation of the same. No restraint should be placedon including additional departments or employees under civil such action should be encouraged.

Lastly, it should be statutorily provided that the city council be able to delegate to whatever entity that administers the civil service system the ability to contract and cooperate with other state and local governmental agencies and private corporations and persons over matters relating to personnel selection and administration. An example of such legislation is presented in my earlier paper dealing with examinations, and would fulfill the objectives I expressed in that paper.

What I am basically proposing is state statute enabling the municipality to set up a civil service system by ordinance. This arrangement is extremely compatible with home rule, for it would seem that the municipality would be the best judge of what its civil service needs are and should be able to formulate legislation to that end rather than leaving this function entirely up to state law in a manner incompatible with home rule. Now although the legislation I have proposed gives the municipality the best of all possible worlds it can be compromised and amended in parts to meet felt state expectations of municipal civil service or to accommodate vested interests who would not favor totally giving the municipality a free reign in devising its civil service system.