

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

RE:

Request for Investigation Against the Town of Maynard by Adam Paicos

CSC Tracking Number:

I-15-10

Appearance for Petitioner:

Gary G. Nolan, Esq.
Nolan Perroni Harrington, LLP
133 Merrimack Street
Lowell, MA 01852

Appearance for Town of Maynard:

Michael J. Kennefick, Esq.
Blatman, Bobrowski, Mead
& Talerma, LLC
730 Main Street: Suite 2B
Millis, MA 02054

Appearance for Human Resources Division:

Michael Downey, Esq.
Human Resources Division
One Ashburton Place: Room 207
Boston, MA 02108

Commissioner:

Christopher C. Bowman

RESPONSE TO REQUEST FOR INVESTIGATION

1. On March 20, 2014, the Civil Service Commission (Commission), allowed the appeal of Adam Paicos (Mr. Paicos), who was bypassed for appointment as a police officer by the Town of Maynard (Town).
2. As part of the March 20, 2014 decision, the Commission ordered that the name of Mr. Paicos be placed at the top of any current or future civil service Certifications for the position of police officer in the Town of Maynard until such time as he was appointed or bypassed.
3. There is no record of the Town pursuing a judicial appeal of this Commission decision.
4. On January 7, 2015, Mr. Paicos filed a petition with the Commission in which he argued that the Town failed to comply with the Commission's March 20, 2014 decision. Specifically,

Mr. Paicos alleged that the Town circumvented the civil service process by appointing multiple police officers since March 20, 2014 without requesting a Certification from the state's Human Resources Division (HRD) which would have included the name of Mr. Paicos ranked first.

5. On January 22, 2015, the Commission issued an order to show cause why the Commission should conduct an investigation under G.L. c. 31, s. 2(a). Notice was sent to the Town, counsel for Mr. Paicos and HRD. The show cause hearing was scheduled for February 3, 2015.
6. At the show cause hearing, counsel for Mr. Paicos argued that, although Town Meeting passed an Article in May 2014, that Article only referenced petitioning the Legislature to exempt certain positions from civil service. It did not, standing alone, according to counsel for Mr. Paicos, exempt the positions from civil service. According to counsel for Mr. Paicos, a Special Act of the Legislature would be required to exempt only certain positions from civil service and no such legislation has been enacted by the Legislature and/or signed into law by the Governor.
7. Counsel for the Town stated that a Special Act of the Legislature is not needed here and, since civil service was adopted by a Town Meeting vote in 1917, only a Town Meeting vote was required to exempt these positions from civil service.
8. Counsel for the Town stated that they had been working with an employee at the state's Human Resources Division regarding the process for exempting these positions from civil service and that the Town had provided HRD with various documents regarding the process for exempting these positions from civil service.
9. For all of the above reasons, I made the following orders as noted below.
10. HRD was to provide the Commission with any and all documentation, including, but not limited to, any correspondence between the Town and HRD directly or indirectly related to the Town's request to exempt certain positions from civil service.
11. The Town was to provide the Commission with any and all documentation, including, but not limited to, any correspondence between the Town and HRD directly or indirectly related to the Town's request to exempt certain positions from civil service.
12. The Town was to provide the Commission with a brief, replying to the petition of Mr. Paicos, which must include, but not be limited to, the Town's position on the steps required to exempt the positions in question from civil service, what steps actually have been taken by the Town in this regard and the Town's position on whether those steps have resulted in the position of police officer being exempt from civil service in the Town.
13. The Town's brief was to include a list of all police officer appointments that have been made by the Town since the Commission's decision was issued on March 20, 2014 and the process used to make those appointments.

14. All information was to be submitted to the Commission within thirty (30) days with a copy to both parties.
15. In response to the Procedural Order, HRD provided a series of email exchanges between the Town and HRD. While the Town's Police Chief represented to HRD that "Maynard removed PD from civil service in the May 2014 Town Meeting", the only documentation provided to HRD to verify this was a certified copy of Article 21 from the Town's May 19, 2014 Annual Town Meeting which, along with the language related to certification, stated, in its entirety:

ARTICLE: 21 REVOKE CHAPTER 31 OF THE ACTS OF 1917, CIVIL SERVICE

To see if the Town will vote to petition the General Court to pass AN ACT EXEMPTING THE POSITIONS OF PATROLMAN, SEARGENT (sic) AND LIEUTENANT IN THE TOWN OF MAYNARD POLICE DEPARTMENT FROM THE PROVISIONS OF THE CIVIL SERVICE LAW

Section 1: The positions of patrolman, sergeant and lieutenant in the Town of Maynard Police Department shall be exempt from the provisions of Chapter 31 of the General Laws and related regulations applicable thereto.

Section 2: The provisions of Section 1 of this act shall not impair the civil service status of the present employees of the Town of Maynard Police Department except for the purpose of promotion.

Section3: This act shall take effect upon its passage.

Section 4: The General Court may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition;

To do or act thereon.

SPONSORED BY:	Board of Selectmen
APPROPRIATION:	None
FINCOM RECOMMENDATION:	At Town Meeting

The following action was taken:

Voted: To accept the article as printed in the warrant except the words "To do or act thereon."

The Finance Committee recommended.

16. On February 20, 2015, in response to an inquiry from the Commission, counsel for HRD stated: “HRD’s position is that the passage of the Town Meeting warrant article simply provided the Town of Maynard with the authority to ‘petition the General Court to pass AN ACT EXEMPTING THE POSITIONS OF PATROLMAN, SERGEANT AND LIEUTENANT IN THE TOWN OF MAYNARD POLICE DEPARTMENT FROM THE PROVISIONS OF THE CIVIL SERVICE LAW.’ Following the explicit language of the warrant article referenced above, HRD takes the position that legislative action is necessary before the listed positions are effectively exempt from Civil Service.”
17. On March 6, 2015, the Town filed its response with the Commission. In its response, the Town stated that only one (1) police officer appointment has been made in Maynard since May 2014, an appointment that was made on November 5, 2014. The appointment was not made through the civil service process, which requires appointment from a list of names on a Certification drawn from an eligible list of candidates who took and passed a civil service examination.
18. In its response, the Town argues that, a Town can rescind or revoke its prior acceptance of a General Law in the same manner as it accepted *and* that the revocation here of the 1925 Town Meeting vote on civil service became effective as of the Town Meeting vote in May 2014.
19. Further, the Town argues that, even if the Town Meeting vote did not result in revocation of these civil service positions, the Commission should take no action because “it is expected that the special legislation that was filed pursuant to that vote will be passed by the legislature and signed into law before these proceedings are concluded or shortly thereafter, thereby rendering all matters relating to the Commission’s investigation moot.”
20. The Town has requested that the Commission “enter a finding that the Town lawfully filled the position of patrolman when it hired [the police officer] on November 5, 2014.”

Analysis

Passage of Article 21 at Maynard’s Annual Town Meeting in May 2014 did not result in the positions of patrolman, sergeant and lieutenant being revoked from civil service. As correctly stated by HRD, the explicit language of that Article was limited to an authorization to petition the legislature to seek such revocation.

In short, absent a Special Act of the Legislature¹, those positions remain in civil service and the Town is required to abide by the civil service law and rules when making appointments to those positions.

¹ In regard to whether the Town can revoke individual positions from civil service without a Special Act of the Legislature (i.e. – a Town Meeting Article that does not reference petitioning the Legislature, but, rather, authorizes

When the Town hired a police officer in November 2014, there was an active (civil service) eligible list of candidates. Consistent with the civil service law and rules, the Town was required to requisition a Certification of names (from HRD) and choose from among the first three (3) candidates on that Certification. They did not. Further, as of the date of this Order, no Special Act has been enacted to revoke these positions from civil service.

For this reason, the Petitioner's request for the Commission to initiate an investigation is allowed and an investigatory hearing will be held at the offices of the Commission on July 15, 2015 at 9:30 A.M. Said hearing is being scheduled to provide sufficient time to determine what, if any, action will be taken on the Town's petition to the Legislature.

In the interim, the Town shall comply with all civil service law and rules, including, but not limited to, matters related to original and promotional appointments to the positions of patrol officer, sergeant and lieutenant.

Further, the Town shall post this Response in the Police Department Headquarters and/or any other location(s) to ensure that all members of the Police Department, including the individual hired on November 14th, are aware of these proceedings which may impact their rights.

SO ORDERED.

/s/ Chris Bowman

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on April 2, 2015.

Notice:

Gary Nolan, Esq. (for Petitioner)
Michael J. Kennefick, Esq. (for Town of Maynard)
Michael Downey, Esq. (for HRD)

revocation outright, the Petitioner and the Town disagree. That issue is not before the Commission at this juncture of the proceedings.