

DECEMBER 5, 1949.

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

FORMAL OPINION—1949. No. 108.

DEAR SIR:

I have your communication submitting for my consideration the question as to who has jurisdiction to hear and determine complaints by State employees of allocation of ranges to class titles under Chapter 27 of the Laws of 1949.

An examination of that act discloses that the Legislature, by Section 2, established for the fiscal year 1949-1950 four compensation schedules consisting of thirty-four salary ranges for employees in the classified civil service of the State, and Section 5 directed that the ranges allocated to all classes as of July 1, 1949, should be the established ranges for the fiscal year commencing on that date.

By Section 13 of said act of 1949, the State Treasurer, the President of the Civil Service Commission and the Director of the Division of Budget and Accounting in the Department of the Treasury are granted power to make rules and regulations as in their discretion appears to be necessary in order to achieve an equitable application of the provisions of the act.

From your communication it appears that in the month of July, 1949, the then Acting Governor directed the Civil Service Commission to hear all complaints of State employees regarding their compensation under the act of 1949. I am sure that the Acting Governor, by the directive mentioned, did not intend or contemplate any more than that the complaints mentioned should be heard by the Civil Service Department, and that the question of jurisdiction had not entered his mind. The situation then was that certain employees of the State felt aggrieved by their allocations to certain ranges under the act of 1949 and desired to be heard, and the Acting Governor did nothing more than direct that that be done.

Prior to 1944, all the affairs of the Civil Service Department were under the jurisdiction of the Civil Service Commission. In that year, however, a very great change was effected in the law by Chapter 65 of the laws of that year, and by Section 3, amendatory of R. S. 11:1-6, all the executive functions, powers and duties vested in the commission by any section of the civil service law (Title 11), were thereafter required to be performed, exercised or discharged, as the case might be, solely by the President of the Civil Service Commission. You were given the authority as President to exercise general supervision over all activities under any section of Title 11 (Civil Service), and by Section 9 of said act, amendatory of R. S. 11:2-6 of the Revised Statutes, the Chief Examiner and Secretary was empowered, among other things, to administer the work of the commission and perform such other duties as may be prescribed under the civil service law or by rule or regulation, under the direction and supervision of the President of the commission.

I now quote two pertinent provisions of Section 10 of the act of 1944, amendatory of R. S. 11:5-1 of the Revised Statutes, empowering the commission to

“d. Hear appeals, either as a body or through one or more members designated by a majority thereof to hear such appeals, of persons in the classified service

sought to be removed, demoted in pay or position, suspended, fined or otherwise discriminated against contrary to the provisions of this subtitle, and render decisions thereon and require observance of the decisions as herein provided:

"e. Hear and determine such appeals respecting the administrative work of the department, including appeals from the allocation of positions, the rejection of applicants for admission to examination, and the refusal to certify the name of an eligible, as may be referred to the commission by the chief examiner and secretary."

This brings us to the question of who has jurisdiction to hear appeals by State employees who were dissatisfied by their allocations under the act of 1949. Certainly that power was not vested in the Civil Service Commission for under "d" the commission, in addition to its other duties imposed under the civil service law, shall, as a body, or through one or more of its members designated by a majority thereof, hear appeals of persons in the classified service sought to be removed, demoted in pay or position, suspended, fined or otherwise discriminated against contrary to the provisions of the law, and to render decisions thereon and require observance of such decisions.

Certainly the activities required in determining allocations of positions within the ranges described in the schedules set forth in the act of 1949 cannot and do not fall within any of the descriptive words used in clause "d" of Section 10 of the act of 1944 just referred to, but do fall within clause "e" above referred to, for they are administrative matters and may be only heard by the commission when referred to that body by the Chief Examiner and Secretary.

It is clear from the foregoing, that the Civil Service Commission, as a body, has no jurisdiction to hear complaints of employees who feel aggrieved by allocations made under the act of 1949, for, as I have pointed out, they are administrative matters and belong to the President of the commission, and not to the commission itself, and that the directive of the Governor hereinabove referred to, which I have said, was not designed to and did not contemplate a question of jurisdiction, should not be understood to confer a jurisdiction where none was granted by law.

Finally, Section 13 of the act of 1949, amply empowers the officers of the State therein named "to make such rules and regulations as in their discretion appear necessary in order to achieve an equitable application of the provisions of the act." The final determination therefore of what adjustments should be made in the compensation of an employee of the State where those officers find that an employee should have compensation greater than that prescribed in the schedule to which he has been assigned, resides in those officers, who may, in order to achieve an equitable application of the provisions of the act, make a rule or regulation covering such situation and direct that a greater allowance be made.

Very truly yours,

THEODORE D. PARSONS,
Attorney General.

By: THEODORE BACKES,
Deputy Attorney General.