

and by the authorization of a temporary appointment. At the end of a six month period, after appointment to such a position, it would have been necessary, if it was determined to continue the position, for the appointing authority to have reported his intention to establish the position, R. S. 11:7-3, for the Chief Examiner to have certified that the position was necessary, R. S. 11:7-5, for the position to have been classified, R. S. 11:7-3, N.J.S.A. 11:7-11, 11:7-12, and the requisite employment list to have been prepared in the appropriate manner, R. S. 11:7-3, R. S. 11:9-9 and R. S. 11:10-1.

At the time Formal Opinion 1949 No. 27 was written, the statute, Chapter 323, P. L. 1946, authorizing the administrator (Commissioner of the Department of Economic Development) to hire employees, was silent as to the manner of selection of employees. In such a circumstance, the provisions of the Civil Service Law should have been complied with. Article VII, Section II, Paragraph II, of the New Jersey Constitution requires that appointments in the civil service of the State " * * * shall be made according to merit and fitness to be ascertained, as far as practicable, by examination * * * ." This provision would seem to require that appointments should be made in accordance with the Civil Service Law unless there has been a legislative determination by statute or an administrative determination of the Civil Service Commission that it is not practicable to determine merit and fitness by examination. We know of no such legislative or administrative determination concerning these positions. Subsequently, on May 21, 1949, shortly after the date of Formal Opinion 1949 No. 27, Chapter 186, P. L. 1949 was enacted. The amendment provided, among other things, that the employment of the state employees authorized should not be subject to the Civil Service Law, N. J. S. A. 55:14G-12, paragraphs "b" and "c". After that date it was no longer necessary to comply with the provisions of the Civil Service Law as to the selection of new state employees of the Veterans Emergency Housing Program in the State Department of Conservation and Economic Development. The statute, however, continued to remain silent as to the manner of the selection of municipal employees engaged in the management of such Housing Projects.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General.

APRIL 15, 1955.

HON. HARRY A. WALSH,
Chief Examiner and Secretary,
Department of Civil Service,
State House,
Trenton 7, New Jersey.

FORMAL OPINION—1955. No. 15.

DEAR MR. WALSH:

You have requested advice as to whether an examination for the position of Chief of the Fire Department of the Town of Morristown should be limited to the paid members of the Fire Department or extended to include the volunteer members as well. R. S. 40:47-21 provides as follows:

"In municipalities having a permanent paid fire department, other than cities of the first class, all promotions in such department shall be made from the membership thereof as constituted at the time of the promotion, but no person shall be eligible to a superior position unless he shall have served for a period of at least three years in the grade of permanent paid fireman."

We understand from the information you have supplied that the Morristown Fire Department consists of several volunteer companies each of which have paid drivers. The status of the drivers is described as that of regular firemen. The latest effective ordinance entitled "An Ordinance relating to the Fire Apparatus Drivers of the Town of Morristown", passed July 5, 1929, (Ordinance Book No. 1, page 224) provides,

"1. Hereafter the full time drivers of the fire apparatus of the Town of Morristown, who are now so employed or who may be hereafter appointed shall be and are hereby designated *firemen*.

* * * * *

4. Said fire drivers, as *such firemen*, shall receive such compensation and shall be paid in the manner as is now provided by ordinance."

Other ordinances have established the compensation for the chief and drivers so that it now appears that Morristown has a fire department consisting of volunteer as well as paid firemen headed by a chief who is paid.

To establish a paid fire department the municipality would have had to adopt an ordinance and submit it to the voters for approval, R. S. 40:47—32. We assume this has not been done for we find nothing in the file so to indicate. Assuming this to be the case, it would appear that Morristown does not have a permanent paid fire department within the meaning of the statute, R. S. 40:47—21, *supra*, which limits eligibility for promotion to members of such department.

Assuming it is practicable to determine the merit and fitness of applicants for the office of Fire Chief by competitive examination as contemplated by R. S. 11:22—30 (and we know of no reason why it should not be so) we think the situation calls for an exercise of the discretion granted by R. S. 11:22—34, as amended, (see also Civil Service Rule 24) as to the lower grade or grades to be encompassed, *Falcey v. Civil Service Commission*, 16 N. J. 117 (1954), and as to whether or not the examination should be open to members of the general public, *DeStefano v. Civil Service Commission*, 130 N. J. L. 267. (E. & A. 1943).

Accordingly, we advise you that the provisions of R. S. 40:47—21, do not apply to the instant situation; thus eligibility for promotion to the office of Chief is not limited to the paid members of the Fire Department.

Very truly yours,

GROVER C. RICHMAN, JR.,
Attorney General.

By: JOHN F. CRANE,
Deputy Attorney General.