

# Understanding Civil Service Classifications

See page 2 and 3 of this document for information on Exempt Civil Service class

Despite popular belief, all jobs in town government, from elected officials to clerical staff, are governed by Civil Service law. Civil Service law defines "civil service" to be all offices and positions in the service of the state or its civil divisions.<sup>1</sup> That is not to say that all positions must be filled by competitive examination. Rather, the civil service of the state is first broken down into two types of service, the classified service and the unclassified service.<sup>2</sup> The classified service is further broken down into four classes: 1) competitive class; 2) non-competitive class; 3) labor class; and 4) the exempt class.<sup>3</sup> Before any new positions are created, or existing positions reclassified, a statement of the duties of the position must be forwarded to the local civil service commission for classification.<sup>4</sup> How the provisions of the civil service law, and the rules made pursuant thereto, apply to a specific position will depend on this classification, i.e., which type of service the position is in, and, if in the classified service, how that position has been classified. Below is a brief overview of what factors are considered in determinations with respect to classification, and what such classifications mean in the context of appointment and discipline / discharge under the Civil Service Law.

## Unclassified Service

Often, when a public officer or employee says that their position is not "covered by" or "under" civil service, they are telling you that they are in the unclassified service of the state or a political subdivision thereof. Positions in the unclassified service include all

elected officials, all officers and employees of the state legislature, department heads who have control over a department and have power to appoint and remove officer and employees therein, all members, officers and employees of boards of elections, and certain State University and Community College professors.<sup>5</sup> Although this list is not exhaustive, it provides a clear picture of the types of positions covered; namely, those positions that involve the exercise of the highest degree of discretion and/or require a degree of autonomy that is not found in the classified service.

It is important to note that a position that would otherwise be in the un-

classified service may be placed in the classified service by a separate provision of state law. For example, an appointive assessor for a town may appear to meet the "department head" qualifications for placement in the unclassified service. She or he has control of the department, and may (although it is not common) be vested with the power to appoint and remove officers and employees therein. A provision of the Real Property Tax Law, however, expressly places appointive assessors in the classified service.<sup>6</sup>

With limited exceptions, Civil Service Law requirements with respect to

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## Quality Communities Grants

The Department of State Announces the Environmental Protection Fund New York State Quality Communities Grant Program.

**What:** Competitive Grant Program

**Amount Available:** \$3 Million

**Deadline:** December 5, 2005

**Eligible Applicants:** Counties, Cities, Towns, Villages, Indian-Tribes/Nations, Local Public Authorities, Public Benefit Corporations, and Not-for-Profits (under certain circumstances).

**Purpose:** These funds are designed to assist local governments with planning efforts to: encourage community growth, improve community centers, promote intermunicipal growth, enhance mountain communities preserve open space and more.

**Details:** Applications and other details can be downloaded from the Quality Community website at <http://www.qualitycommunities.org/index.asp>

**Questions:** Direct questions to Laurie Savage at 518-473-3355, or [QC@dos.state.ny.us](mailto:QC@dos.state.ny.us)

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recruitment, personnel changes, position classification and compensation do not apply to those positions in the unclassified service of the state. A notable exception is section 62 of the Civil Service Law, which requires *all* persons employed by the state or any of its civil subdivisions to file an oath of office before discharging their official duties, without regard to the type of service they are in. Those holding positions in the unclassified service are not subject to any of the provisions with respect to appointment, discipline or discharge that govern those in the classified service.<sup>7</sup>

### Classified Service

As mentioned above, the classified service is broken down into four classes: competitive, non-competitive, labor and exempt. Every position that

is not listed in the unclassified service falls within the classified service. Thus, the vast majority of positions in town government will be in one of these four classifications. One of the key factors in determining which classification a position will be placed in is the practicality of holding an examination for filling that position. It is the responsibility of the local civil service commission or personnel officer to determine how to classify a given position, subject to approval by the State Civil Service Commission. Except for the towns of Colonie and Hempstead, the local civil service commission or personnel officer will be found at the county level.

#### A. Exempt Class

The exempt class consists of positions designated as exempt in the civil service law, along with positions that the local civil service commission find not practicable to fill by competitive or non-competitive examination.<sup>8</sup> In or

der for a position to be considered in the exempt class, it must be specifically named in the rules of the local civil service commission.<sup>9</sup> The following positions are typically listed in the exempt class:

1. Deputies of principal executive officers who are authorized by law to act generally for and in place of their principals

Deputies of principal executives fall within the exempt class only when they are authorized by law to act generally for and in place of their principals. A deputy by name or title only, who lacks authority to act in place of the principal, will not be placed in the exempt class under this provision.<sup>10</sup> The power to act for and in place of principals is expressly provided by the Town Law to the deputies of the following Town Officers: Town

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Supervisor; Highway Superintendent; and the Collector / Receiver of Taxes. A Deputy Town Clerk may act for and in place of the town clerk only when so authorized by the Town Board.<sup>11</sup>

With respect to deputies of principals not listed above, the authority of a deputy to act for and in place of the principal will be defined by the law establishing that position, be it local law or state law.

2. One secretary to each municipal board authorized by law to make such an appointment

One secretary for each municipal board authorized by law to make such an appointment may be placed in the exempt class.<sup>12</sup> The town law permits a Planning Board, within available appropriations provided by the Town Board, to employ a secretary. If so authorized by the town board, this secretary would be in the exempt class.<sup>13</sup> Where a Planning Board is authorized to employ more than one secretary, only one secretary may be in the exempt class.

3. One clerk and one deputy clerk if authorized by law of each Court, and one clerk of each elective judicial officer

Every town that has a justice court may have such "non-judicial personnel" as provided for by the town board.<sup>14</sup> Thus, where a town board has authorized the positions of clerk, deputy court clerk and/or clerks to the elected justices, these positions will be in the exempt class of the classified service.<sup>15</sup>

4. Positions which competitive or non-competitive examination is not practicable

In addition to the positions noted above, the exempt class includes "all other subordinate offices or positions for the filling of which competitive or non-competitive examination may be found not to be practicable."<sup>16</sup> If a position is in the exempt class due to this provision, only one appointment may be made thereto, unless the local rules specifically permit a greater number. It is within the discretion of the local civil service commission to determine whether a position will be in the exempt class under this provision. Factors that are considered in making such a determination include the confidential nature of the position, the personal qualities or expertise that cannot be measured by objective examination, and the exercise of authority or discretion at a high level.<sup>17</sup> The determination made by a civil service commission under this provision is afforded a high degree of deference and subject to review only if it is made without any rational basis.

A position common to town government that can be in the exempt class by virtue of this provision is the bookkeeper or confidential secretary to the Supervisor.

Of all the positions in the classified service, positions in the exempt class are afforded the least amount of protection. These positions, however, are subject to fewer restrictions with respect to appointment and promotion than the non-competitive and the competitive class. For example, individuals may be appointed to these positions without being subject to any examination or minimum requirements prior to appointment; however, they are not entitled to a disciplinary hearing prior to discharge under section 75 of the civil service law unless they are honorably discharged veteran who served during time of war or a volunteer firefighter.<sup>18</sup>

**B. Non-Competitive Class**

A town position is placed in the non-competitive class when it is not in the labor or exempt class, and the local civil service commission or personnel

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## Court of Appeals Upholds ZBA Determination

The New York State Court of Appeals unanimously upheld a ZBA determination denying a secondary roadway as part of an expansion project for a church. Typically, when considering a special use permit, a ZBA is prohibited from considering a religious or educational institution's "need to expand." The Court, however, in *Pine Knolls Alliance Church v. ZBA of the Town of Moreau*, distinguished this consideration of "need to expand" from consideration of alternative means to mitigate the negative impacts of an expansion. Since the ZBA found an alternative way of meeting the applicant's traffic concerns while mitigating the negative impacts on the community, and its decision was supported in the record, the denial of the secondary roadway was proper.

A more comprehensive review of this case will appear in the January / February issue of *Topics*. The full text of the decision may be found on the Court of Appeals website: <http://www.courts.state.ny.us/ctapps/>



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officer determines that it is not practicable to ascertain the merit and fitness of the applicants by competitive examination.<sup>19</sup> These positions are filled by appointment after a "non-competitive examination," which is essentially the minimum qualifications that one must meet to be eligible for appointment to the position. The local civil service commission may determine that some of these positions are confidential or policy influencing, and if so, must specifically designate them as such.

The key distinction between the exempt class and the non-competitive class is the practicability of the non-competitive examination. If the local civil service commission determines that establishing minimum qualifications for a position is a practicable way to fill the position, it will be placed in the non-competitive classification, and not the exempt class. As with determinations made with respect to the exempt class, this determination is entitled to a high degree of deference, and will not be overturned unless the determination has no rational basis to support it. Also, like the exempt class,

positions in the non-competitive class must be specifically named in the local civil service rules.

Appointments to positions in the non-competitive class are subject to more restrictions than those in the exempt class, but not as many as those in the competitive class. Likewise, they enjoy some, but not all, of the civil service protections that are afforded to individuals holding a position in the competitive class. Within this class, a distinction is made between those positions that are policy influencing or confidential and those that are not. Under section 75 of the Civil Service Law, an individual holding a position in the non-competitive class that is not policy influencing or confidential are entitled to a hearing prior to discipline or discharge only after they have completed five continuous years of service.<sup>20</sup> Those holding positions that are policy influencing or confidential are not entitled to a hearing under § 75 unless they are an honorably discharged veteran who served during time of war, or a volunteer firefighter.

**C. Labor Class**

This class is comprised of all the unskilled laborers in the service of the state or its civil divisions, except for those positions where a competitive examination can be held.<sup>21</sup> Although not required to, the local civil service commission may require applicants to "qualify in such examinations of their fitness for employment as may be deemed practicable."

Those in the labor class are not entitled to a hearing under Civil Service Law § 75, unless they are an honorably discharged veteran who served during time of war, or a volunteer firefighter.<sup>22</sup>

**D. Competitive Class**

This class consists of all those positions for which it is practicable to determine merit and fitness by competitive examination, as well as every position that is not in the exempt, non-competitive, or labor class.<sup>23</sup> Whenever a new position is created, it is automatically placed in the competitive class until the local civil service commission takes a formal action to remove it from that class. It is therefore recommended that a proposed new position be discussed with your local civil service commission prior to its creation.

Competitive examinations for positions within this class are designed to "fairly test the relative capacity and fitness of the persons examined to discharge the duties of that service into which they seek to be appointed."<sup>24</sup> From the results of this exam, an "eligible list" of applicants is created. The list is required to be effective for at least one year, but no more than four years. Appointments to a position in the competitive class must be made off this list, and the individual appointed must be one of the three persons having the highest standing on the list. This is commonly referred to as the "rule of three."

Once they have completed any required probationary period, individuals in the competitive class are

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entitled to a hearing under § 75 of the Civil Service Law prior to being disciplined or terminated.<sup>25</sup>

### Conclusion

The classification of new town positions, and understanding the consequences on appointment, discipline and discharge that each classification carries, can be fairly complex and confusing. The discussion above is designed to provide an overview of the considerations involved and significance such determinations carry. In addition to the requirements set forth in the Civil Service Law, each municipal civil service commission is responsible for establishing rules to carry into effect those laws. Ultimately, specific questions should be addressed to your local civil service commission or personnel department. Aside from prescribing rules and enforcing the civil service law, these municipal civil service commissions can prove to be a useful resource in assisting local governments with their staffing and personnel needs. ♦

#### (Endnotes)

<sup>1</sup> N.Y. CIV. SERV. LAW § 2. Exception is made under this section only for positions in the militia or military department authorized

under Article 12 of the State constitution.

<sup>2</sup> *Id.* §§ 35, 40

<sup>3</sup> *Id.* § 40

<sup>4</sup> *Id.* § 22

<sup>5</sup> *Id.* § 35

<sup>6</sup> N.Y. REAL PROP. TAX LAW § 310 (3)

<sup>7</sup> N.Y. CIV. SERV. LAW §§50-59-a; § 75

<sup>8</sup> *Id.* § 41

<sup>9</sup> *Id.*

<sup>10</sup> *Amico v. Erie County Legislature*, 36 A.D.2d 415 (4<sup>th</sup> Dept. 1971), *aff'd* 30 N.Y.2d 729

<sup>11</sup> N.Y. TOWN LAW § 30 (10); *see also Liss v. New York State Civil Serv. Comm'n*, 76 A.D.2d 831 (2<sup>nd</sup> Dept. 1980)

<sup>12</sup> N.Y. CIV. SERV. LAW § 41

<sup>13</sup> N.Y. TOWN LAW § 271

<sup>14</sup> N.Y. U.C.J.A. § 109

<sup>15</sup> N.Y. CIV. SERV. LAW § 41

<sup>16</sup> *Id.*

<sup>17</sup> *Butler v. New York State Dept. of Law*, 211 F.3d 739 (2<sup>nd</sup> Cir. [N.Y.] 2000)

<sup>18</sup> N.Y. CIV. SERV. LAW § 75(1)(b)

<sup>19</sup> *Id.* § 42

<sup>20</sup> *Id.* § 75(1)(c)

<sup>21</sup> *Id.* § 43

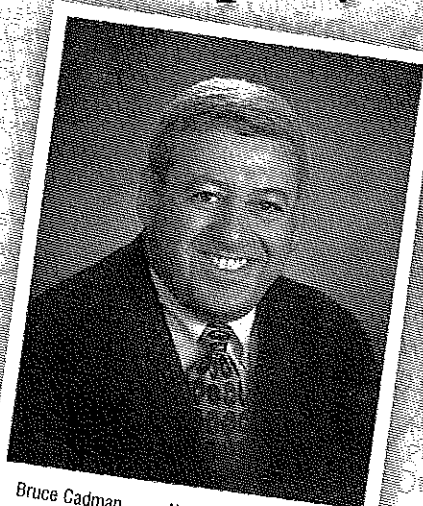
<sup>22</sup> *Id.* § 75(1)(b)

<sup>23</sup> *Id.* § 44

<sup>24</sup> *Id.* § 50(6)

<sup>25</sup> *Id.* § 75

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