

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH

for the

NEW JERSEY CONSTITUTIONAL CONVENTION

CIVIL SERVICE

by

Dr. William S. Carpenter
President, New Jersey Civil Service Commission
Professor, Department of Politics, Princeton University

State of New Jersey
Alfred E. Driscoll, Governor
May 1947

THE PERSONNEL ARTICLE IN THE STATE CONSTITUTION

Formal personnel procedures in public administration are regarded as recent innovations. The hiring and firing of public employees and the relationships between them and their directing officers, however, are as old as organized society itself. Down the centuries man has been seeking the key to the successful management of people both in government and in private undertakings. Evidences of these efforts appear again and again in our earliest writings, both sacred and profane. The recorded history of every populous ancient and modern nation is interlarded with laws, rules and regulations respecting directing and subordinate employees, employer-employee relationships, terms and conditions of employment, pay, privileges, hours of work and other provisions respecting public officers and employees down to the humblest workman.

The antiquity of the employment processes and of employer-employee relationships in the public service has no direct significance, perhaps, for the pending Constitutional Convention in New Jersey, but it does emphasize the basic importance of these problems and the persistent efforts to solve them in the long evolution of the governing process. This recognition and these past efforts lend support to the widely accepted principle that the effectiveness of government depends directly upon the integrity, the capacity and the wisdom of those who direct its affairs and do its work. And this is particularly true today when, in its efforts to meet the needs and render the services required of it, its regulatory procedures have extended to

practically every activity of modern society, its civil employees are numbered in the millions and as its far-flung administration grows increasingly complicated both in its organization and its program.

Since personnel so directly affects the quality and character of modern public administration and since this fact is recognized in both old and new constitutions, it follows that personnel as a factor in government warrants recognition in the organic law of any state or nation. It is submitted, therefore, that the framers of a new Constitution for the State of New Jersey should recognize these facts and should include in the draft Constitution to be submitted to the people both the recognition of the problem itself and the guiding principles upon which sound personnel administration for the state, county and municipal governments shall be established.

It would be neither appropriate nor necessary to cite or attempt to cite the numerous personnel laws, rules and regulations as recorded in the history of the progress of public administration or included in ancient and modern constitutional documents. For the purposes of this Constitutional Convention, however, the recognition of the personnel problem and the provisions for dealing with it as contained in the Constitution of the United States are of great significance. While it is unlikely that the most imaginative of the forefathers could have visioned a civil service such as we have

today, running into millions of full-time officers and employees, the document itself shows that its writers saw with unusual clarity that the new nation would require not only legislative, executive and judicial officers but other employees as well to provide the services and carry out the prescriptions contained in the new Constitution. A careful reading shows that a very considerable part of it is devoted to matters of the qualifications, selection, induction, terms, duties, powers, privileges, pay and removal of federal officers and employees, both civil and military, required in the operation of the government.

To this day the recruiting authority and responsibility for civil servants in our national government, implemented, to be sure, by numerous laws, regulations and executive orders, yet remain primarily in the hands of the President, directly, or as he may delegate these functions. Some personnel fundamentals, such as the classification of positions on the basis of their attaching duties and responsibilities, and the appraisal of performance of officers and employees expressed in the form of service ratings, are not mentioned specifically, of course, since these and many other personnel terms are more nearly products of the 20th Century. Nevertheless, the expressed terms of the Constitution are broad enough to permit the administration of an adequate personnel program even today, and it contains several expressions and provisions which seem to indicate that the framers were conscious of the broad principles embraced in a comprehensive personnel program.

It would have been helpful all down the years if the drafters of the Constitution had distinguished more definitely between the office and its incumbent, and if they could have used some synonym or substitute for what we now call an "employee." It would have been equally helpful if the personnel prescriptions could have been brought together in one or more articles or sections, instead of being scattered here and there throughout the whole document, but these are refinements which belong to a later period. They do not detract from the remarkable fact that the soundness of the personnel conceptions and the broad outlines of the procedures authorized in the Constitution remain intact without conscious need for change to this date.

Most state constitutions, including that of New Jersey, are silent with respect to the important matter of personnel administration. While few present state constitutions are as old as that of New Jersey, the Federal Constitution is older, and many state constitutions have been rewritten in recent years. It is as if the drafters of state constitutions generally failed to take into account the fact that great numbers of state and local civil officers and employees were already at work or were potentially required to administer the governmental functions called for in the very state whose constitution was being constructed or reconstructed by them.

A few states, however, have recently written into their organic law some personnel provisions. The extent of the prescriptions provided depend upon the background philosophy and method of approach of the framers or of the voters in these states. The

typical draft is brief and expressed in the most general terms. More often than not it is indefinite and incomplete. The constitutions of the States of New York¹ and Michigan² are illustrative of this type of constitutional provision. They contain brief mandates as to civilian activities respecting recruiting and one or more other items in a public personnel program, but no serious attempt seems to have been made to provide a constitutional mandate for a complete or adequate personnel program.³

1. New York Const., Art. V, Sec. 6. "Appointments and promotions in the civil service of the state and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive; provided, however, that any member of the armed forces of the United States who served therein in time of war, who is a citizen and resident of this state and was a resident at the time of his or her entrance into the armed forces of the United States and was honorably discharged or released under honorable circumstances from such service, and who was disabled therein to an extent certified by the United States veterans administration, and whose disability is certified by the United States veterans administration to be in existence at the time of his or her application for appointment or promotion, shall be entitled to preference and shall be appointed or promoted before any other appointments or promotions are made, without regard to his or her standing on any list from which such appointment or promotion may be made. Until December thirty-first, nineteen hundred fifty, but in no event for a period less than five years next following the honorable discharge or release under honorable circumstances of a member of the armed forces of the United States who served therein in time of war, who is a citizen and resident of this state and was a resident at the time of his or her entrance into the armed forces of the United States, he or she shall be entitled, after such disabled members of the armed forces shall have been first preferred, to similar preference in appointment and promotion. Upon the abolition or elimination of positions in the civil service, to which the foregoing preferences are applicable, any such member of the armed forces shall be entitled to preference in the retention of any position held by him or her, in inverse order of the preference as provided in this section. Laws shall be enacted to provide for the enforcement of this section."

2. Michigan Const., Art. VI, Sec. 22. "The state civil service shall consist of all positions in the state service except those filled by popular election, heads of departments, members of boards and

commissions, employees of courts of record, of the legislature, of the higher educational institutions recognized by the state constitution, all persons in the military and naval forces of the state, and not to exceed two other exempt positions for each elected administrative officer, and each department, board and commission.

"There is hereby created a non-salaried civil service commission to consist of four persons, not more than two of whom shall be members of the same political party, appointed by the governor for eight-year, overlapping terms, the four original appointments to be for two, four, six and eight years respectively. This commission shall supersede all existing state personnel agencies and succeed to their appropriations, records, supplies, equipment, and other property.

"The commission shall classify all positions in the state civil service according to their respective duties and responsibilities, fix rates of compensation for all classes of positions, approve or disapprove disbursements for all personal services, determine by competitive performance exclusively on the basis of merit, efficiency and fitness the qualifications of all candidates for positions in the state civil service, make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the state civil service. No person shall be appointed to or promoted in the state civil service who has not been certified as so qualified for such appointment or promotion by the commission. No removals from or demotions in the state civil service shall be made for partisan, racial, or religious considerations.

"The administration of the commission's powers shall be vested in a state personnel director who shall be a member of the state civil service and who shall be responsible to and selected by the commission after open competitive examination.

"To enable the commission to execute these powers, the legislature shall appropriate for the six months' period ending June 30, 1941, a sum of not less than one-half of one per cent, and for each and every subsequent fiscal year, a sum not less than one per cent, of the aggregate annual payroll of the state service for the preceding fiscal year as certified to by the commission.

"After August 1, 1941, no payment for personal services shall be made or authorized until the provisions of this amendment have been complied with in every particular. Violation of any of the provisions hereof may be restrained or observance compelled by injunctive or mandamus proceedings brought by any citizen of the state.

"This amendment shall take effect on the first day of January following the approval thereof."

3 Model State Constitution (Fourth Edition, 1941, Partial Revision 1946), National Municipal League.

See also "IX. The Civil Service," pp 46-47 (same volume),
W. Brooke Graves.

The State of Colorado has gone to the other extreme by including in its constitution what are in fact personnel statutes rather than the fundamentals of a complete personnel system.⁴ The State of California has followed neither the New York and Michigan plan nor the Colorado plan, but rather has submitted from time to time extensive personnel legislation as constitutional amendments dealing with particular phases, but never of the whole problem.

It is safe to say that no single state has now in its constitution comprehensive and well-balanced personnel provisions, and it is safe to say, also, that none of the state constitutions includes personnel provisions equal to those in the Constitution of the United States.

It must be recognized, of course, that New Jersey under legislative authorization and executive support has been able to build a creditable personnel system for the state and the more populous local governments which has been long recognized as among the best in the country. Reasoning from this fact, it

4. Colorado Const., Art. XII, Sec. 13.

could be argued that the proposed new Constitution, as the present one, should not include adequate personnel provisions. There is little doubt, however, but that future legislative bodies and chief executives, however wise, would be both encouraged and strengthened in their efforts in providing government adequate to current requirements if they had a personnel mandate straight from the people setting forth sound guiding principles and the broad objectives involved. Such a mandate, if soundly conceived and executed, could have but a wholesome effect and might well prove a useful guide and a continuing stimulus to good government.

With respect to the Article itself, it should be adequate for the purposes sought. It is more important that the draft be adequate and complete than that it be contained in a single paragraph. In the drafting of it the fundamentals found to be sound through the long experience of those who have served in the field should be carefully observed. These fundamentals include:

1. To assure completeness, adequacy, certainty of understanding and easy reference, the personnel provisions, aside from those relating to elective and appointive officers, should be assembled in one article.

2. The personnel provisions should deal only with fundamental conceptions, objectives and procedures likely to remain sub-

stantially constant as economic employment conditions change, as the state and local government services expand or contract and as technological advances in the personnel field occur. The detailed procedures can be better dealt with from time to time by the Legislature and the Executive as current conditions and needs indicate.

3. The Legislature and the Executive should be given instructions to provide for present essential personnel transactions and a broad mandate to provide for such others as may be required at any future time.

4. The personnel problems of the local governments, which are creations and agents of the State, should be provided for as forthrightly and as competently as those of the State Government.

5. The constitutional mandates as to personnel, other than elective and appointive officers, should be brief but of sufficient length to cover the broad essentials.

The translation of these general principles into an actual draft of a personnel article means the immediate coming to grips with major and minor parts of the problem and a discriminating selection of those things which belong properly in the personnel article and those which do not.

First, is the determination of the types of personnel transactions which are essential. It seems clear that these should include the establishment and abolition of positions; the grouping

of established positions into homogeneous classes to be used as a basis for establishing scales and rates of pay for classes, and the adjustment in pay of individual officers and employees; recruiting when vacant positions are to be filled by promotion, demotion, transfer or by bringing personnel into the service from outside; determining hours and conditions of work, including leaves of various kinds with and without pay; and dealing with the several kinds of separations, including resignations, lay-offs, retirements and removals. Detailed procedures for handling these transactions in the Constitution itself would be highly inadvisable, but it would be equally as unsound to ignore them altogether and ostrich-like proceed as if they will not occur. The point to be emphasized is that the State Constitution should authorize and direct the legislative body to establish procedures, but not detailed procedures.

Next in order, perhaps, is the manner of providing the directing heads of the operating agencies with the help they must have in handling personnel transactions in a modern and populous government in such way as to achieve, surely and economically, desired personnel objectives. It cannot be expected, nor is it wise to expect, that the thousands of supervisory officers in the state and local governments can and should master the science and art of personnel administration. Only those who give years of study and practice to this complicated problem can be reasonably expected to do this.

For this reason, if for no other, there is required a central personnel agency properly staffed to establish the necessary procedures based on sound personnel trends and practices and to assist responsible officers in the operating agencies in handling the great volume of personnel transactions that occur from day to day. The exact form of the central personnel agency, the exact amount of authority to be given to it, its particular place in the administrative structure and its specific part in the several kinds of personnel transactions are not properly a part of the constitutional structure. They should, in the main, be left for legislative determination.

Closely allied with the foregoing matters are the provisions to be made for assistance to local governments in dealing with their personnel transactions. New Jersey has been more successful than most states in providing that the state agency shall serve as the personnel agency for such local governments as, by referendum vote, choose to adopt a formal personnel system. While the system has already been adopted by most of the populous counties and municipalities, and probably 70 to 75 per cent of all local government employees in the State are now covered by the civil service laws, there are numerous other local jurisdictions which should be included in the system without further delay.

It is recognized, of course, that formal personnel procedures are of limited value in the very small local governments having few employees and many of them on a part-time basis. It.

cannot be successfully argued, however, that regular full-time employees in any local government should not be entitled to tenure, retirement on pension and other advantages which have come to be regarded as attaching to public employment. It may generally be accepted that formal personnel procedures are desirable in jurisdictions of a population of 10,000 or more, and the New Jersey experience has established, it is believed, both the wisdom and the economy of having the state personnel agency serve the local governments in the same capacity as it serves the State. The drafters of the Constitution may well consider the immediate application of the civil service system to all county and municipal governments having a population of 10,000 or more which are not now operating under the civil service laws.

Finally, the amount and kind of preference to be accorded veterans in the public service or who may seek admission thereto must be given consideration. While the Constitutional Convention itself must determine the validity of the principle involved it must be recognized that the State has developed by statutory provision a system of veteran preference which has been widely copied throughout the Nation, and which has proved effective and advantageous to veterans by the test of experience. It is of interest to note that eight out of nine recommendations contained in the report of the committee of the National Civil Service League to study the subject of veteran preference and issued in 1945, were almost identical with the New Jersey provisions and practices.⁵

5. National Civil Service League, "Veterans Preference in the Civil Service," 1945.

It is not possible, however, to determine now exactly what shall be the terms and conditions of veteran preference in ten or twenty years from now, or in the long future. Here, as in other personnel provisions of the Constitution, the general principle may well be laid down but the detailed procedures and the character and amount of the preference should be left to the legislative body which can act with greater wisdom in meeting conditions and situations as they develop from time to time. This was the procedure followed in the Draft Constitution agreed upon by the One Hundred and Sixty-Eighth Legislature and submitted to the people at the General Election on November 7th, 1944.⁶

Adequate public personnel administration in the State and in the local governments warrants recognition in the State's organic law. As a factor in effective public service and in its dollar and cents significance no problem of government is of greater importance.

6. Draft Constitution, 1944, Article VI, Sec. 1, par. 2.
"2. In the civil service of the State and all of its civil divisions, all offices and positions shall be classified according to duties and responsibilities, salary ranges shall be established for the various classes, and all appointments and promotions shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; except that preference in the appointment of persons who have been or shall have been in active service in any branch of the military or naval forces of the United States in time of war may be created by law."