

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

THOMAS FENNELLY,
Appellant

v.

**SAUGUS POLICE
DEPARTMENT,**
Respondent

Case No.: G1-13-233

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Saugus Police Department to bypass Mr. Fennelly for original appointment as a police officer is affirmed and Mr. Fennelly's appeal under Docket No. G1-13-233 is hereby ***denied***.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on June 12, 2014.

A true record. Attest.

Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Thomas Fennelly (Appellant)

Eugene J. Sullivan, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk. ss.

Division of Administrative Law Appeals

**Thomas G. Fennelly,
Appellant**

v.

Docket Nos. **CS-14-30** (DALA),
G1-13-233 (Civil Service

Commission)

**Town of Saugus - Police Department,
Respondent/Appointing Authority**

Dated:

Appearance for Appellant:

Thomas G. Fennelly, *pro se*
42 Juniper Drive
Saugus, MA 01906

Appearance for Appointing Authority:

Eugene J. Sullivan, Esq.
Holtz & Reed, LLP
225 Friend Street
Boston, MA 02114

Administrative Magistrate:

Sarah H. Luick, Esq.

Summary of Tentative Decision

The Respondent/Appointing Authority was justified in bypassing the Appellant for an original appointment to Police Officer. There was no pre-textual reason for bypassing the Appellant. The process followed to evaluate the Appellant was the same one used for all the candidates. The Police Chief found the Appellant's prior five year driving record to contain too many and one very serious speeding citation so that the Appellant was not recommended for the final interview stage. The Appellant had ample opportunity to address his problematic driving record. No other reason was justifiable to support the bypass.

TENTATIVE DECISION

Pursuant to G.L. c. 31, § 2(b), the Appellant, Thomas G. Fennelly, filed an appeal with the Civil Service Commission on October 28, 2013 seeking a review of the decision of August 1, 2013 of the Saugus Police Chief to the Saugus Town Manager, the Appointing Authority, to bypass him for an original appointment to the position of Police Officer. G.L. c. 31, § 27. The Appellant was provided with the bypass letter and a cover letter of September

25, 2013 from the Town Manager containing his appeal rights. The appeal was timely filed. (Exs. 1 & 2.) Pursuant to 801 CMR 1.01 (11)(c), a hearing was held on January 27, 2014 for the Civil Service Commission on the merits of the bypass appeal by the Division of Administrative Law Appeals (DALA) at its offices at One Congress Street, 11th Floor, Boston, MA 02114. The hearing was digitally recorded, and both parties were provided with a copy of the recording.

Various documents are in evidence. (Exs. 1 - 6.) The Appointing Authority filed a pre-hearing memorandum. (Ex. A.) The Appointing Authority presented the testimony of the Appellant and of Saugus Police Chief Domenic J. DiMella. The Appellant also testified on his own behalf. Both parties made closing arguments on the record.

FINDINGS OF FACT

Based on the evidence presented and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. Thomas G. Fennelly, born in 1990, grew up in Saugus and graduated from Austin Preparatory High School (2008) and from Merrimack College (2008-2012) with a B.A. degree in criminology. Other than for his first year in college, he has lived with his parents and sister in Saugus. He grew up next to a retired Saugus Police Chief, and early-on developed a desire to become a Police Officer. He is single, never married, and has no children. (Exs. 4 & 6. Testimony of Fennelly.)

2. Mr. Fennelly is a social drinker with no accidents or incidents involving excessive use of alcohol. He has not tried illicit or opioid drugs. He is not a smoker. He has no criminal record. Mr. Fennelly received awards in high school that included a coach's award for baseball, being on the honor roll, being a peer leader, and being a senior retreat leader. He has computer skills in word, power point, windows, excel and access. He did volunteering while in high school, and during college he was an assistant coach at Austin Preparatory High School. He also did volunteering at "Greenwood Elementary School" and for "Relay for

Life”. His hobbies include “golf, softball, hockey, detailing cars, boating, sportmen’s club, running [and] all terrain vehicle riding.” He has welding skills and has “first responder training, CPR training, [and has a] Certified Federal Firearms qualification.” He has no problematic credit history and has paid his income taxes. He has no gambling problem and plays the lottery at about \$100 per year. He has registered for Selective Service but has not served in the military and is not in the National Guard. Mr. Fennelly has received firearm licenses through the Town of Saugus and has never been denied a firearm license. He holds no professional licenses. (Exs. 4 & 6. Testimony of Fennelly.)

3. Mr. Fennelly had academic difficulties at Merrimack College. He was on academic probation in the Spring of 2009 because of poor grades received in the Fall 2008 semester. He was “new to college life and ... not focusing 100% on ... school work ... lack of concentration.” This academic struggle continued during the Spring 2009 semester, and he was “suspended academically.” He appealed and was able to return to college for the Fall 2009 semester. Starting with this semester, he returned to living at home. This helped him stay “away from the temptations of the social aspect of college” to “focus more on ... academics.” In the Fall 2010, his “grades suffered again” which he attributed to losing one of his best friends in a car accident. He found it hard to concentrate on school work, and failed some courses. He acknowledged “things had to change.” He feared “ruining ... chances of getting into law enforcement.” He again appealed, was given another chance, and he was able to finish his college degree by December 2012. (Exs. 4 & 6. Testimony of Fennelly.)

4. Mr. Fennelly has a current driver’s license. He has received citations for his driving.

a) On March 23, 2008, he was cited for speeding on Interstate Route 91 in New Hampshire. He drove about 81 mph in a 65 mph zone and was fined about \$250.

- b) On December 17, 2008, he was in a surchargeable accident in Wakefield. A vehicle passed him and then quickly cut back in front of him to avoid an oncoming vehicle. To avoid being hit, Mr. Fennelly moved into the breakdown lane that was icy and snowy. He skid and hit an electrical pole causing damage to his front passenger side and door. He was found responsible for this accident. He had not been able to get the license number of the other vehicle.
- c) On June 14, 2009, he was in another surchargeable accident. He was in Peabody when he drove out of a parking lot and was in a collision with another vehicle that hit his bumper. He was found at fault for entering the traffic too late. The accident was a “small fender-bender.” (Ex. 4.)
- d) On September 6, 2009, he was driving on Revere Beach Parkway when he was stopped for failing to obey a traffic sign and fined about \$45.
- e) On January 4, 2010, he was stopped for speeding in Wakefield. He was found not responsible after appealing the ticket.
- f) On April 2, 2010, he was stopped for speeding on Route 128 in Peabody. He drove as much or more than 100 mph in a 45 mph zone. He was fined about \$550.
- g) On December 10, 2010, he was stopped for speeding on Main Street in Saugus, going 50 mph in a 35 mph zone. He was fined about \$150. He appealed and was found not responsible.
- h) On May 18, 2012, he was stopped in Wakefield for speeding and for failing to wear a

seat belt. He was fined about \$125. He appealed and was found not responsible.

(Exs. 4, 5 & 6. Testimony of Fennelly.)

- 5. Mr. Fennelly currently works full-time for Paragon Systems as an armed guard at the

federal immigration services building (ICE) in Burlington. This is the same job he held with MVM, Inc., which Paragon bought. He has done this job from October 2012. Mr. Fennelly was sworn in as a part-time Auxiliary/Special Police Officer for the Whitman Police Department, receiving an appointment covering January 15 to June 20, 2013. Between July 2011 and September 2012, Mr. Fennelly worked part-time at Lawton Welding as a fabricator, and at Total Temperature Control part-time as an assistant technician. Between May 2005 and August 2010, he worked part-time doing counter help for a pizzeria in Saugus. (Exs. 4, 5 & 6. Testimony of Fennelly.)

6. On April 20, 2011, Mr. Fennelly took the Civil Service Police Officer Entrance Examination. During 2012, the Saugus Police Department decided to hire two or three Police Officers. Mr. Fennelly passed the examination and received a rank of 23 on certified list # 00250. He was one of three with this rank. Mr. Fennelly signed the list that he would take the job if offered. (Ex. 3. Testimony of DiMella & Fennelly.)

7. Mr. Fennelly was provided with an extensive job application which he completed on January 30, 2013. The information sought covered his personal history, physical profile, family, marital status, residences, travel, education, computer training, special skills, volunteer service, hobbies and athletics, finances, income taxes, employment history, any interactions with state agencies, all court records, full driving record, military record, any government investigation record, all licenses held, professional and personal references, general behaviors, any drug use or experimentation, and use of alcohol. He signed various required authorization forms to permit the Police Department to uncover background information about him. When answering the application questions, the candidate was expected to use additional pages to provide full and accurate answers, and Mr. Fennelly did this. After the application was filed, the candidate would proceed to the next stage in the hiring process of meeting with the Police Department

Investigator. Mr. Fennelly met with his Investigator, Detective Fred Forni. (Exs. 4, 5 & 6. Testimony of Fennelly & DiMella.)

8. Mr. Fennelly completed his application fully, including pages of additional explanation on such topics as his education and driving record. He had letters of reference in his application as required. He also wrote out a statement about why he wanted to become a Saugus Police Officer. He explained that this “has always been a life long dream.” He always viewed police as heroes who “help people, and also put the criminal away,” and helping to solve problems “is rewarding.” He explained that a police officer has a “financially stable job ... [so there is] always going to be a need for police officers.” He noted how Saugus has always been his hometown so that he would like to do police work in Saugus. He would like to make his “parents proud ... [and show them that] all the money they spent on my education was not wasted, and it is actually my dream job and what I want to be doing.” (Exs. 4 & 6. Testimony of Fennelly.)

9. Mr. Fennelly met with Detective Forni on March 18, 2013 at the Saugus Police Station. Detective Forni reviewed the completed application with Mr. Fennelly. Mr. Fennelly gave him copies of his driver’s license, his social security card and his birth certificate as required. Detective Forni found the application to be complete along with all the needed release forms. Mr. Fennelly had left his job and come to the interview in his work clothes. He had sunglasses propped on top of his head. He was aware that after meeting with the Investigator about his application that the hiring process would include a formal interview with the hiring committee. He recognized that he was not in formal attire for this interview with Detective Forni. He did not apologize to Detective Forni about his appearance. Detective Forni did not address Mr. Fennelly’s attire with him. During the interview, Mr. Fennelly was not “nervous and spoke very well.” (Exs. 4, 5 & 6. Testimony of Fennelly.)

10. Detective Forni questioned Mr. Fennelly about his driving record, especially “the

several speeding tickets.” Mr. Fennelly explained: “[H]e had no excuse other than he was young and immature” when he received his speeding citations, in particular the speeding of 100 mph. He had recently bought a car and was trying out the car which was “a stupid thing to do.” Detective Forni asked him about the citations he appealed and was found not responsible for; whether he “thought the officers were incorrect in issuing those tickets.” Mr. Fennelly told him the officers may have been correct in stopping him but he appealed “hoping to just get the fine reduced.” In his application, Mr. Fennelly provided background information about each driving citation he received as best as he could recall them. He also included accounts of two driving accidents that did not lead to any citation. One occurred on April 29, 2012 when his car banged into the back of the car ahead of him inside a car wash. He was found not responsible for this accident. Another occurred on July 17, 2012 while he was driving on Route 1 entering Danvers when a vehicle came into his lane of traffic and hit his vehicle causing damage to the car’s rear driver’s side. He was found not responsible for this accident. (Exs. 4 & 5. Testimony of Fennelly.)

11. Detective Forni asked Mr. Fennelly about the references he listed, noting that the letters of reference do not match the names on the list. Mr. Fennelly explained that he was confused about the directions on references and felt he had to have different people do the letters of reference. Detective Forni found the handwriting sample Mr. Fennelly produced “to be grammatically accurate.” Detective Forni asked him why he owned and needed so many firearms. Mr. Fennelly explained, “that he enjoys shooting and often takes those weapons up north to shoot recreationally.” Detective Forni asked him about his alcohol use, and Mr. Fennelly told him “he only drinks socially and never to excess.” Mr. Fennelly confirmed that he never smokes any tobacco products and is aware that police officers are not allowed to use tobacco. He confirmed that “he has not experimented with any ... illicit drug.” He acknowledged playing “various lottery games,” spending about \$100 a year, and that he does this just “for recreation ... not a problem.” Detective Forni asked him “how he felt about the

Saugus Police Department.” Mr. Fennelly explained he has “a very good opinion about it ... thinks that this is a great department and the officers ... conduct themselves in a professional manner ... that he grew up next to retired Saugus Police Chief Donald Peters and has always held the Saugus police in high regard.” In terms of the traits important to a police officer, Mr. Fennelly mentioned a need to be “honest and have integrity skills.” Detective Forni asked him what he would do if he was faced with arresting “a family member or close friend.” He responded:

[I]t would be a difficult decision but that he wouldn’t allow his relationship with an individual cloud his decision on what to do ... the law is the law and ... if you break the law you should be held to the same standard as everyone else no matter who you are.

(Ex. 5.)

12. Detective Forni formed a conclusion about his interview of Mr. Fennelly that he put into his investigation report. He noted that Mr. Fennelly submitted his application on time and in a complete and truthful form. He found his confusion over the reference letters and the list of references to be “a misunderstanding.” He noted how “Mr. Fennelly seemed very at ease during the interview and spoke very candid[ly] ... gave firm honest answers to the questions ... asked and elaborated on most without being asked to do so.” Detective Forni noted his college degree in criminology, but that Mr. Fennelly had academic challenges including being put on academic probation and also academically suspended twice before completing his degree in 2012. He noted how Mr. Fennelly’s

employment history shows steady employment since his graduating High School in 2008 and during his college years to the present time ... past and current supervisors all spoke well of him and his ability of becoming a police officer.

Detective Forni noted he had no negative financial/credit issues. He noted he had no criminal record. In terms of his driving record, Detective Forni acknowledged he

has been issued several M/V citations ... and found responsible for two motor vehicle accidents ... majority of these violations were for speeding. Of note ...

a speeding ticket ... for travelling in excess of 100 mph in a 45 mph zone on Rt. 128 in Peabody.

Detective Forni noted that “Mr. Fennelly was forthcoming about the [driving] tickets he received and took responsibility for them.” Detective Forni concluded his report by noting Mr. Fennelly enjoys

the support of his family and friends in his desire to become an officer and they spoke very highly of him and his ability ... personal and professional references ... spoke very well of him ... that he was an upstanding person who possesses qualities that would make him a good candidate for Police Officer. No one had anything negative to say about this applicant.

Detective Forni opined that Mr. Fennelly “presented himself well during my interview ... and seems determined to complete his quest to become a Police Officer.” (Ex. 5.)

13. Chief DiMella reviewed Mr. Fennelly’s application and the report from Detective Forni on his interview of Mr. Fennelly. He was concerned that Mr. Fennelly did not come to the interview in more formal attire, but he primarily was concerned about his driving record within the last five years. Chief DiMella has been Chief for five years and prior to that was a long-time Saugus Police Officer who rose through the ranks, including six years as a Lieutenant. He is familiar with the hiring process and procedures to be followed having been involved as Chief in the hire of about ten Police Officers. He determines among the candidates who have reached the level that Mr. Fennelly reached, whether or not he will recommend to the Town Manager that they go onto the formal interview stage. That stage involves a panel that includes the Town Manager, the Chief, and the Human Resources Director. Chief DiMella decided that Mr. Fennelly should not proceed to this final interview stage primarily due to his poor and too recent driving record. Specifically, Chief DiMella felt that the speeding at 100 plus mph occurred too recently and showed a lack of maturity and poor judgment to a degree that Mr. Fennelly would pose too great a risk to be using a cruiser. Using a cruiser would be a routine job responsibility for a new Saugus Police Officer. Chief DiMella may not have felt the same if the poor driving record, including this particular speeding incident, had been much prior in time with a good recent driving record to show a

growth in good judgment and maturity. In determining to stop Mr. Fennelly's candidacy, Chief DiMella felt he had ample candidates to go into the formal interview level of the hiring process that also matched the positive features of Mr. Fennelly's candidacy including his education and pertinent employment with good references. (Testimony of DeMella.)

14. Mr. Fennelly was not given the opportunity by the Town Manager to move into the
the
next phase of the hiring process, as the Town Manager relied on the recommendation of Chief DiMella. That final phase of formal candidate interviews occurred. The next candidate following Mr. Fennelly on the certified list who went through the final interview stage and who was recommended to the Town Manager for an appointment to Police Officer, was David Zeitz. Mr. Zeitz ranked 24 on the certified list along with one other candidate. (Ex. 3. Testimony of DiMella.)

15. By letter of August 1, 2013, Chief DiMella wrote to the Town Manager in support of
of
bypassing Mr. Fennelly for appointment. He explained that he reviewed Mr. Fennelly's background investigation by Detective Forni and found "a poor driver history." He highlighted "one violation ... [where] he was cited for doing 100 mph in a 45 mph zone in Peabody on 4/1/2010." He also noted "four speeding tickets in a two year period." Chief DiMella added that Mr. Fennelly appeared for his interview with Detective Forni in his "work clothes and ... his sunglasses on his head during the entire interview." Chief DiMella reported that Mr. Fennelly had been "repeatedly" calling Detective Forni since his interview to learn "what was going on even when he was told that the department will contact him when the background process is completed." (Ex. 2.)

16. On September 17, 2013, Chief DiMella wrote to the Town Manager in support of
the
hire of Mr. Zeitz.

Mr. Zeitz' application packet was submitted on time and was complete and truthful. He has knowledge of the Policies and Procedures of the Saugus Police Department ... has been employed as a dispatcher since 1999 ... knows the IMC software system ... used for all reports ... earned a Bachelor of Science degree in Criminal Justice from Salem State College ... completed the N.E.R.P.I. Reserve Police Officers Academy in 2004.

Mr. Zeitz provided three personal and three professional references and all ... spoke well of Mr. Zeitz ... all agree he will make an excellent Police Officer.

Mr. Zeitz interviewed very well because he has the experience as a dispatcher and works closely with the police officers. I feel he will be an excellent addition to the Saugus Police Department.

(Ex. 2.)

17. By memorandum of September 23, 2013 to Chief DiMella, the Town Manager
stated

his agreement that Mr. Fennelly should be bypassed for appointment. He did not provide more specific information. (Ex. 2.)

18. By letter of September 25, 2013, the Town Manager informed Mr. Fennelly that
he

was being bypassed for appointment. Mr. Fennelly was provided with

a copy of a letter from the Bureau of Criminal Investigation of the Saugus Police Department and a memorandum from the Town Manager stating the selection reasons associated with the candidate appointed below your name ... [and] correspondence stating the reasons associated with your non-selection.

The letter contained Mr. Fennelly's right to appeal. (Ex. 2.)

19. Mr. Fennelly filed a timely appeal with the Civil Service Commission on October
28,

2013. (Ex. 1.)

Conclusion and Recommendation

I conclude from my findings of fact that the Town Manager, as the Appointing Authority, had justifiable reasons for bypassing Mr. Fennelly for an original appointment to the position of Police Officer. The findings show that Chief DiMella's concerns, that the Town Manager agreed with, show accurate and not speculative or arbitrary reasons for the

bypass based on Mr. Fennelly's driving record within the five years prior to his applying for the position. In terms of the Chief's concerns about how he came dressed to the interview with Detective Forni, I do not find that ground has been shown to support a bypass decision. No evidence was presented to use as a reason for the bypass what the Chief's August 1, 2013 letter to the Town Manager noted about Mr. Fennelly repeatedly contacting Detective Forni about his status after his interview despite being told he would be hearing from the Police Department about his status.

When an Appointing Authority bypasses an otherwise eligible candidate it must provide both a reasonable justification for doing so, as well as proof that such a justification could be applied fairly to all potential candidates. *Brackett v. Civil Service Commission*, 447 Mass. 233, 241 (2001); *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). In hearing bypass appeals, the Civil Service Commission must determine whether the Appointing Authority has "sustained its burden of proof that there was reasonable justification for the action taken." *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 304. Reasonable justification requires that the Appointing Authority base its actions on adequate reasons, supported by creditable evidence, guided by common sense, and weighed by an unprejudiced mind. *See Wakefield v. First District Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928); *Civil Service Commission v. Municipal Court of Boston*, 359 Mass. 214 (1971). In sustaining its burden of proof, the Appointing Authority must prove its justification by a preponderance of the evidence. G.L. c. 31, § 2(b). I conclude the Appointing Authority's proof satisfies these standards for its bypass determination.

Appointing Authorities are granted wide discretion when choosing individuals from a certified list of eligible candidates. The Civil Service Commission cannot substitute its views and preferences for those of the Appointing Authority. *Burlington v. McCarthy*, 60 Mass. App. Ct. 914 (2004). Rather, the Civil Service Commission's role is to "protect against

overtones of political control, objectives unrelated to merit standards, and assure neutrally applied public policy.” *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 304; *Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315, 321 (1991); *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). The Civil Service Commission reviews the legitimacy and reasonableness of the Appointing Authority’s reasons for bypassing an Appellant. *Beverly v. Civil Service Commission*, 8 Mass. App. Ct. 182, 187 (2010). So long as the Appointing Authority provides sound and sufficient reasons for the bypass and applies its policies equally, the Civil Service Commission should not intervene.

There was no proof of any pre-textual reason in the decision to bypass Mr. Fennelly, and no proof of any improper factors given consideration regarding his candidacy. It is not hard to appreciate that if driving a cruiser would be routine work expected of a new Saugus Police Officer, the new hire should come to the job with a good driving record. Mr. Fennelly’s driving record within the five years prior to his seeking the position was not a good driving record due to his speeding citations, including the April 2010 very dramatic speeding of at least 100 mph in a 45 mph zone. Moreover, that was not Mr. Fennelly’s last speeding citation. He had another one in December 2010 and another one in May 2012. He had appealed these two citations and found to be not responsible, but he acknowledged that he had appealed to try to get the fine reduced and not because he felt he was not speeding on these occasions. Employing the criteria of hiring new Police Officers who have recent good driving records shows the Town of Saugus values safe and responsible driving by its Police Officers. It is hard to see how speeding shows other than poor judgment when driving.

There was sufficient evidence presented by the Appointing Authority to show the process that it used to evaluate candidates for an original appointment to Police Officer was useful, reasonable, and fair to the candidates. It was not a new process facing Chief DiMella who had already hired new Police Officers using this same hiring process. The application was

long but not difficult to follow. There was an opportunity for candidates to explain their answers, something Mr. Fennelly took advantage of. Even the background investigation process involved meeting with the investigator and providing clarifications for any of the application answers. All the candidates faced the same hiring process and procedures. Having the Chief involved so closely allowed for a useful evaluation and assessment process toward assuring that the Town Manager as the Appointing Authority had sufficient and useful information to make a final hiring decision. The fact that the Town Manager agreed with Chief DiMella that there was no need for Mr. Fennelly to participate in the final interview stage in the hiring process, does not change the appropriateness and soundness of the hiring process given Mr. Fennelly's poor recent driving record.

The decision to hire Mr. Zietz over Mr. Fennelly was also presented as based on reasonable and justifiable criteria. Nothing showed that Mr. Zietz had a driving record in the same category as Mr. Fennelly's poor recent record and that he was chosen despite this.

Mr. Fennelly showed his long standing and very genuine desire to become a Police Officer, and in particular, a Saugus Police Officer. Setting aside his driving record, the rest of his background shows his dedication to secure this position. He got through academic struggles to secure a B.A. degree in criminology. His work experience seems pertinent to someone striving to gain skills pertinent to many police tasks, i.e., his current job doing armed guard work and his Whitman Auxiliary/Special Police Officer appointment. His employers have all found him a good worker. It would seem not out of the question if more hiring for Police Officer is done in Saugus in the future that as more time passes and Mr. Fennelly secures a good period of time showing a safe driving record reflecting use of good judgment, that he might fare well for a future appointment. Chief DiMella noted that it was in part because the poor driving record was recent that this was a clear ground to bypass Mr. Fennelly.

For these reasons, I recommend that the Civil Service Commission affirm the action taken by the Appointing Authority and dismiss Mr. Fennelly's bypass appeal.

**DIVISION OF ADMINISTRATIVE
LAW APPEALS**

Sarah H. Luick
Administrative Magistrate
Dated: