

Opinion No. 57-186

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QUESTIONS

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Does the "Penitentiary Merit System Act of 1955" require that written examinations be given and the results thereof considered by the Penitentiary Personnel Panel prior to promoting employed personnel?

CONCLUSION

See opinion.

OPINION

ANALYSIS

The question here to be considered arises out of the recommendation of the Santa Fe Grand Jury of the administration of the New Mexico State Penitentiary.

As evidence by the report of the aforesaid jury, considerable attention was given by that body to the Penitentiary Merit System Law, as brought into existence by the 1955 Legislature.

Chapter 230 of the Session Laws of 1955 provides in Section 42-1-64 that:

"The general purpose of this act is to establish for the state penitentiary a system of personnel administration based on merit principles and scientific methods of classification, appointment, promotion, transfer, removal or discipline of its employees. All classified appointments to and promotions on the staff of the penitentiary shall be made on the basis of merit and fitness, to be ascertained by competitive examination, except as hereinafter specified."

And in Section 42-1-65 the law provides that:

"The classified personnel of the state penitentiary shall include every employee except the following:

a. Members of the board of penitentiary commissioners, hereinafter referred to as the board.

b. Persons employed in a professional or scientific capacity on a temporary or special basis.

In Section 42-1-67 the merit system law calls for the preparation and maintenance of a position classification plan, for a pay plan, for probationary periods of employment, for the keeping of employment records, for the establishment of a veteran's preference employment policy, and a plan for resolving classified employees' grievances. In addition to the aforesaid provisions, Section 42-1-67 also specifically provides in subsection c as follows:

"For open competitive examinations to test the relative fitness of applicants for all positions. The first of such examinations shall be held not later than one (1) year after the effective date of this act.

Such examinations shall be advertised in both English and Spanish for at least four (4) consecutive weeks, next preceding the date for the filing of applications, in a newspaper of general circulation throughout the state and in a newspaper of general circulation in Santa Fe County. The board shall also publicize generally the fact of the impending examinations during a period of not less than one (1) month preceding the filing date. The board may continue to receive applications and examine candidates for a long enough period of time to assure a sufficient number of employees to meet the needs of the penitentiary and may add the names of successful candidates to existing eligible lists in accordance with their respective ratings."

From the foregoing section quoted, it becomes apparent that the purpose and thinking behind the Merit System Act was that of assuring the highest type and caliber of qualified personnel for each and every job classification as is required in the administration of the State Penitentiary. It further becomes apparent that the Legislature considered competitive written examinations as a valid and important basis for considering persons for advancement or for the filling of existing vacancies from presently employed personnel.

Section 42-1-67, subsection d, provides specifically that:

"For promotions which shall give appropriate consideration to the applicant's qualifications, past record, seniority, and conduct. Vacancies shall be filled by promotion whenever practicable and in the best interest of the service, and promotion shall be by competitive examination whenever practicable. An advancement in rank or grade or an increase in salary beyond that fixed for the class shall constitute promotion."

From the last quoted section, it appears that the Legislature intended that in situations where all other considerations are equal, that competitive examination grades should be

considered when approving promotions or the filling of existing vacancies. Also in subsection e of the aforesaid section, the law provides:

"For the establishment of eligible lists for appointment and promotion upon which lists shall be placed the names of successful candidates in order of their relative excellence and achievement in the examinations. Eligibility for appointment from any such list shall continue not longer than two (2) years."

In considering all provisions herein quoted along with the manifest intent of the Legislature, it is our opinion that written examinations are to be given in two situations:

1. All persons other than those specifically exempt from the classification service, as provided in Section 42-1-65, supra, are to be given a written competitive examination prior to being employed by the Penitentiary in any capacity.

2. Where vacancies arise or promotions are to be considered, the results of either the original employment examinations or specialized examinations should be considered where all other requisites and standards appear substantially equal.

It is well appreciated that a merit system guided only by the relative achievements of an individual evidenced by the tallied results of written tests would likely soon result in a completely unrealistic situation in the administration of a penal institution. On the other hand, a policy wherein is given no credit for intellectual attainments is equally unrealistic in view of the legislative expression herein considered.

With an understanding that in many cases where a promotion vacancy exists it will be necessary to pass over a person credited with a high "eligibility list" standing, it is our opinion that some recorded comment be made by the Personnel Panel stating the basis for such pass over.