



GENERAL CIRCULAR OSE 2010-01
April 26, 2010

General circulars are new to the Office of State Examiner (you may have noticed our new format). In the future, general circulars will be used to provide updates on revisions made to civil service laws, and general advice and guidance to all civil service board members and secretaries, as well as administrators.

In an effort to provide quality service, the Office of State Examiner is continuously conducting in depth research into laws and cases that may affect the civil service system. When concerns are brought to our office by administrators, employees, board members, and secretaries alike, we feel an obligation to find solutions that would benefit not only the specific jurisdiction but the system as a whole. The information included in this circular has derived from not only legislative changes but changes in how our office advises on certain issues due to research conducted by office personnel. We appreciate you taking the time to review the information below. If you have any questions, please call our office at (225) 925-4400.

LAW UPDATE
FIRE EMPLOYEE'S RIGHTS AND THE RIGHTS OF LAW ENFORCEMENT
OFFICERS WHILE UNDER INVESTIGATION

As you may be aware, Acts 2007, No. 258 and Acts 2009, No. 328 amended R.S. 33:2181, a provision of the **Fire Employee's Rights**. The revision made in 2007 provides the following:

No fire employee shall be disciplined, demoted, dismissed or be subject to any adverse action unless the investigation is conducted in accordance with this Subpart. Any discipline, demotion, dismissal or adverse action of any sort taken against a fire employee without complete compliance with the provisions of this Subpart is an absolute nullity.

In 2009 revisions included, but were not limited to, adding provisions in regards to the *interrogation* and how the appointing authority is to notify the fire employee prior to commencing a *formal investigation*.

Revised Statute 40:2531, **Rights of Law Enforcement Officers While Under Investigation**, was also amended by Acts 2007, Nos. 91 and 258, and Acts 2008, Nos. 249 and 65. The revision made in 2007 provides the following:

There shall be no discipline, demotion, dismissal or adverse action of any sort taken against a police employee or law enforcement officer unless the investigation is conducted in accordance with the minimum standards provided for in this Section. Any discipline, demotion, dismissal or adverse action of any sort whatsoever taken against a police employee or law enforcement officer without complete compliance with the foregoing minimum standards is an absolute nullity.

Although these statutes are not part of the Municipal Fire and Police Civil Service laws, we feel obligated to advise the fire and police chiefs, and the appointing authorities to be cautious when affecting disciplinary action as failure to follow the provisions of the Fire Employee's Rights and the Rights of Law Enforcement Officers, may result in the civil service board overturning the disciplinary action. Likewise, we want to make the civil service board members aware that when they are conducting an appeal hearing and the appellant provides evidence that his/her bill of rights was violated, the board may have no choice but to overturn the disciplinary action.

The administration and the civil service board may wish to consult with their attorney to obtain legal advice in regards to the provisions of the Fire Employee's Rights and the Rights of Law Enforcement Officers. You may find the most recent copy of these laws on our website at www.ose.louisiana.gov/billofrights.htm.

CLASS PLAN REVISIONS
OUR NEWEST ADVICE REGARDING
EDUCATION REQUIREMENT FOR ENTRY-LEVEL CLASSES

The language of your board's current educational requirement does not contemplate that many students who obtain a high school diploma necessarily attend a traditional high school, or one that is accredited by a state department of education. Many private schools which have excellent programs do not, by choice, seek accreditation by state government. Additionally, we understand that there are many individuals who have misplaced their high school diploma but may have other documentation verifying their educational background. The purpose for the educational requirement, of course, is to assure that candidates selected for appointment to the classified service possess, at a minimum, the knowledge obtained as a result of a complete high school curriculum, as evidenced by a diploma or certificate of equivalency. With these comments in mind, we recommend that your board post to consider a revision to your board's educational requirement which is a departure from that which has been traditionally recommended. We recommend, therefore, the following:

Applicant must possess one of the following: high school diploma, general educational development (G.E.D.) certificate, high school transcript, affidavit from the issuing high school, associate's or bachelor's degree, or college transcript, any one of which must indicate that graduation has occurred or a degree awarded. A certification of completion shall not be sufficient to substitute for a diploma or G.E.D. certificate.

Adopting the above recommendation would allow your board to accept various documentation verifying an applicant's educational background. Your board would also not be restricted to only accepting a high school diploma from a state accredited high school. While we understand that some applicants may have obtained a high school diploma from what some professionals in the education field refer to as "diploma mills," we advise that once your board certifies a list of eligibles to the appointing authority, the appointing authority may determine if applicants have the required knowledge, skills, and abilities to begin a working test period. Although your board may have recently revised your education requirements in accordance with our previous advice, we ask that your board consider the above recommendation. If you or your board members have any questions about our recommendations or the procedures to amend your classification plan, please do not hesitate to call our office for assistance.

BOARD RULE REVISIONS
OUR NEW ADVICE REGARDING HOLIDAYS

Due to concerns brought to the attention of the State Examiner's Office, we have conducted research into the question of the board's authority to adopt rules which provide for holidays, and for extra compensation to be paid if employees are required to work on holidays. As you may be aware, Louisiana Revised Statutes 33:1999, 33:2214.1, and 33:2589 include certain provisions for fire and police employees. These provisions include language which requires that all fire and police employees in the Municipal Fire and Police Civil Service system must receive additional compensation if they are required to work on holidays declared by the *governing authority*. Whereas civil service law gives your board authority to adopt rules to *provide for leaves of absence*, we have not found support in the law which gives the civil service board specific authority to declare holidays for which employees who are required to work would receive additional compensation. Such authority appears to rest solely with the governing authority as a provision of the pay plan.

Therefore, as a result of this conclusion, we feel obliged to change our recommendation for holidays which is a departure from that which has been traditionally recommended by our office. We must advise instead that your board should not adopt or retain rules providing for leaves of absence on holidays nor for compensation for work on holidays. By eliminating the holiday rules, your governing authority may declare holidays for the classified fire and police employees as local needs dictate. The governing authority would, of course, be required to comply with R.S. 33:1999, R.S. 33:2214.1, or 33:2589, whichever applies to your jurisdiction, should employees be required to work on the declared holidays. Therefore, in the event

that your board rules provide for holidays, we recommend that your board consider posting to delete that section of your board rules in its entirety.

If you or your board members have any questions about our recommendations or the procedures to amend your board rules, please do not hesitate to call our office for assistance.

REMINDER
CLASS PLAN REVISIONS
QUALIFIED ELECTOR REQUIREMENT

Advice given to all civil service boards by our letter dated August 19, 2004, (all large municipalities) and August 8, 2006, (all small municipalities and fire protection districts)

As you may be aware, Acts 2006 No. 212 (HB 930), which became effective July 1, 2006, as well as Acts 2004 No. 645 (SB 415), which became effective July 5, 2004, amended the civil service laws which govern all municipalities, parishes and fire protection districts operating a regularly paid fire department. The Louisiana Revised Statute regarding Admission to Tests (either R.S. 33:2493 or R.S. 33:2553) now provides that applicants admitted to **any** civil service examination in your municipality, parish or fire protection district, are no longer required to be qualified electors of the state of Louisiana. Therefore, if your board currently retains such a requirement, we recommend that your board consider posting to delete all qualified elector statements and residency requirements you currently retain in your classification plan and consider posting to adopt the following proposed qualification requirement for each of your classes:

Must meet all requirements of the Municipal Fire and Police Civil Service Law, including being a citizen of the United States and of legal age.

If you or your board members have any questions about our recommendations or the procedures to amend your classification plan, please do not hesitate to call our office for assistance.

REMINDER
PERSONNEL ACTION FORMS

The appointing authority must report all appointments such as recruits, probational appointments, substitute appointments, and provisional appointments to the civil service board within fifteen days. Other personnel actions such as promotions, reinstatements, reemployments, lay offs, and all disciplinary actions must also be reported to the civil service board (R.S. 33:2503 or 33:2563). We advise that the appointing authority must likewise report all confirmations to your board, inasmuch as confirmation in a class determines an employee's departmental seniority and seniority in a class.

The chief of the department is responsible for having the personnel action form (PAF) completed and then forwarded to the appointing authority for approval and signature. The PAF is then forwarded to the civil service board for their review and acknowledgment indicating that the action was taken in accordance with civil service law. *At the next civil service board meeting the board will review the PAF to verify that it is completed properly, all required signatures are on the PAF, and that the action taken is in accordance with civil service law from the information provided at that time. If everything is correct, a motion is made to approve the personnel action. After the motion passes, the chairman signs the PAF.* After this process is complete, the following individuals are provided a copy of the PAF: chairman and secretary of the civil service board, appointing authority, fire chief, police chief, the employee, and State Examiner's Office. We suggest that your board have its own locked filing cabinet and only your board members and secretary should have a key. In order to easily access an employee's records, each employee should have a separate file folder so that approved PAFs and other pertinent correspondence will be placed in the appropriate employee's personnel file.

Personnel action forms are to be completed by using our interactive form on our website at www.ose.louisiana.gov/forms/testOSEform/PAF.asp. Office of State Examiner personnel in Resource Services will be happy to answer any questions and to assist you in completing PAFs.

REMINDER

MAINTAINING ELIGIBILITY LISTS

Calling for Examinations:

Your board has the responsibility and authority to call for promotional and competitive examinations in order to establish employment lists in accordance with R.S. 33:2552 or R.S. 33:2492. Examinations for *competitive classes* are given as the needs of the service require. Examinations for *promotional classes* are given as the needs of the service require and *must* be given at least one time during each successive period of eighteen (18) months. When it has been fourteen (14) months since our office has administered a promotional examination, we advise your board to call for the examination as it will take sixty days or more for your board to properly post for the examination, accept and review applications, and notify approved applicants. The appointing authority may request your board to call for an examination for a class or classes; however, your board should not wait for the appointing authority to request an examination when there is a need to establish an eligibility list. Your board may call for an examination when an eligibility list for a promotional class has been exhausted and your board determines that there is a demonstrated need to call for the examination. We advise that a demonstrated need occurs when the appointing authority notifies the civil service board that there is a permanent vacancy in a class which he anticipates filling, or a provisional appointment has been made to a position in that class.

Approving Applications:

Your board must post an examination notice for at least thirty (30) calendar days prior to the deadline for accepting applications. The notice for both a competitive and promotional examination must be posted on all departmental stations and buildings of the respective department. We suggest that your board have at

least one locked bulletin board at each department station and building on which only board correspondence is posted. In addition, public notice of all competitive examinations must be placed in the official journal of the jurisdiction at least four (4) times during the thirty (30) day period prior to the final date for accepting applications. Your board is required to meet to review the applications as soon as possible after the final date for accepting applications and determine who is eligible to be admitted to the scheduled examination. All approved applicants must be notified of the date, time, and place of the scheduled examination at least five (5) calendar days prior to the examination in any manner your board deems appropriate.

Approving Test Results:

After our office administers an examination and our test administrator returns to the office, we will begin the grading process as soon as possible. The process normally takes four to six weeks. When the grades are finalized and signed by the State Examiner, we will mail the results to your board. Your board is required to meet to review and approve the test results. The test results are not official and should not be released until approved by your board. After your board approves the test results of an examination, please forward the blue copy of the "Results of Examination" to our office. Please have the chairman or vice-chairman sign and date (date of civil service board meeting where grades were approved) the blue copy.

Certifying Names to the Appointing Authority:

As you may be aware, R. S. 33:2491 and 33:2551 provide that following your board's approval of test scores from a competitive or promotional examination given in your jurisdiction, and before a vacancy may be filled by the appointing authority, your board must certify the names of the individuals who are eligible for appointment. If the position to be filled is in a competitive classification, names must be certified from highest to lowest according to their final test scores. When a vacancy is to be filled in a promotional class, the names of employees attaining a passing score must be certified upon the promotional employment list for the class for which they were tested in the order of their total departmental seniority. The list of eligibles are certified to the appointing authority with the date on which the board approved the scores and the date on which the scores will expire.

Reported Test Scores:

Civil service law permits individuals to take the Firefighter, Police Officer, and entry level Fire and Police Communications Officer tests in other jurisdictions and report their scores along with an application to your board, in order that they may be certified as eligible for appointment in your jurisdiction. In order that these persons may be appointed, your board must add their names to the appropriate eligibility lists and re-certify the list to the appointing authority in score order. Your civil service board must first meet to review the individuals' applications, required attachments, and reported test scores to verify that they meet your board's requirements and that their scores are valid. The board would then pass a motion to add the names to the appropriate eligibility lists before the appointing authority makes a hiring decision. In order to create a public record of this action, your minutes must reflect the individuals' names, where they took the examinations, test scores, the scores' expiration dates, and the eligibility lists to which the names are

added. Your board must also certify a list of these eligibles to the appointing authority, including all pertinent information, such as the date your board approved adding the names to your eligibility lists and the date the individuals' scores will expire.

Re-employments:

Louisiana Revised Statute 33:2490.D and 33:2550.D, requires the appointing authority to obtain prior approval of the civil service board in order to re-employ a former employee. The appointing authority cannot re-employ the employee in a permanent position without the board having first approved the re-employment. Re-employment can occur only if a person was a regular and permanent employee in the department at the time of resignation and the re-employment will be effective within four years of the date of the employee's resignation. An individual may be re-employed in a position of the class from which he resigned, or any lower class for which he is qualified. If the re-employment will be to a position in a promotional class, the re-employment can only occur if the individuals whose names are on a reinstatement list or eligibility list for the class decline the offer of promotion, if such lists exist. Although regular employees who are re-employed within four years of resignation are not required to pass an examination in order to be re-employed, they must serve a working test of at least six months in order to be confirmed. Inasmuch as the employees lost all their departmental seniority upon resignation, the date they are confirmed after re-employment will be their new seniority date.

EXECUTIVE SESSIONS

As you may be aware, in accordance with R. S. 42:5, all meetings of your civil service board must be open to the public, unless your board holds an executive session. The exceptions under R.S. 42:6.1 are limited and must be properly noted in your minutes. As it relates to your board deliberating in executive session at the conclusion of testimony of an appeal hearing, Attorney General Opinion No. 94-47 states that such use of R.S. 42:6.1 is not appropriate. The opinion states that while in executive session the board's business is limited to discussion of the privileged matters as outlined in the above mentioned statute and any board action or decision should be taken in open session. The opinion further states the entire meeting of a public body must open to the public, except as provided for in the statutory exceptions and a vote may not be taken during an executive session and then announced upon resuming the open meeting.

We advise civil service boards to carefully exercise their authority to enter into executive sessions, not solely because the business of your board should be conducted in the public forum, but also because of the penalties that may be imposed upon *each* board member if an executive session is improperly conducted. Revised Statute 42:13 provides:

Any member of a public body who knowingly and wilfully participates in a meeting conducted in violation of R.S. 42:4.1 through R.S. 42:8, shall be subject to a civil penalty not to exceed one hundred dollars per violation. The member shall be personally liable for the payment of such penalty. A suit to collect such penalty must be instituted within sixty days of the violation.

Your board may wish to obtain the appropriate legal guidance as may be necessary to comply with the public meetings laws. Our intention is to raise awareness of the requirement for exceptions to open meetings. If you or your board members have questions or comments with regard to these matters, please do not hesitate to contact our office.

The Office of State Examiner has expanded the availability of services provided by our office through our website (www.ose.louisiana.gov). After every legislative session, if needed, we will update the civil service laws and fire and police related laws on our website with all amendments passed during the session. We also use our website to advise of changes in the examination schedule due to inclement weather. Please continue to frequently visit our website in order to review all revisions to the laws and any updates to the information provided on our website. If you have any questions or if we may be of any further assistance, please do not hesitate to call our office at (225) 925-4400.

2010 Regular Legislative Session information is currently on our website at www.ose.louisiana.gov/legisSessions/mainframe2.htm. The information on our website is made available as a public service to provide a focused site of select legislation relevant to the fire and police services. The information is compiled directly from the latest publicly available information provided by the Louisiana Legislature. All attempts will be made to keep the information as current as possible with daily updates of relevant legislative activity. However, given the dynamic nature of the legislative process, we cannot guarantee up-to-the-minute accuracy. A link to the official site of the Louisiana Legislature is

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