



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

December 28, 1976

ATTORNEY GENERAL OPINION NO. 76- 379

Mr. Raymond Menendez
Attorney for the Shawnee County
Civil Service Board
112 West Sixth Street
Topeka, Kansas 66603

Re: Counties--Civil Service--Eligible Lists

Synopsis: K.S.A. 19-4320(c) does not prohibit the addition of names to an existing eligible list prior to depletion of the list.

* * *

Dear Mr. Menendez:

You inquire concerning the administration of the civil service act governing the sheriff's department of Shawnee County, and in particular, concerning the maintenance of eligible lists of persons qualified for appointment to positions in the department which are covered by the act.

K.S.A. 19-4320(a) requires that all appointments to positions which are subject to the act shall be made from names certified to the sheriff by the civil service board. Under subparagraph (c), appointments are required to be made from "the appropriate eligible list." However, if there is no "appropriate eligible list," the board may certify from such other list as it deems the next most nearly appropriate. It may create a new and separate list when and only when there is no satisfactory list from which to certify names to the sheriff for appointment.

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The sheriff is required to give written notice to the board of his intention to establish any new position and of any vacancy to be filled in any position covered by the act. Within a reasonable time thereafter, the board must certify the names of the three persons at the head of the list appropriate for the grade and class in which the position is classified.

The apparent question which is raised is whether the eligible list from which names are certified to fill a particular vacancy must be exhausted before additional persons may be qualified and added to the eligible list.

In preparing eligible lists, the board is required to do so to fill each position classification which it has approved by regulation. K.S.A. 19-4316 commences thus:

"The civil service board, shall, as soon as practicable and after consultation with the sheriff, classify all offices, employments and positions, not exempt from the provisions of this act, according to the duties, responsibilities and supervisory character of each position. Titles shall be established for each class of office, employment or position for use in examining and certifying the names of persons for appointment under this act."

Pursuant to this authority, the board has adopted five classifications:

Classification 1	--	Patrolman
Classification 2	--	Detective or Corporal
Classification 3	--	Sergeant
Classification 4	--	Lieutenant
Classification 5	--	Captain

The classifications are based, substantially, on rank, and do not directly correspond to the five duty assignments which comprise the departmental areas of responsibility:

1. Road Patrol
2. Communications
3. Civil Process
4. Detention
5. Investigation

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The classification of patrolman is thus the entry level position for all duty assignments in the department.

Because there is only one entry level classification, that of patrolman, it may happen, particularly when the list is small, that no applicant on the eligible list is interested in the particular duty assignment of the position which is available to be filled. Thus, for example, persons who are certified from the eligible list for filling a particular position may not be interested in the position. Thus, although the list is not exhausted, the question arises whether the list may be augmented by the addition of other qualified persons. K.S.A 19-4320(c) provides in pertinent part thus:

"A new and separate list shall be created for a stated position only when there is no satisfactory list."

It is urged by counsel for the Board that this provision prohibits augmentation of an eligible list until it is exhausted, and that so long as names of qualified persons remain thereon, it is a "satisfactory" list.

The first and foremost requirement of K.S.A. 19-4320(c) is that appointments be made from the "appropriate eligible list." It goes on, as pointed out above, to provide that if no such list exists, the board may certify from the next most nearly appropriate list. Where, as here, there is but one entry level list, that list is always and exclusively the legally "appropriate eligible list." There is no occasion to resort to the "next most nearly appropriate list," because there is none. There can never be the occasion for the creation of a new and separate list, as the classifications are drawn, for there can only be one appropriate eligible list, and thus one "satisfactory list." The eligible list for the classification of patrolman does not become legally inappropriate or legally unsatisfactory merely because no applicant listed therein will accept an appointment to a particular duty assignment.

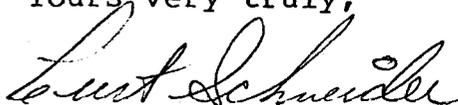
Persons who are thus eligible do not forfeit their eligibility to remain on the list as a result of declining an appointment, as we understand the present rules of the board. At that point, lacking any qualified person on the eligible list who will accept an appointment to an existing vacancy which is sought to be filled, the board is legally free, in my judgment, to augment that eligible list by qualifying such additional persons therefor as it deems appropriate and necessary. The prohibition against the creation of new and separate lists does not prohibit the augmentation of an existing list.

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The requirement of K.S.A. 19-4320(c) was designed, at least in part, to assure that persons who were certified as eligible for a particular position were qualified therefor by having satisfied all qualifications and examinations established by the board for that position classification. Thus, an applicant was required to be certified from an eligible list which was "appropriate" for that position, and lacking such a list, the list which was "next most nearly appropriate." Where but one entry level classification is created for all duty assignments as here, that statutory concern is, of course, less compelling, and indeed, is substantially mooted.

Accordingly, in my judgment, the addition of names to an existing eligible list which is not yet exhausted does not defeat any apparent statutory purpose of the act, and is not prohibited by K.S.A. 19-4320(c).

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. Joseph Zima
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