

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**  
One Ashburton Place: Room 503  
Boston, MA 02108  
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INVESTIGATION RE:

CITY OF NEWBURYPORT 2014 RESERVE POLICE OFFICER APPOINTMENTS

Tracking No. I-14-189

Appearance for City of Newburyport:

Darren Klein, Esq.  
Kopelman and Paige, P.C.  
101 Arch Street  
Boston, MA 02110

Commissioner:

Christopher C. Bowman

**INVESTIGATION FINDINGS AND CONCLUSIONS**

*Background*

On November 19, 2013, the state's Human Resources Division (HRD) sent Certification No. 01368 to the City of Newburyport (City) for the purpose of the City appointing permanent reserve police officers. It is undisputed that one of the candidates on Certification No. 01368 is the Police Marshal's son.

On June 5, 2014, the Civil Service Commission (Commission) received a bypass appeal from a then-non selected candidate (See CSC Case No. G1-14-126). As part of that appeal, the then-non selected candidate alleged that the Police Marshal's son, who was ranked below her and who was selected for appointment, did not qualify for the statutory residency preference (and, therefore, should not have been appointed).

As part of and subsequent to the pre-hearing conference, the City indicated that it had reconsidered the Appellant's application in CSC Case No. G1-14-126 and has now issued that candidate a conditional offer of employment.

As part of the pre-hearing conference, I notified counsel for the City that, regardless of the disposition of the Appellant's appeal in CSC Case No. G1-14-126, the Commission may exercise its authority under G.L. c. 31, § 2(a) to initiate an investigation into what, if any, role the Police Marshal had in the current hiring cycle and, specifically, whether the Police Marshal's son qualified for the residency preference.

In order to determine whether an investigation was warranted, I issued a Procedural Order on July 18, 2014, seeking certain information about the hiring cycle. Counsel for the City promptly responded to the information request on August 1, 2014.

Based on a review of the information provided by the City, I concluded that an investigation was warranted regarding two issues.

First, Certification No. 01368 clearly indicated that the Police Marshal's son was listed as qualifying for the residency preference, which placed him above any candidates who did not qualify for the residency preference. Since the City did not appoint any non-residency preference candidates, I inferred that the Police Marshal's son would not have been eligible for consideration but for his residency status.

The City, in its response to the Commission, stated that no steps were taken to verify that candidates qualified for the residency preference, beyond asking the candidates to provide a copy of his / her driver's license. Further, the City stated that the Police Marshal's son's address "has been listed in the documents relative to his application, including his driver's license, as 'Newbury, MA, not Newburyport, MA'". The City also (it appears erroneously) stated that the

Certification “did not list [the Police Marshal’s son] as a resident of Newburyport or as him receiving a residency preference.” (emphasis added)

The City appeared to be erroneously equating a candidate’s address at the time he / she signs the Certification with his/her eligibility for residency preference. Pursuant to G.L. c. 31, § 58,

“If any person who has resided in a city or town for one year immediately prior to the date of examination for original appointment to the police force or fire force of said city or town has the same standing on the eligible list established as the result of such examination as another person who has not so resided in said city or town, the administrator, when certifying names to the appointing authority for the police force or the fire force of said city or town, shall place the name of the person who has so resided ahead of the name of the person who has not so resided; provided, that upon written request of the appointing authority to the administrator, the administrator shall, when certifying names from said eligible list for original appointment to the police force or fire force of a city or town, place the names of all persons who have resided in said city or town for one year immediately prior to the date of examination ahead of the name of any person who has not so resided.”

Applied here, a candidate, in order to qualify for residency, would have needed to reside in Newburyport from June 15, 2012 to June 15, 2013. The City had not provided any documents to show whether the Police Marshal’s son met this requirement.

Second, and more broadly, there was the question about the Police Marshal’s involvement in a hiring process in which his son was a candidate. Even accepting the City’s contention that the Marshal had no role in his son’s interview or candidacy, it is clear that the Marshal was involved in making recommendations to appoint (or not appoint) other candidates, including those ranked above his son, that could potentially impact his son’s candidacy. Further, rather than informing his Appointing Authority of the possibility of a conflict, he designated his subordinates with the responsibility of assessing the strengths and weaknesses of his son.

*Discussion*

G.L. c. 31, § 2 states in relevant part:

“In addition to its other powers and duties, the commission shall have the following powers and duties:

- (a) To conduct investigations at its discretion or upon the written request of the governor, the executive council, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth.”

This statute confers significant discretion upon the Commission in terms of what response and to what extent, if at all, an investigation is appropriate. See Boston Police Patrolmen’s Association et al v. Civ. Serv. Comm’n, No. 2006-4617, Suffolk Superior Court (2007). (See also Dennehy v. Civ. Serv. Comm’n, No. 2013-00540, Suffolk Superior Court (2014) (“The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.”))

G.L. c. 31, § 72 states in part:

“The commission or the administrator may investigate all or part of the official and labor services, the work, duties and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings and methods of promotion in such services.

...

The commission or the administrator or any authorized representatives of either, may summon witnesses, administer oaths and take testimony for any hearing, investigation or inquiry conducted pursuant to the civil service law and rules. Fees for such witnesses shall be the same as for witnesses before the courts in civil actions and shall be paid from the appropriation for incidental expenses.”

G.L. c. 31, § 73 states:

“If, in the opinion of the administrator [HRD], a person is appointed or employed in a civil service position in violation of the civil service law and rules, the commission or the administrator shall mail a written notice of such violation to such person and to the appointing authority. The commission or the administrator shall then file a written notice of such violation with the treasurer, auditor or other officer whose duty it is to pay the salary or compensation of such person or to authorize the drawing, signing or issuing of any warrant for such payment.

The payment of any salary or compensation to such person shall cease at the expiration of one week after the filing of such written notice with such treasurer, auditor or other officer. No such treasurer, auditor or other officer shall pay any salary or compensation to such person, or draw, sign or issue, or authorize the drawing, signing or issuing of any warrant for such payment, until the legality of the appointment or employment is duly established.

Any person found by the administrator [HRD] to be illegally appointed or employed may file a petition for a writ of mandamus in the supreme judicial court to compel the administrator to authorize such appointment or employment and the payment of compensation or salary.

At any time after the filing of such petition, the court may order that the compensation accruing to such person for services actually rendered shall be paid to him until further order of the court, if the court is of the opinion that there is a reasonable doubt whether the appointment or employment of such person is in violation of the civil service law and rules.”

The Commission’s core mission includes ensuring fair and impartial treatment of all candidates for appointment to civil service jobs in the public sector. The information provided thus far warrants further inquiry to determine whether that occurred here.

For these reasons, the Commission, on its own initiative, on August 25, 2014, opened an investigation under G.L c. 31, § 2(a) regarding the 2014 review and selection process of reserve police officer candidates in the City of Newburyport under Tracking No. I-14-189.

As part of this investigation, the City’s Mayor was ordered to ensure that a bonafide independent review was conducted to determine whether the Police Marshal’s son was eligible for the residency preference in this hiring cycle. Specifically, said review was to determine whether the Police Marshal’s son did - or did not – reside in the City of Newburyport from June 15, 2012 to June 15, 2013. A hearing on the matter was scheduled to occur on November 18, 2014.

On November 11, 2014, the Commission received a status update from the City regarding the Commission’s August 25, 2014 order.

The City reported that it had completed an independent review regarding whether the Marshal's son did or did not reside in the City of Newburyport from June 15, 2012 to June 15, 2013. As a result of that independent review, the results of which were provided to the Commission, it was determined that the Marshal's son did not reside in the City of Newburyport from June 15, 2012 to June 15, 2013. Therefore, he was not entitled to residency preference and should not have been among those considered for appointment as a reserve police officer on Certification No. 01368.

The City also reported that the Marshal's son has now resigned from his position as a reserve police officer with the City, effective October 17, 2014.

Based on the fact that the Marshal's son has resigned from his position, the Commission is closing its investigation of this matter. We do so, however, confident that the City will take all appropriate steps to ensure that future hiring processes are conducted in accordance with both the civil service law – and the state ethics law. As referenced above, although the Marshal did not interview or review his son's candidacy, he did participate in the hiring process, including not recommending at least one (1) candidate who was ranked above his son on Certification No. 01368. This highlights the need for the City to make appropriate – and immediate – changes regarding any hiring process involving immediate family members.

The Commission's investigation under Tracking No. I-14-89 is hereby *closed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

Notice:

Darren Klein, Esq. (for City of Newburyport)

John Marra, Esq. (HRD)