

Prior to the enactment of the act creating the State Department of Defense (P.L. 1948, page 473) the leasing of armories was the duty of the State Military Board. These powers and duties, by the consolidation act, were transferred to and are now vested in the Department of Defense.

An examination of the several sections of the old Militia Act relative to the use of armories for other than military purposes, notably Revised Statutes 38:8-13 thru 38:8-22, lists the specific uses for which any armory may be leased. These include the use of armories by recognized organizations composed of honorably discharged soldiers, sailors or marines; use of armories by pupils, boys scouts and girl scouts; State Board of Agriculture; State Board of Horticulture; State Grange or by any duly authorized or incorporated association approved by the State Board of Agriculture.

I can find no statutory authorization for the making of a lease for other than these purposes and in the absence of specific statutory authorization I am of the opinion that the Department of Defense is without power to make the contemplated lease or arrangement.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General,*

By: JOSEPH LANIGAN,  
*Deputy Attorney General.*

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NOVEMBER 28, 1949.

DR. WILLIAM S. CARPENTER, *President,*  
*Civil Service Commission.*  
State House,  
Trenton, New Jersey.

FORMAL OPINION—1949. No. 105.

DEAR DR. CARPENTER:

You have requested our opinion as to what, if any, length of service in grade is required of a police sergeant in the City of Newark in order that he may be eligible to take a promotion examination for the position of police lieutenant.

In my opinion, the situation is governed by Rule 24 of the Civil Service Rules, which was adopted pursuant to R. S. 11:10-7 and provides in part:

"In all cases unless the President for good and sufficient reasons deems otherwise, the person seeking promotion shall have served at least one year after permanent appointment in the next lower class or classes as the case may be".

In accordance with this Rule, the Civil Service Department has fixed twelve months as the required time in grade in order to achieve eligibility for the promotion examination in question.

You have inquired as to the effect of R. S. 11:27-12 (Ch. 164, P.L. 1920). That section, so far as here pertinent, provides:

"A member of the police department in a city of the first class who served in the war between the United States and the German Empire shall be entitled to be admitted to examination for promotion to a superior rank and upon successfully passing such examination shall be entitled to appointment in such superior rank, notwithstanding that fact that such person may not have held the position or rank held or occupied by him at the time of taking the examination for more than two years".

When the foregoing statute was in bill form, it was accompanied by the following statement of purpose, in compliance with the rules of the General Assembly:

"This act is to benefit members of the police in Jersey City who served in the recent war with Germany and who have taken promotion examinations but, by reason of being unable to comply with the regulations of the Civil Service, are not entitled to such promotion."

While such statement was not part of the bill, it serves to confirm the conclusion herein reached, i.e., that the above quoted section does not affect the issue now pending.

As early as the Civil Service Law of 1908 (Ch. 156), the Commission was given the general power to make rules and regulations to carry the law into effect. Nevertheless, in respect to requiring service of a minimum time in a lower class of position in order to achieve eligibility for promotion, a later (1930) Legislature thought it proper to specifically empower the Commission to determine the requirement by regulation. Such power was accordingly granted expressly to the Commission by Chapter 176 of the Laws of 1930, from which R. S. 11:10-7 was derived. This power applies to positions in local government service as well as in the state service. R. S. 11:19-2.

Under the authority of the 1930 statute, the Commission has fixed twelve months as the required minimum time for the position in question. Since that is less than the two years mentioned in R. S. 11:27-12, and since there is nothing else in the latter statute which, in my opinion, could possibly invalidate or override the determination of the Commission, that determination controls this case.

Yours very truly,

THEODORE D. PARSONS,  
*Attorney General,*

By: THEODORE BACKES,  
*Deputy Attorney General.*

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