

JANUARY 31, 1957

HONORABLE WILLIAM F. KELLY, JR.
President, Civil Service Commission
Department of Civil Service
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-2

DEAR COMMISSIONER KELLY:

You have requested our opinion in connection with the propriety of certifying certain persons on the eligible list for appointments to the police department of the City of Newark.

The facts, we are informed, are as follows: After certification of the list of eligibles by the Civil Service Commission to the Newark Police Department, the City of Newark made an independent investigation of the qualifications and character of the persons so certified. Such an examination, including a check of state police records had already been made by your Department before certification. The inquiries by the City of Newark, however, produced information which was not present in the state police files and which prompted the police department of Newark to advise certain of the eligibles certified by the Civil Service Department that they were not acceptable. These individuals have appealed to the Civil Service Commission from this action. All are veterans, and so must be appointed in the order of their standing on the list under R.S. 11:27-4.

Before proceeding further into the specific facts prompting the action by the City of Newark, we deem it important to point out that the action of the City of Newark in directly notifying the eligibles was improper. Objection to persons on the list certified by Civil Service should properly be brought to the attention of the Civil Service Department so that, if warranted, the list of persons certified may be changed.

We understand that the objections raised by Newark all relate generally to the moral character of the individuals in question. These objections may be broken down for convenience in this opinion into three categories.

Category one includes individuals who have had juvenile arrest and adjudication records, but no record subsequent to their eighteenth birthday. Category two includes those individuals who have had adult records of convictions of offenses of varying degrees. Category three includes individuals who have had adult records, not involving convictions but involving either arrest or other evidence of unsavory companions and character.

N.J.S.A. 40:47-3 provides:

“No person shall be appointed to police or fire departments unless he is of good moral character . . .”

and further provides:

“No person shall be so appointed who has been convicted of any crime constituting an indictable offense, or who has been convicted of any crime or offense involving moral turpitude.”

R.S. 11:23-2 provides that:

"The commission may refuse to examine or certify persons who have been guilty of a crime or infamous or notoriously disgraceful conduct or who have been dismissed from the public service for delinquency or misconduct."

(In the case of *Vanderwart v. Department of Civil Service*, 19 N.J. 341 (1955) the same language in R.S. 11:9-6 was construed to *require* the chief examiner to reject or refuse to certify any applicant falling within its terms.) Both R.S. 11:9-6 and 11:23-2 provide for hearings where candidates' names are stricken for cause.

N.J.S. 2A:4-39, which deals with juvenile offenders, provides that adjudications upon the status of children under eighteen shall not be deemed convictions and that the disposition of such children or any evidence given in the juvenile and domestic relations court against such children shall not be used against them in any other proceedings or held against their records in any future civil service examination, appointment or application.

Civil Service Rule 26 provides that the chief examiner and secretary shall notify in writing any person whose application is rejected for cause and that upon receiving a written request from any person whose application is so rejected, the President may give him an opportunity to show cause why it should not be rejected. Civil Service Rule 40 provides that the name of any person who has been dismissed from another position in public service or whose character, qualifications and record are found not to warrant public employment, may be removed from any employment list. It further provides that in such cases, the person whose name is considered for removal should be notified of such contemplated action and given reasonable opportunity to be heard.

Applying the statutes and rules cited above to the three categories noted, you are advised as follows: Category one—if the only evidence tending to point to the poor moral character of a candidate is his juvenile record, or evidence given at a juvenile hearing, it would be improper for the Civil Service Commission to refuse to certify him and for the municipality to refuse to appoint him. However, if external evidence dealing with the offense, independently secured, is offered, which tends to indicate a poor moral character, the person's application may be rejected with a specification of the reasons for such rejection and a notification that a hearing will be granted upon request. Similarly, if the person's name has already been placed upon an employment list, upon opportunity for hearing, his name may be removed from such list, if his character, qualifications and record are found to be such as not to warrant public employment.

It should be noted that the removal of the individual's name from the employment list, once he has been certified, must be done by the President and the Commission, and not by the appointing authority.

Category two—no person in this category should be admitted to examination, unless the crime involved did not constitute either an indictable offense or one involving moral turpitude. If one has been admitted and certified, the provisions of Rule 40 should be followed. Refusal to admit or certify such candidates is mandatory under the *Vanderwart* decision.

Category three—If information acquired by the chief examiner tends to indicate that an individual is of poor moral character, or has been guilty of disgraceful conduct sufficient to indicate unfitness for police employment, he may be denied opportunity

for examination, subject to his right to a hearing, or if certified, his name may, upon prior notice and opportunity to be heard, be removed from the certified list by the commission.

We shall be happy to furnish further advice if the case of any one individual poses a special problem not answered by this opinion.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

By: DAVID LANDAU
Legal Assistant

DL:mc

FEBRUARY 7, 1957

HONORABLE FREDERICK J. GASSERT, JR.
Director, Division of Motor Vehicles
State House
Trenton, New Jersey

MEMORANDUM OPINION—P-3

DEAR DIRECTOR GASSERT:

You have requested our opinion as to whether you may refund driver's license fees in cases where the licensee has died before the expiration of the license. For the reasons hereinafter stated it is our opinion that you may not refund such fees.

While there appear to be no decisions concerning refunds in cases where the license has died, the authorities agree that a licensing agency which has illegally exacted fees may not be compelled to refund them absent statutory authorization therefor. *City of Camden v. Green*, 54 N.J.L. 591 (E. & A. 1892), and *Shoemaker & Co. v. Board of Health*, 83 N.J.L. 423 (Sup. Ct. 1912). See also 53 C.J.S. 696 (*sec. 57, Licenses*). It would seem that a similar rule should prevail where the fee has been properly collected but the license has prematurely lapsed through no fault of the licensor.

As to your right to make such refunds, there is no statutory provision permitting this to be done. On the contrary, it is provided by R.S. 39:5-40 that:

"Except as otherwise provided by this subtitle all moneys received in accordance with the provisions of this Title, whether from fines, penalties, forfeitures, registration fees, license fees, or otherwise, shall be accounted for and forwarded to the commissioner, who shall pay the same over to the State Treasurer, to be credited to the State Highway Fund and used for the purposes of such fund as provided by section 52:22-20 of the Title, State Government, Departments and Officers."

The licensing fees which you have received have of course all been paid over to the State Treasurer pursuant to the quoted statute and are no longer available to you. Such moneys may not be drawn out of the treasury except upon legislative appropriation. In this connection it is provided by Article VIII, Section II, paragraph 2 of the New Jersey Constitution in pertinent part as follows: