

CHAPTER 16.

CIVIL SERVICE.

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16.01 Bureau of personnel; director of personnel. (1) There is created within the executive department a bureau of personnel. The administrative head of such bureau shall be appointed by the governor subject to chapter 16. He shall be paid such salary as may be fixed by the governor, within the salary ranges for the position established pursuant to section 16.105.

(2) When a vacancy occurs in the position of director of personnel the members of the personnel board shall forthwith prepare and conduct an examination for the position in the manner usually followed and prescribed by chapter 16 for all other positions. The

personnel board shall certify the top 3 names to the governor, who shall make the appointment. The governor may remove the director of personnel with the approval of the personnel board for just cause. [1931 c. 424 s. 2; 1933 c. 159 s. 4; 1939 c. 513 s. 4; 1941 c. 321]

Note: Rights of state employes under the civil service law are conferred by act of the legislature, and what the legislature may give in this respect it may take away. The court has nothing to say with respect to the policy of the civil service law, all questions of public policy being primarily for the legislature. State ex rel. Anderson v. Barlow, 235 W 169, 292 NW 290.

16.02 Definitions. In sections 16.01 to 16.30, unless the context otherwise requires:

- (1) "Board" means the personnel board in the bureau of personnel.
- (2) "Civil service" means all offices and positions of trust or employment, including mechanics, artisans and laborers, in the service of the state, except offices and positions in the organized militia.
- (3) "Appointing officers" means the officer, commission, board or body, having the power of appointment, or election to, or removal from, subordinate positions in any office, department, commission, board or institution.
- (4) "Subordinate" or "employee" means any person holding a subordinate position subject to appointment, removal, promotion or reduction by any appointing officer.
- (5) "Director" means director of personnel. [1931 c. 424 s. 2]

16.03 Personnel board; appointment, term; office. (1) The personnel board in the bureau of personnel shall consist of 3 members, who shall be appointed by the governor by and with the advice and consent of the senate for terms of 6 years expiring on July 1 or until their successors have been appointed and qualified. The members of the board shall be citizens of the United States and residents of the state for not less than 5 years and shall have a recognized sympathy for and knowledge of the application of merit principles in public employment and shall not, when appointed, nor for 3 years then last past before the date of appointment, have been a member of any local, state or national committee of a political party, or an officer or a member of a committee in any partisan club or organization, or have held or been a candidate for any elective public office. No member of the board shall become a candidate for or hold any of these offices while serving as such member. Violation of this provision shall be grounds for removal. The board shall elect one of its members as chairman of the board.

- (2) Each member of the personnel board shall take and file the official oath.
- (3) At no time shall more than two members be adherents of the same political party; and no member shall hold any other lucrative administrative office under the United States or this state, except the office of notary public or a military office.
- (4) The personnel board shall keep its office and shall hold all its meetings in the state capitol, and all of said meetings shall be open to the public.
- (6) The members of the personnel board shall each be paid twenty-five dollars per day for time actually devoted to their duties but shall not be paid more than six hundred dollars in any year. [1933 c. 159 s. 5; 1937 c. 169; 1939 c. 513 s. 4; 1941 c. 321]

16.04 Use of municipal and county buildings. The officials in control of municipal and county buildings, upon requisition by the director, shall furnish convenient offices and rooms for examinations, and necessary furniture, heat and light for the accommodation of local examiners.

16.05 Duties of personnel board. The personnel board shall:

(1) After a public hearing prescribe, and amend rules for carrying into effect the provisions of sections 16.01 to 16.30, on the recommendation of the director of personnel. All rules so prescribed shall be subject to the approval of the governor, and they may, from time to time, subject to like approval, be added to, amended or rescinded. However, if the governor takes no action on a rule or amendment submitted to him within a period of ten days from the date of its submission, then the rule or amendment shall become effective as though approved by the governor. Notice of the contents of such rules and of any modifications thereof shall be given in due season to appointing officers affected thereby, and such rules and modifications shall also be printed for public distribution.

(2) Keep minutes of its own proceedings and other official actions. All such records shall, subject to reasonable regulations, be open to public inspection. Examination and roster or pay roll cards, and minutes of board proceedings shall be kept and preserved. All other records including correspondence, applications and examination or test material may be destroyed after 5 years, except that the bureau shall keep intact a complete record of all persons who secure employment for a period of at least 5 years from the date of their separation from the service.

(3) Make investigations concerning all matters touching the enforcement and effect of the provisions of sections 16.01 to 16.30, and the rules and regulations prescribed thereunder concerning the action of any examiner or subordinate of the bureau of personnel and any person in the public service, in respect to the execution of said sections.

(4) Approve the biennial report prepared by the director and submit the same to the governor on June thirtieth in each even-numbered year, including therein any suggestions it may approve for the more effectual accomplishment of the purposes of sections 16.01 to 16.30.

(5) Hear appeals from any action taken by the director in any matter arising under section 16.01 to 16.30, upon the application of any interested party. [1937 c. 169; 1941 c. 321]

Note: State personnel board has no power to direct state hospital superintendent to employ or re-employ any particular person; power of personnel bureau being limited to submission of names of three persons receiving highest grades on examination for selection to fill vacancies or new positions created by board of control. *Berg v. Seaman*, 224 W 263, 271 NW 924.

Rule-making power of state personnel board under 16.05 (1) extends to vacations,

despite 16.275 (2), provided that such rules are incidental to administration of statutory provisions relating to vacations and not in conflict therewith. 29 Atty. Gen. 266.

State employe compensated at monthly rate of pay is not entitled to additional pay for overtime work and has no right to hearing on any such claim before personnel board under the civil service law. 32 Atty. Gen. 222.

16.051 Advisory committee. (1) An advisory committee consisting of 9 members is created to confer with the board. The members of the committee shall be appointed by the governor from among the appointing officers of the state. Of the members first appointed, 3 shall serve for a term of one year, 3 for a term of 2 years and 3 for a term of 3 years. Their successors shall each serve for a term of 3 years.

(2) The functions of the committee shall be advisory only. The committee shall meet with the board, once each month or oftener, at such times and places as shall be specified by the board. [1947 c. 611]

16.055 Assistance to counties, cities and villages. The bureau of personnel shall, when requested by the proper authorities, render service in accordance with the provisions of this chapter to counties, cities and villages which have adopted civil service systems under the provisions of section 66.19 or 59.074, and shall charge the cost of such service to the city, village or county for which it is performed. [1939 c. 263; 1943 c. 275 s. 5; 1943 c. 490]

16.06 Testimonial powers; witnesses. Each member of the personnel board and the director of personnel may administer oaths and take testimony. The board and the director may examine such public records as it requires in relation to any matter which they have authority to investigate. All officers and other persons in the civil service shall attend and testify when requested to do so by the board or the director. [1931 c. 424 s. 2; 1945 c. 34]

16.07 Witness fee. Each person not in the civil service who appears before the board or the director by order shall receive for his attendance the fees and mileage provided for witnesses in civil actions in courts of record, which shall be audited and paid upon presentation of proper vouchers. But no witnesses subpoenaed at the instance of parties other than the board or the director shall be entitled to compensation from the state for attendance or travel, unless the board or the director certifies that his testimony was relevant and material, to the matter investigated.

16.08 Classification of civil service. (1) **CLASSES.** The civil service is divided into the unclassified service and the classified service.

(2) **UNCLASSIFIED SERVICE.** The unclassified service comprises positions held by:

(a) All officers elected by the people.

(b) All officers and employes appointed by the governor whether subject to confirmation or not, unless otherwise provided.

(c) The director, chief librarian and chief curator of the museum of the state historical society.

(d) All presidents, deans, principals, professors, instructors, research assistants, librarians and other teachers, as defined in section 42.20, in the university, state teachers colleges, Stout institute and the Wisconsin institute of technology.

(f) All legislative officers.

(3) **CLASSIFIED SERVICE.** The classified service comprises all positions not included in the unclassified service. [1931 c. 424 s. 1, 2; 1943 c. 276; 1943 c. 552 s. 2; 1947 c. 476]

16.09 Classification of classified service. (1) **DIVISIONS.** The offices, positions and employments in the classified service shall be arranged by the director in two divisions designated respectively the exempt and the competitive divisions.

(2) **EXEMPT DIVISION.** The following positions shall be included in the exempt division:

(a) One deputy or assistant and one stenographer of each elective executive officer and the speaker of the assembly.

(b) The clerks and other assistants and employes of the supreme court.

(3) **COMPETITIVE DIVISION.** The competitive division shall include all positions for which it is practicable to determine the merit and fitness of applicants by competitive examinations, and shall include all positions and employments of whatever functions, designations or compensation, in each and every branch of the classified service, except such positions as are in the exempt division. [1931 c. 424 s. 1, 2; 1935 c. 113; 1941 c. 321]

Note: Chief clerk and sergeant-at-arms executive officers within meaning of (2) (a), of senate and assembly are not elective 19 Atty. Gen. 617.

[16.095 Stats. 1945 repealed by 1947 c. 483]

16.10 Appointments, promotions, changes in classified service. (1) Appointments to, and promotions in the classified service, shall be made only according to merit and fitness, which, except as otherwise provided by law shall be ascertained so far as practicable by examinations which so far as practicable, shall be competitive.

(2) The director may designate persons in or out of the official service of the state or of any city or county who shall, if in the service, with the consent of the head of department or office in which such person serves, act as local examiner. Such persons in the official service, in the performance of such duties as the director orders, shall be under the direct and sole control of the director, and their duties shall be considered part of the duties of the offices in which they are serving, and time shall be allowed therefor during office hours.

(3) No person shall be appointed, transferred, removed, reinstated, promoted or reduced as an officer, clerk, employe or laborer in the classified service in any manner or by any means, other than those prescribed in sections 16.01 to 16.30. [1933 c. 159 s. 5]

16.105 Classification and compensation plan. (1) The director, with advice and approval of the personnel board, shall ascertain and record the duties and responsibilities of, and establish grades and classes for, all positions to which this chapter applies. Each class shall include positions requiring duties which are substantially similar in respect to the authority, responsibility, and character of the work required in the performance thereof and shall be designated by a title indicative of such duties. Each class shall be so defined that the same requirements as to education, experience, capacity, knowledge and skill are demanded of incumbents for the proper performance of their duties, that the same tests of fitness may be used in choosing qualified appointees; and that the same schedule of pay can be made to apply with equity under like working conditions. As far as practicable the natural or probable lines of promotion to and from the class of position shall be designated or indicated. The titles of positions so established shall be used in all reports and pay rolls and in all estimates requesting the appropriation of money for personal services.

(2) (a) The director shall, after a public hearing and with the advice and approval of the personnel board, establish and maintain salary ranges for all positions and employments in the state service to which this chapter applies.

(b) Each such range shall provide for a minimum and a maximum rate of pay, and for intermediate salary steps to govern salary increases for meritorious service. The director shall not certify the salary of any person holding any such position or employment, unless such salary is at the minimum or maximum of such range, or is at an intermediate step within such range, or is within such range and is an exact multiple of \$5; but this provision shall not prevent the payment of any bonus or of any added pay for added hours of work under rules and regulations of the board, which shall be considered separately from the basic salary rate of the employe.

(c) Merit increases within salary ranges shall be allowed each year to employes in the competitive division of the classified service, by each appointing officer for his budgetary division or subdivisions, in accordance with this section and rules and regulations of the board, subject to the following limitations:

1. The total of all such merit increases for any fiscal year shall not exceed the amount budgeted therefor pursuant to paragraph (e).

2. Each appointing officer shall, in granting or denying merit increases, take into account the relative performance of his employes, with a view to recognizing and encouraging superior service.

3. No employe shall receive a merit increase exceeding 2 intermediate steps. Merit increase of 2 intermediate steps shall be granted by an appointing officer only for exceptionally meritorious service.

4. Not more than 10 per cent of the employes currently eligible to receive a merit increase in a given budgetary subdivision shall receive increases amounting to as much as 2 intermediate steps. In computing the 10 per cent limitation, any resulting fraction shall be rounded to the next higher unit.

5. No employe shall be eligible for a merit increase on any July 1 if he has not then completed his probationary period.

(d) An employe, on the completion of his probationary period with meritorious service, shall become eligible to receive a merit increase of not more than one intermediate salary step.

(e) Each appointing officer shall, in submitting his budget to the governor-elect and to the joint committee on finance, request an amount for merit increases. Such amount shall be equal to the sum of:

1. Eighty per cent of the amount which would be required if every employe eligible for a merit increase during the budgetary period were to receive an increase equal to one intermediate step; and

2. The amount estimated to be required during said period for the merit increases authorized by paragraph (d).

(3) Immediately after the organization of the joint committee on finance in each regular session of the legislature, the director of personnel shall report to such committee the following:

(a) The standard salary ranges for the various grades and classes of positions in the classified civil service.

(b) Recommendations, based upon experience in recruiting the service, data collected as to rates of pay for comparable work in other public services and in commercial and industrial establishments, and any special studies carried on, as to the need for changes in the compensation schedule for any grade and class or group of classes.

(c) Any other matters that seem pertinent in developing and administering a compensation plan for the classified service which takes proper account of prevailing market rates, costs and standards of living, the state's employment policies, and the state's financial resources and needs.

(4) The standard salary ranges submitted by the director, as may be modified by the joint committee on finance, shall, for the ensuing biennium, constitute the state's compensation plan for positions in the classified service; provided, that the personnel board, with the approval of the director of budget and accounts and the emergency board, while the legislature is not in session, may change the compensation schedule for any grade and class when such action is made desirable by changing employment and economic conditions.

(5) The standard salary ranges in effect at the time when this subsection becomes effective shall continue in effect until amended as provided in this section. [1941 c. 321; 1943 c. 519; 1945 c. 293; 1947 c. 9, 331]

Note: Employes in classified service who voluntarily waived portions of salary during depression cannot now recover portion waived even though they received less than minimum salary levels set by bureau of personnel. 25 Atty. Gen. 263.

The recommendations which the director of personnel is required to make under (2)

(d), Stats. 1945, should be based on salary schedules in effect at the time. Recommendations for revision of salary schedules under (3) need not be completed prior to organization of the joint finance committee at a regular session of the legislature. 35 Atty. Gen. 309.

16.11 Examinations; procedure, where held. (1) All examinations for positions in the classified service shall be of such character as to determine the qualifications, fitness and ability of the persons examined to perform the duties of the class for which the register is being established. The examinations may be written, oral, physical, or in the form of a demonstration of skill, or any combination of such types. The examinations may take into consideration such factors, including education, experience, aptitude, capacity, skill, knowledge, character, physical fitness and other qualifications, as in the judgment of the director, enter into the determination of the relative fitness of the applicants. A person failing in the written portion of any such examination shall not be permitted to participate or continue with any other remaining portion of such examination. No question shall be so framed as to elicit information concerning the political or religious opinions or affiliation of an applicant. Every precaution shall be taken to prevent any unauthorized person from gaining any knowledge of the nature and content of the tests that is not available to every applicant. The director shall utilize appropriate scientific techniques and procedures in rating the results of examinations and determining the relative ratings of the competitors. If 2 or more competitors have like averages in the total examination, the order in which their names shall appear on the register shall be determined by that component part of the several parts of the total test as in the judgment of the director has been determined as most significant in relation to the job for which the examination is given.

(2) The competitive examinations shall be free and open to all applicants who are citizens of the United States and who have been residents of this state for one year prior to their application and who have fulfilled the preliminary requirements stated in section

16.12, and shall be held at such times and places as in the judgment of the director, most nearly meet the convenience of applicants and the needs of the service. The director may open competitive examinations for technical and professional services only to residents of other states who are citizens of the United States and who have fulfilled the preliminary requirements stated in section 16.12.

(3) It is the declared policy of the state that under the operation of sections 16.01 to 16.30, there shall be a fair distribution throughout the state of persons accepted for the classified service, and to that end examinations shall be held at convenient points in the state.

(4) The director may require candidates who have satisfied the preliminary requirements, to undergo an examination, in cases where oral tests or tests for manual skill or use of instruments in constructive work may be necessary, at convenient or designated places in the state.

(5) Whenever an oral examination of applicants is to be required, the director shall list in the examination announcement the qualifications which will be appraised in the oral examination. The system of oral examinations shall be designed to produce objective data upon which oral ratings shall be assigned and shall be designed to appraise such factors as ability to assume responsibility, initiative, or ability to co-operate with others. Applicants shall be given an opportunity to produce actual evidence of occasions when they have demonstrated the qualifications being measured. Applicants may use names, dates and places, or other factual data necessary to substantiate evidence given. A record of each oral examination shall be kept for the purpose of validation and review, and for contributing to the objectivity of the entire process.

(6) The director may appoint specially constituted boards of examiners for the purpose of conducting oral examinations as a part of the recruitment procedure for certain positions. Each such board may include one representative from the bureau and from 1 to 3 other well-qualified members, of whom at least 1 or 2 shall not be permanent employes of the state. The outside members shall be well qualified, impartial, and of recognized attainment in their respective fields. Whenever such oral examinations of applicants are required, all questions asked and answers made shall be recorded and made a part of the records of such applicants. [1935 c. 223; 1939 c. 253; 1941 c. 321]

16.12 Application for admission to examinations; forms. (1) The director shall require persons applying for admission to any examination provided for under sections 16.01 to 16.30, or under the rules of the board, to file in the office of the bureau a reasonable time prior to the proposed examination, a formal application.

(2) The director may require in connection with such application such certificates of citizens, physicians or others having knowledge of the applicant, as the good of the service may require.

(3) Blank forms for such applications shall be furnished by the bureau without charge to all persons requesting the same. [1931 c. 424 s. 2]

Note: Subsection (1) is mandatory, and applicant for one examination who, by mistake, takes examination for different position may not be certified for latter position; neither may he be certified for position for which he did file application if he failed to take examination for that position. 27 Atty. Gen. 221.

16.13 Applicants and eligibles may be barred; qualifications, bonds may be required. (1) The director may refuse to examine the applicant, or after examination to certify an eligible, who is found to lack any of the preliminary requirements established for the examination for the position or employment for which he applies, or who is physically so disabled as to be rendered unfit for the performance of the duties of the position to which he seeks appointment, or who is addicted to the habitual use of intoxicating liquors to excess, or has been guilty of any crime or of infamous or notoriously disgraceful conduct, or who has been dismissed from the public service for delinquency or misconduct, or who has made a false statement of any material fact; or directly or indirectly shall give, render, or pay or promise to give, render or pay any money, service or other valuable thing to any person for or on account of, or in connection with, his test, appointment or proposed appointment; or practiced, or attempted to practice, any deception or fraud in his application, in his certificate, in his examination, or in securing his eligibility or appointment, or refuses to furnish testimony as required in section 16.06.

(2) Whenever the director refuses to examine an applicant, or after an examination to certify an eligible, as provided in this section, then said director, if requested by the person so rejected, shall give to him a full and explicit statement of the exact cause of such refusal to examine or to certify, as the case may be. Appeal may be had from the decision of the director in accordance with the provisions of subsection (5) of section 16.05.

(3) When any position to be filled involves fiduciary responsibility, the appointing officer, where otherwise permitted by law, may require the appointee to furnish bond or

other security, and shall notify the director of the amount and other details thereof. Any surety company authorized to do business in this state, shall be a sufficient security on any such bond. [1931 c. 424 s. 2]

16.14 Political or religious affiliations; no discrimination. No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations and all disclosures thereof shall be discountenanced. No discriminations shall be exercised, threatened, or promised, by any person in the civil service against or in favor of any applicant, eligible, or employe in the classified service because of his political or religious opinions or affiliations.

16.15 Recommendations. No recommendation for any person who applies for office or place, or for examination or registration under the provisions of sections 16.01 to 16.30, or of the rules established pursuant thereto, except as to character, and, in the case of former employers or teachers, as to ability, shall be given to, or considered by any person concerned in making any examination, registration, appointment, promotion or reinstatement under sections 16.01 to 16.30, and the rules made pursuant thereto. No recommendation whatsoever shall relate to the political or religious opinions of any applicant. No recommendation for the promotion of any person in the classified service shall be considered by any officer concerned in making promotions, except it be made by the officer or officers under whose supervision or control such employe is serving. Any recommendation made contrary to the provisions of this section, with the knowledge and consent of the applicant or employe, shall be sufficient cause for refusing his application or appointment, or for debarring him from the promotion proposed, and a repetition of the offense shall be sufficient cause for removing him from the service.

16.16 Exempt division, appointments to, limitations. (1) Appointments in the exempt division may be made without examination, but no office or position shall be deemed to be in the exempt division unless it is specifically exempted by law or is named in such division in the rules, and if so named, the reasons for such exemptions shall be stated separately in the reports of the bureau. Not more than one appointment shall be made to or under the title of any such office or position unless a different number is specifically authorized by law or mentioned in the rules. [1931 c. 424 s. 2; 1941 c. 321]

16.17 Competitive division; appointments to, term of eligibility, separate lists for various localities. (1) Appointments shall be made to or employment shall be given in all positions in the competitive division that are not filled by promotion, reinstatement, transfer or reduction under the provisions of sections 16.01 to 16.30, and the rules made in pursuance thereof, by appointments from among those certified to the appointing officer in accordance with the provisions of section 16.18.

(2) The term of eligibility of applicants on original entrance and promotional lists shall be 6 months; but such term may be extended by the board after consideration of the recommendation of the director. The eligibility of individuals on reinstatement lists may be extended in like manner. But such eligibility may not be extended for a period of more than 3 years, except for such classified employes who have been transferred by a department head or officer to a federal agency or department which is administered in co-operation with the state provided that no reinstatement for any such employe shall be extended beyond or after January 1, 1942.

(3) Appointments shall be made from the eligible list most nearly appropriate, and a new and separate list shall be created for a stated position only when there is no appropriate list existing from which appointments may be made. The director with the advice and approval of the board shall have authority to establish separate eligible lists in various localities, provided that the director shall have given proper publicity to the intent of the bureau to establish such lists. For legislative positions, eligible lists shall be established and certification made therefrom according to state senatorial districts. No person shall be appointed or employed under any title not appropriate to the duties performed, and no person shall be transferred to, or assigned to perform the duties of, any position subject to a competitive examination, unless he has previously passed an open competition examination equivalent to that required for such position. [1931 c. 424 s. 2; 1935 c. 137; 1941 c. 166, 321]

Note: The power of the bureau is not exhausted upon fixing the original term of eligibility at less than three years, the aggregate eligibility not to exceed three years. 20 Atty. Gen. 383. See note to 16.23, citing 27 Atty. Gen. 129.

16.18 Competitive division; notice of vacancy, preference to veterans, appointment, objections to. (1) Appointing officers shall give written notice to the bureau of personnel of the existence of any vacancy to be filled in any office or employment in the

competitive division, under the provisions of sections 16.01 to 16.30, and within 10 days after the receipt of such notice the director shall certify from the register of eligibles appropriate for the grade and class in which the position is classified, the 3 names at the head thereof, which have not been certified 3 times to the department or office in which the vacancy exists. Whenever an employing officer notifies the bureau of personnel of a vacancy or vacancies to be filled he shall indicate whether he wishes certification to be made from an appropriate reemployment or original employment register for the grade or class. Whenever eligibles are certified, they must be those candidates who have been graded highest in an examination held in pursuance of sections 16.01 to 16.30, and the rules made in accordance therewith, except that there shall be no restriction as to age in the case of veterans and except that other conditions being equal, a preference shall be given in favor of veterans of any of the wars of the United States. The employing officer shall not reject because of age any eligible veteran, 55 years of age or less, whose name has been certified to him. Preference is hereby defined to mean that whenever an honorably discharged veteran competes in any examination conducted by the bureau he shall be accorded 5 points, and if such veteran has a disability which is directly or indirectly traceable to war service, he shall be accorded another 5 points, in addition to earned ratings therein. In every case after a name has been certified 3 times, it may be dropped from the list by the director, but certificates for temporary appointment shall not be counted as one of such certificates.

(2) The appointing officer shall appoint on probation, with sole reference to merit and fitness, one of the said candidates whose name is certified in the manner above set forth, to fill such vacancy unless objection is made, and sustained by the director, to one or more of the persons certified for any of the reasons stated in section 16.13; however, the provisions of this section may be altered by the director when the office or employment comes within those where by section 16.20 competitive examinations are not required. [1931 c. 424 s. 2; 1937 c. 280; 1941 c. 321; 1947 c. 465]

Note: Where an employe of the tax commission continued to work and receive her pay after the enactment of ch. 412, Laws of 1939, her service after the enactment, but before the effective date of the abolition of the tax commission and the creation of the new department, was not a part of any "probationary period" in the newly created department. State ex rel. Anderson v. Barlow. 235 W 169, 292 NW 290.

16.19 Competitive division; vacancies, promotions. (1) Vacancies in positions in the competitive division shall be filled, so far as practicable, by promotion from among persons holding positions in the lower grade in the department, office or institution in which the vacancy exists, under rules and regulations made and enforced by the bureau. Promotions shall be based upon merit and fitness to be ascertained by examinations, to be provided by the director, and upon the superior qualifications of the person promoted as shown by his previous service, due weight being given to seniority and experience.

(2) For the purposes of this section an increase in the salary or other compensation of any persons holding an office or position subject to the provisions of chapter 16, beyond the limit fixed for the grade in which such office or position is classified, shall be deemed a promotion.

(3) No promotion shall be made to a position in the competitive division from a position in the exempt division, nor shall any promotion be made except as provided in subsection (1) of section 16.105. [1931 c. 424 s. 2; 1941 c. 321]

16.20 Competitive division; provisional, emergency, exceptional and temporary appointments. Positions in the competitive division may be filled without competition only as follows:

(1) Whenever there are urgent reasons for filling a vacancy in any position in the competitive division and the director is unable to certify to the appointing officer upon requisition by the latter a list of persons eligible for appointment after a competitive examination, the appointing officer may nominate a person to the director for noncompetitive examination, and if such nominee is certified by the said director as qualified after such noncompetitive examination, he may be appointed provisionally to fill such vacancy only until a selection and appointment can be made after competitive examination, but no such appointment shall be continued for more than thirty days and successive appointments shall not be made.

(2) In case of an emergency an appointment may be made without regard to the rules of this section, but in no case to continue longer than ten days, and in no case shall successive emergency appointments be made.

(3) In case of vacancy in a position in the competitive division where peculiar and exceptional qualifications of a scientific, professional, or educational character are required, and upon satisfactory evidence that for specified reasons competition in such special case is impracticable, and that the position can best be filled by the selection of some designated person of high and recognized attainments in such qualities, the board upon recom-

mendation of the director may suspend the provisions of the statute requiring competition in such case, but no suspension shall be general in its application to such place, and all such cases of suspension shall be reported in the biennial report of the bureau with the reasons for the same.

(4) Where the services to be rendered by an appointee are for a temporary period not to exceed three months, and the need of such service is important and urgent, the director may select for such temporary service any person on the proper list of those eligible for the permanent appointment without regard to his standing on such list. Successive temporary appointments to the same position shall not be made under this provision. The acceptance or refusal by an eligible of a temporary appointment shall not affect his standing on the register for permanent employment, nor shall the period of temporary service be counted as a part of the probationary service in case of subsequent appointment to a permanent position. [1931 c. 424 s. 2; 1933 c. 159 s. 6]

16.21 [Repealed by 1931 c. 424 s. 1]

16.21 Career in public service; director's duties. (1) **CO-OPERATIVE PLANS FOR TRAINING.** The director of personnel shall devise plans for and co-operate with appointing authorities and other supervising officials in the conduct of service training programs to the end that the quality of the service rendered by the persons in the classified service may be continually improved.

(2) **ESTABLISH APPRENTICESHIPS.** The director of personnel shall establish in the classified service in service training apprenticeships designed to give rigorous training in public service administration for periods not to exceed three years under the direct supervision of experienced administrators.

(3) **ROSTER FOR SUPERSERVICE.** The director of personnel shall maintain a perpetual employment roster of men and women with special qualifications for public service administration obtained by selection from within the service upon the recommendation of appointing authorities, and from the student bodies of the educational institutions maintained by the state upon recommendation of their governing bodies, by recruitment from outside the service, including nonstate supported educational institutions.

(4) **RULES FOR APPRENTICESHIPS.** The director of personnel shall draft rules and regulations relating to salary increases, annual leaves, the probationary period, and means by which apprentices may be promoted to permanent employment in the state service.

(5) **CO-OPERATE FOR SCHOLARSHIP LOANS.** To stimulate the interest of qualified students of exceptional merit in government career service, the director of personnel shall co-operate with the university regents in providing opportunities for recipients of public service scholarship loans to secure employment under the apprenticeship plan. [1937 c. 181 s. 5]

16.22 Probationary period; permanent appointment. (1) All original appointments to the competitive division of the classified service shall be for a probationary period of 6 months, but dismissal may be made at any time during such period. Upon such dismissal, the appointing authority shall forthwith report to the director and to the employe removed his action and the reason therefor. No more than 3 employes shall be removed successively from the same position during their probationary periods without the approval of the director. The director may remove an employe during his probationary period if he finds after giving him notice and an opportunity to be heard, that such employe was appointed as a result of fraud or error.

(2) Fifteen days prior to the expiration of an employe's probationary period, the director shall notify the appointing officer as to the date on which the probationary period will terminate, and thereupon the appointing authority shall notify the director in writing whether or not the services of the employe have been satisfactory and whether or not he will continue the employe in his position. A copy of such notice shall be given to the employe.

(3) If any employe is removed from his position during or at the end of his probationary period, and the director determines that he is suitable for appointment to another position, his name may be restored to the list from which it was certified. If any such employe was a regular employe in another position in the classified service immediately prior to his appointment, his name shall be placed on the reemployment list for the class of position in which he was a regular employe. [1931 c. 424 s. 2; 1941 c. 321]

Note: Under chapter 16, Stats. 1939, employing officer may at will or pleasure dismiss employe having probationary status. As result of peculiar circumstances created by senate resolution No. 6, S. (1939) civil service laws will not be evaded if proba-
 tionary employes resign or are dismissed during such period, their names recertified by bureau of personnel as eligible for new appointment and new appointment is made for new probationary period of six months. 28 Atty. Gen. 34.

16.23 Transfers and reinstatements. (1) No transfer or reinstatement shall be made from a position in one grade and class to a position in another grade and class unless the same be specifically authorized by the director. Section 16.19 and the rules adopted thereunder shall be read with this section and the rules adopted hereunder, and where the transfer involves a promotion the requirements of the promotion rule and regulation shall be observed.

(2) Any person who has held a position by permanent appointment under the civil service law and rules and who has been separated from the service without any delinquency or misconduct on his part but owing to reasons of economy or otherwise, may be reinstated within one year, and in the case of legislative employes within two years, from the date of such separation to positions in the same or similar grade or class in the state service; provided, that for the original entrance to the position proposed to be filled by such reinstatement there is not required in the opinion of the director examination involving essential tests or qualifications different from or higher than those involved in the examination for the original entrance to the position formerly held by the person proposed to be reinstated.

(3) The board after consideration of the recommendation of the director may provide in its rules for the reinstatement of persons who have served meritoriously less than three months in seasonal employments, the need for which may reasonably be anticipated and is likely to recur each year or shorter period. [1931 c. 424 s. 2]

Note: Under (2) reinstatement rights of employe under civil service law extend only during year immediately following his last permanent employment, temporary employes not being included in that statute. 26 Atty. Gen. 422.

leave of absence except where tenure is terminated by abolishing position during leave, in which case reinstatement rights begin to run as of date of separation from service rather than from expiration of time set in leave of absence. Bureau of personnel is not obligated to return employe to analogous position where his classification has been abolished while he was on leave of absence. 27 Atty. Gen. 129.

Eligibility of persons on reinstatement lists under 16.23 (2) dates from time of separation from service. Section 16.17 (2), relating to extended eligibility under civil service law, does not apply to person on

16.24 Removals, suspensions, discharges, reductions, dismissals, lay-offs, resignation.

(1) (a) No permanent subordinate or employe in the competitive division who shall have been appointed under the provisions of sections 16.01 to 16.30 or the rules made pursuant thereto shall be removed, suspended without pay, discharged, or reduced in pay or position except for just cause, which shall not be religious or political. In all such cases the appointing officer shall, at the time of such action, furnish to the subordinate in writing his reasons for the same. The reasons for such action shall be filed in writing with the director prior to the effective date thereof. Within 10 days after the effective date of such action of the appointing officer, the employe may appeal to the board and within 30 days after the date of appeal, the board shall hold a public hearing thereon.

(b) After the public hearing before the board, the board shall either sustain the action of the appointing officer, or shall reinstate the employe fully. Any action brought against the appointing officer by the employe for failure to comply with the order of the board to reinstate shall be brought and served within 60 days from the date of the board's findings.

(2) Provisional employes as defined in subsection (1), emergency employes as defined in subsection (2), and temporary employes as defined in subsection (4) of section 16.20 may be dismissed or laid off at any time at the discretion of the appointing officer. Seasonal employes provided for in subsection (3) of section 16.23 may be dismissed or laid off at any time during the first 6 months of service, and, if such service extends beyond 6 months, they may be laid off at the expiration of the seasonal period, at the discretion of the appointing officer. In case of a reduction in force because of stoppage or lack of work or funds or because of material change in duties or organization, permanent employes shall be laid off in accordance with rules established by the bureau. The seniority and service ratings of employes shall be considered, in such manner as the rules shall provide, in determining the order of lay-offs and reinstatements. The appointing officer shall confer with the director relative to a proposed lay-off a reasonable time before the effective date thereof in order to assure compliance with the rules. Persons so laid off shall be placed on the appropriate reinstatement list. Resignations from the classified service shall be regulated by the rules of the bureau.

(3) Any employe who shall have been removed, demoted or reclassified, from or in any position or employment in contravention or violation of any provisions of sections 16.01 to 16.30, and who shall have been reinstated to such position or employment by order of the board or any court upon review, shall be entitled to compensation therefor from the date of such unlawful removal, demotion or reclassification at the rate to which he would have been entitled by law but for such unlawful removal, demotion or reclassification, and such employe shall be entitled to an order of mandamus to enforce the payment or

other provisions of such order. [1931 c. 424 s. 2; 1935 c. 204, 520; 1941 c. 321; 1943 c. 428, 541; 1945 c. 230]

Note: Abolishing of the office of state supervisor of inspectors of illuminating oils by chapter 461, Laws 1933, did not abolish the office of deputy inspector of illuminating oils or remove the person holding the latter office when the act went into effect. Therefore a new appointment or the filing of an oath or bond by an existing deputy inspector was not necessary, and he was not an original appointee holding temporarily, but a permanent appointee by virtue of his prior appointment and qualifications, and subject to removal only for just cause, not political, and upon notice, under the civil service law. State ex rel. Nelson v. Henry, 216 W 80, 256 NW 714.

Employee discharged without cause is entitled to reinstatement notwithstanding a subsequently effective discharge, since discharge could not operate retroactively. State ex rel. Tracy v. Henry, 219 W 53, 262 NW 222.

Just cause for the discharge of an employe cannot be founded upon a political or religious reason, but must be based upon other considerations. In a mandamus proceeding to compel the state treasurer to reinstate a discharged oil inspector, wherein it appeared that the treasurer in the notice of discharge had assigned reasons constituting just cause for the discharge, the trial court, on properly finding as a matter of fact that just cause existed for the discharge, should have closed the inquiry and dismissed the petition, regardless of evidence as to secret motives of the treasurer in making the discharge. State ex rel. Nelson v. Henry, 221 W 127, 266 NW 227.

"Reinstatement" of employe means reinstatement in position from which he was removed. Berg v. Seaman, 224 W 263, 271 NW 924.

Where the state treasurer notified an employe that he was discharged, and the employe did not reply within the time allowed therefor by statute, a subsequent denial of the charges which were sent to the bureau of personnel did not cure the employe's failure to reply within the time allowed. State ex rel. Tracy et al. v. Levitan, 228 W 136, 279 NW 620.

In a mandamus proceeding to compel compliance with an order of the bureau of personnel, made after hearing, to restore the

relator to the position from which he had been discharged, the defendants' return to the alternative writ, merely attacking the findings and determination of the bureau as unwarranted and contrary to the facts, stated no defense, it being assumed in the mandamus proceeding that the bureau conducted such hearing as the statute provides, and the findings and order of the bureau not being subject to collateral attack or review by the courts in the mandamus proceeding. State ex rel. Fess v. Mackenzie, 236 W 602, 296 NW 61.

The personnel board has power either to sustain the action of an appointing officer discharging an employe or to reinstate the employe, but where the board has held the required public hearing and has sustained the action of the appointing officer and dismissed the employe's appeal, the board has no power subsequently to grant a rehearing, reconsider the matter, and reinstate the employe. Baken v. Vanderwall, 245 W 147, 13 NW (2d) 502.

Where a state employe under civil service had been demoted by his appointing officer, and had received the appointing officer's notice of his reasons for the demotion, and knew that the resulting change in position carried with it a change in classification, the subsequent formal notice of reclassification from the bureau of personnel, which, instead of stating the appointing officer's reasons for the demotion, stated that the transfer of the demoted employe to a different position was occasioned by the return of another state employe from military service, did not affect the demotion nor operate to extend the time within which the demoted employe could appeal to the personnel board from the demotion. Odau v. Personnel Board, 250 W 600, 27 NW (2d) 726.

Personnel board which has ordered reinstatement of discharged employe is without power to enforce its order by court action. This can be done in action commenced by employe. 25 Atty. Gen. 268.

Where state board of personnel reinstates employe its determination cannot be collaterally attacked through failure to honor pay roll certified in accordance with order of reinstatement if procedural requirements as to filing of appeal and holding of hearing provided for by statute governing reinstatement are complied with. 33 Atty. Gen. 172.

16.25 Appointing officers to report appointments, promotions, reductions, separations, efficiency, etc., standards of performance; service ratings. (1) Each appointing officer shall report to the director forthwith in writing upon any appointment or employment in the classified service, the name of the appointee, or employe, the title and character of his office or employment, the date of commencement of service by virtue thereof, and the salary or compensation thereof, and shall report from time to time, and, upon the date of the official action, in, or knowledge of each case, any separation of a person from the service or any promotion, reduction, transfer, reinstatement, or other change therein, the efficiency of his subordinates and employes and other information, in such manner as may be prescribed.

(2) In co-operation with appointing officers and principal supervisors, the director shall establish, and may from time to time amend, standards of performance and output for employes in each class of positions in the classified service or for groups of classes, and a system of service ratings based upon such standards. In such manner and with such weight as shall be provided in the rules, service ratings shall be considered in determining salary increases and decreases within the limits established by the salary schedules; as a factor in promotion tests; as a factor in determining the order of lay-off when forces must be reduced because of lack of funds or work, or material changes in duties or organization and the order in which names are to be placed on reemployment lists; and as a means of discovering employes who should be promoted, demoted, transferred or dismissed. In such manner and at such times as the rules may require, each appointing officer shall report to the director the service ratings of employes in his division or such information as the director may request as a basis for determining such service ratings. Any employe shall be given reasonable opportunity to see his service

ratings and discuss the same with a representative of the bureau and the rating officer of his department. [1941 c. 321]

16.26 Roster of classified service; access to public records. The director shall keep in the office an official roster of the classified service and shall enter thereon the name of each and every person who has been appointed to, employed, promoted, reduced or reinstated in any position in such service, upon such evidence as it may require or deem satisfactory that such person was appointed to, employed, promoted, reduced or reinstated in the service in conformity with the provisions of this chapter, and the rules adopted pursuant thereto. This roster shall show in connection with each name the date of appointment, employment, promotion, reduction or reinstatement, increases and decreases in pay, the compensation and title of the position, changes in title, transfer, sick or annual leaves with pay and the date and nature of any termination of such office or employment. The director shall have access to all public records and papers, the examination of which will aid in the discharge of his duty in connection with said roster. [1933 c. 159 s. 7]

16.27 Pay rolls certified by director; mandamus; liability of appointing officer; taxpayers' suits. (1) Neither the secretary of state, nor other fiscal officer of this state, shall draw, sign or issue, or authorize the drawing, signing or issuing of any warrant on the treasurer or other disbursing officer of the state; nor shall the treasurer or other disbursing officer of the state pay any salary or compensation to any person in the service of the state, unless an estimate, pay roll or account for such salary or compensation containing the names of every person to be paid, shall bear the certificate of the director that the persons named in such estimate, pay roll, or account have been appointed, employed, reinstated or promoted as required by law and the rules established thereunder and that the salary or compensation is within the salary ranges fixed pursuant to section 16.105.

(2) Any officer, clerk, employe, or other person entitled to be certified by said director to the secretary of state or other fiscal or disbursing officer of the state, as having been appointed or employed in pursuance of law and of the rules made in pursuance of law, and refused such certificate, may maintain an action of mandamus to compel such director to issue such certificate.

(3) Any sums paid contrary to the provisions of this section may be recovered from any officer or officers making such appointments in contravention of the provisions of law or of the rules made in pursuance of law, or from any officer signing or countersigning or authorizing the signing or countersigning of any warrant for the payment of the same, or from the sureties on the official bond of any of said officers, in an action in the circuit court of any county within the state, maintained by the director or the personnel board or by any member thereof, or by a citizen resident therein, who is assessed for, and liable to pay, or within one year before the commencement of the action has paid, a state, city or county tax within this state. All moneys recovered in any action brought under this section when collected, shall be paid into the state treasury except that if a citizen taxpayer is plaintiff in any such action he shall be entitled to receive for his own use the taxable cost of such action and five per cent of the amount recovered as attorney's fees. [1931 c. 424 s. 2]

Note: Director of personnel is required to determine whether or not persons are "employed" before issuing certificate pursuant to this section. Employees appearing in court or before administrative tribunal in matters relating to their employment should not be removed from pay roll on days they are so occupied. 36 Atty. Gen. 90.

16.275 Vacation; sick leave; military leave. (1) Appointing officers shall grant to each subordinate employed subject to the provisions of this chapter a noncumulative leave of absence without loss of pay, at the rate of 3 weeks for a full year's service. Where allowances such as laundry, meals or lodging are provided any classified employe or an employe and his family, and such allowance in kind is included as a part of the compensation, the appointing officer or department head in addition shall pay in cash the value of the food during the vacation period or noncumulative leave of absence, if not so utilized, to such an employe.

(2) Leave of absence with pay owing to sickness and leave of absence without pay, other than vacation, shall be regulated by rules of the bureau, except that unused sick leave shall accumulate from year to year not to exceed 60 days.

(4) Officials and employes of the state who are duly enrolled members of the national guard or of the state guard are entitled to leaves of absence without loss of time in the service of the state, to enable them to attend military schools and field camps of instruction which have been duly ordered held but not to exceed 15 days, excluding Sundays and legal holidays, in the calendar year in which so ordered and held. There shall be no deduction from or interruption in the pay from the state for the time spent in such attendance, irrespective of whether or not they receive separate pay for and identified with the attendance. The leave granted by this section is in addition to all other leaves granted or authorized by any other provisions of law and the time of the leave granted under this section

shall not be deemed a part of any leave granted or authorized by any other provision of law. For the purposes of determining seniority, pay or salary advancement the status of the employe shall be considered as though not interrupted by such attendance.

(5) Notwithstanding any provisions of law to the contrary no employe of the state employed on the prevailing hourly rate of pay basis shall be entitled to or be granted leave of absence with pay for sickness or vacation; but any accrued rights to paid vacation leave, earned by such employes through June 1947, which remain unused at the close of that month may be used by them at any time, approved by their employing department, during the balance of 1947, and accumulated sick leave earned by such employes through June 1947, which remains unused at the close of that month, may be used by them any time subject to the rules and regulations of the bureau of personnel. [1931 c. 424 s. 2; 1937 c. 153; 1941 c. 102, 164; 1945 c. 365, 433, 505; 1947 c. 331, 614]

Cross Reference: See 14.59 as to state of five hours and vacations. leave may be allowed by bureau of personnel even though employe has not accumulated unused time, but not to exceed sixty days in year. 26 Atty. Gen. 332.

Note: Chapter 153, Laws 1937, is not retroactive, and does not accumulate unused sick leave prior to its effective date. Sick

16.276 Restoration of employment. (1) Any classified employe of the state of Wisconsin who has enlisted or enlists or has been or is inducted or ordered into active service in the armed forces of the United States pursuant to the selective training and service act of 1940 or the national guard and reserve officers mobilization act of 1940 and any acts amendatory thereof or supplementary thereto, and any such employe whose services are specifically requested by the federal government for national defense work as a civilian during a period officially proclaimed to be a national emergency or a limited national emergency, who, in order to perform such training or service, has left or leaves a position, other than a temporary position, as a classified employe of the state of Wisconsin shall be restored to such a position or to a position of like seniority, status, pay, salary advancement and pension rights under sections 42.60 to 42.70 as though such services toward seniority, status, pay, salary advancement and pension rights under sections 42.60 to 42.70 had not been interrupted by such designated service, provided that (a) he presents to the employing agency a certificate or other evidence that he has satisfactorily completed his period of training or service, (b) he is still qualified to perform the duties of such position, (c) he makes application for reemployment within 90 days after he is released from such training or services, and (d) the circumstances of the employing agency have not changed as to make it impossible or unreasonable to so restore such employe and upon the employe's request made at any time before 6 months after he is relieved from such training or services, or absence during federal hospitalization because of injuries or sickness resulting from such war or emergency service the employe, upon presentation of proof of discharge other than dishonorable or other than (a) by reason of the sentence of a general court martial, (b) on the ground that he was a conscientious objector who refused to perform military duty or refused to wear the uniform or otherwise to comply with lawful orders of competent military authorities, (c) as a deserter or (d) of an officer by the acceptance of his resignation for the good of the service, release from such active service or federal hospitalization shall be restored as hereinafter provided:

(a) Any classified employe who had attained permanency under section 16.22 and the rules of the personnel board pursuant thereto when he left state service shall, under the provisions of this section, be restored to a position of like seniority, status, pay, salary advancement and pension rights under sections 42.60 to 42.70. The service of any employe who is so restored shall be deemed not to be interrupted by such leave, except for the receipt of pay or other compensation, accumulation of sick leave, and vacation for the period of such absence, and he shall be given all the benefits of seniority, status, pay, salary advancement and pension rights under sections 42.60 to 42.70, as though his state employment had not been so interrupted.

(b) Any classified employe who was serving his probationary period, except in the capacity of a substitute, under section 16.22 and the rules of the personnel board pursuant thereto when he left state service shall, under the provisions of this section, be restored to that point of service in his probationary period as though his state employment had not been so interrupted.

(c) Any classified employe who had attained reinstatement rights as a seasonal employe under section 16.22, and the rules of the personnel board pursuant thereto, when he left state service shall, under the provisions of this section, be restored to such seasonal position or eligibility as though his service or eligibility had not been so interrupted.

(2) (a) Any classified employe who leaves state service and enters the armed forces of the United States shall, under the provisions of this section, be given written military leave of absence by the employing agency. Notice of such severance from state service

shall be made in writing by the employing agency to the director of personnel for purposes of record.

(b) Any classified employe who leaves state service for civilian employment in response to specific request or order of the federal government or any of its agencies in connection with manpower redistribution and utilization shall, under the provisions of this section, make written application to the employing agency for civilian leave of absence presenting such specific request or order of the federal government as supporting evidence. Such civilian leave shall be allowed by the employing agency and its terms, which shall conform to the rules of the personnel board, shall be in writing. Notice of such severance from state service shall be made in writing by the employing agency to the director of personnel for purposes of record.

(c) All such military or civilian leaves of absence as heretofore may have been granted are validated and shall be deemed to be sufficient and effective hereunder; such leaves shall be recorded with the director of personnel.

(3) Any person appointed to fill the position of an employe on such military or civilian leave shall be designated as a substitute or replacement employe and upon the return and reemployment of the original employe the substitute employe shall be transferred to a similar position with the same employing agency if one is available, or if not, his name shall be placed upon an appropriate reemployment register in accordance with the rules of the personnel board. The status of any person who is appointed to fill the place of an employe on military or civilian leave under the provisions of this section shall be governed by the rules of the personnel board pursuant thereto.

(4) The restoration of classified employes of the state shall be governed by this section and by the rules of the bureau of personnel. [1945 c. 433, 506]

16.28 Taxpayers' suits. The right of any taxpayer to bring any action to restrain the payment of compensation to any person appointed to or holding any office or place of employment in violation of the provisions of sections 16.01 to 16.30, shall not be limited or denied by reason of the fact that said office or place of employment has been classified as, or determined to be, not subject to competitive examination; however, any judgment or injunction in any such action shall be prospective only, and shall not affect payments already made or due to such persons by the proper disbursing officers, in accordance with the rules of the bureau of personnel in force at the times of such payments. [1931 c. 424 s. 2]

16.29 Duty and liability of appointing officer; aged employes. (1) All officers of this state shall conform to, comply with and aid in all proper ways in carrying into effect the provisions of sections 16.01 to 16.30, and the rules prescribed thereunder.

(2) No appointing officer shall select or appoint any person for appointment, employment, promotion or reinstatement, except in accordance with the provisions of sections 16.01 to 16.30, and the rules prescribed thereunder.

(3) Any person employed or appointed contrary to the provisions of sections 16.01 to 16.30, or of the rules established thereunder, shall be paid by the officer or officers so employing or appointing, or attempting to employ or appoint him, the compensation agreed upon for any service performed under such appointment or employment, or attempted appointment or employment, or in case no compensation is agreed upon, the actual value of such services and any expenses incurred in connection therewith, and shall have a cause of action against such officer or officers or any of them, for such sum and for the costs of the action. No public officer shall be reimbursed by the state for any sums so paid or recovered in any such action.

(4) When an employe becomes physically or mentally incapable of or unfit for the efficient and effective performance of the duties of his position by reason of infirmities due to age, disabilities, or otherwise, it shall be the duty of the appointing officer either to transfer him to less arduous duties or place him on a part-time service basis and at a part-time rate of pay or as a last resort retire him from the service. In either case the same method of procedure shall be followed and the same right of appeal to the personnel board as provided in section 16.24. [1941 c. 321]

Note: The defendant was the president of a state normal school; the plaintiff was an instructress in the school; the school conducted a cafeteria, the manager of which was under civil service. Without authority and contrary to civil service, he arranged with her to manage the cafeteria, as an extra service, and promised her extra pay. Services rendered by her pursuant to that arrangement created no cause of action. *Sullivan v. Baker*, 217 W 306, 258 NW 617.

16.30 Political contributions and certain political activities prohibited. No person holding a position in the classified civil service shall directly or indirectly solicit or receive or be in any manner concerned with soliciting or receiving any assistance or subscriptions or contributions for any political party or any political purpose whatsoever. No person shall orally or by letter solicit or be in any manner concerned in soliciting any

assistance, subscription, or support for any political party or purpose whatsoever from any person holding any position in the classified civil service. No person holding any position in the classified civil service shall during the hours when he is on duty engage in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold political office, nor shall he engage in any political activity when not on duty to such an extent that his efficiency during working hours will be impaired or that he will be tardy or absent from his work. Any violation of the provisions of this section shall be adequate grounds for dismissal.

MILWAUKEE COUNTY

16.31 Milwaukee county civil service commission; appointment; terms. (1) There shall be a civil service commission in every county containing 200,000 inhabitants or more according to the last state or United States census, called "Commission" in sections 16.31 to 16.44. Such commission shall consist of 5 members, all of whom shall be legal residents of the county. Appointments shall be made on the basis of recognized and demonstrated interest in and knowledge of the problems of civil service. No person holding any elective or appointive public position or office of any sort in said county government shall be appointed thereon.

(2) The chairman of the board of supervisors of any such county, within thirty days after sections 16.31 to 16.44 become applicable thereto, shall appoint the members of said commission, designating the term of office of each. Such appointment and designation shall be subject to confirmation by the board of supervisors. Of the persons first appointed one shall hold for one year, one for two years, one for three years, one for four years, and one for five years from the first day of January next following such appointment, and until his successor is appointed and qualifies. In the month of December of each year, immediately preceding the expiration of the term of office of any such commissioner, the board of supervisors shall elect one member of such commission to hold office for the term of five years, from the first day of January next succeeding his appointment and until his successor is elected and qualifies.

(3) Every person appointed a member of said commission shall take and file the official oath.

(4) Each member of the commission shall receive such salary as the county board shall determine, which shall not be less than two hundred dollars for service performed in any one year. Such compensation shall be paid by the county treasurer on the certificate of the chief examiner, countersigned by the county auditor, if any. [1939 c. 301; 1947 c. 499]

16.32 Rules; secretary; employes; offices. (1) Such commissioners, as soon as possible after their appointment and qualification, shall prepare and adopt such rules and regulations to carry out the provisions of sections 16.31 to 16.44, inclusive, as in their judgment shall be adapted to secure the best service for the county in each department affected by said sections, and as shall tend to promote expedition and speed the elimination of all unnecessary formalities in making appointments. Such rules shall be printed and distributed in such manner as reasonably to inform the public of the county as to their purpose, and shall take effect ten days after they are published.

(2) Every such commission may appoint a chief examiner whose duty it shall be, under its direction, to superintend any examinations held in such county under sections 16.31 to 16.44, and to perform such other duties as the commission may prescribe. Such chief examiner shall be ex officio secretary of the commission, and under the direction of such commission he, as such secretary, shall cause the minutes of its proceedings to be taken in shorthand and fully transcribed. The original transcribed copy shall be the official minutes of such proceedings and shall be open and available for public inspection. Such secretary shall preserve all reports made to the commission, keep a record of all examinations held under its direction, and perform such other duties as the commission may from time to time prescribe. The salary of such chief examiner, unless a greater amount therefor is determined by the board of supervisors, shall not exceed \$1,500. The commission may also appoint such clerical or other assistants as it may deem necessary and fix their salaries. All such appointments shall be made subject to the provisions of sections 16.31 to 16.44.

(3) The board of supervisors in every county in which a commission is appointed shall provide suitable offices, furniture, stationery, light, heat, telephone and all other necessary supplies and conveniences to enable the commission to perform its duties. [1945 c. 234]

Note: The reason for the rule, that a new change in name only, with no change in classification under civil service cannot be duties, indicates bad faith in creating the created by giving a new title to a position new position. *Unger v. Gregory*, 249 W 161, involving the same duties, is that such a 23 NW (2d) 480.

16.33 Classification. (1) In every county in which a commission is appointed, pursuant to sections 16.31 to 16.44, inclusive, all offices and positions in the public service

in said county shall be divided into two classes, namely, the classified and the unclassified service. The unclassified service shall include:

- (a) All officials elected by the people.
 - (b) All members of boards and commissions.
 - (c) Professors and instructors in any county agricultural school.
 - (d) Court reporters of all courts.
 - (e) Clerk of the civil court.
 - (f) Undersheriff.
 - (g) Deputy register of deeds.
 - (h) Chief deputy clerk of the circuit court.
 - (i) Deputy county clerk.
 - (j) Deputy county treasurer.
 - (k) Deputy coroner.
 - (l) Deputy district attorneys.
 - (m) Assistants and all members of the staff in the criminal department of the office of the district attorney, except employes engaged in clerical and stenographic work.
 - (n) Investigators in the office of the district attorney, when authorized by the county board.
 - (o) Students and internes in medical or professional specialties.
 - (p) Residents in the medical specialties.
 - (q) Director of institutions and departments; members of the medical staffs of the various hospitals, sanatoriums, and other county institutions who are supplied by a medical school or medical societies without expense to or compensation from the county.
- (2) All other offices and positions, however created or filled, shall be included in the classified service. [1937 c. 293; 1943 c. 125; 1947 c. 192]

16.34 Appointments; promotions and removals in classified service. On and after January first next succeeding the date when sections 16.31 to 16.44, inclusive, become applicable in any county no person shall be appointed or promoted to, reduced in, transferred to or in, or removed from the classified service in any such county, except in accordance with the provisions of said sections.

16.35 Certifications; examinations; preference to veterans; temporary appointments. (1) When any appointing power in any such county learns that a vacancy has occurred, or is about to occur in any office or position in the classified service in his department, he shall forthwith notify the chief examiner of such fact. When an eligible list (containing the names of persons who have, within a period of time to be specified in the rules of the commission, passed an examination appropriate to the office or position in question) is in existence, the chief examiner shall certify to the appointing power the names of the three persons standing highest on that list. If more than one vacancy in the same class or position is to be filled, one additional name shall be certified for each additional vacancy.

(2) The commission shall impose no restrictions as to age in case of veterans and in the certification of eligibles, other conditions being equal, shall give preference to veterans of any of the wars of the United States. Preference is hereby defined to mean that whenever an honorably discharged veteran competes in any examination before the commission and passes the minimum grade he shall be accorded five points, and if such veteran has a disability which is directly or indirectly traceable to war service, he shall be accorded another five points, in addition to earned ratings therein.

(3) The appointing power shall make selection to fill such vacancy or vacancies with reference solely to merit and fitness from the names certified, unless objection is made to one or more of the persons named and such objection is sustained by the commission, in which case the commission shall certify in addition the name next following upon the eligible list.

(4) If there is no such eligible list, the procedure shall be as follows: An examination shall be arranged for the earliest possible date to examine candidates relative to their fitness for said office or position. The time and place of such examination, together with the requirements of the position, and all other necessary information shall be sufficiently advertised by said commission in such manner as the commission shall by its rules determine as best suited to give notice of such examination.

(5) Pending the holding of such examination and the creation of an eligible list, the office or position in question may be filled temporarily by the appointing power, by an emergency appointment, subject to such rules and restrictions as the commission may adopt. [1931 c. 79 s. 2; 1939 c. 244]

16.351 Rights of employes in military service. Any person in the classified service in any such county who is now or hereafter becomes an active member of the

military or naval forces of the United States during a period officially proclaimed to be a national emergency or limited national emergency, shall be granted a leave of absence, such leave to be continuous for the duration of the existing emergency, plus 90 days. Service toward seniority or salary advancement shall be deemed not to be interrupted by such military service, provided that persons occupying a probationary status upon commencing such military leave shall revert to such status upon reinstatement. Application for reinstatement shall be made within 90 days from the honorable discharge from the military service. Evidence of honorable discharge shall be presented to the civil service commission with such application. The position of the person so on leave shall not be filled except by appointment through the certification of the persons next eligible. Upon application of the person so on leave and presentation of evidence of such honorable discharge and of such evidence of physical fitness to perform the duties of the position formerly occupied as shall be satisfactory to the civil service commission he shall be reinstated in the position formerly occupied by him or in a position having similar character and standards of duties and compensation. The person appointed to fill such position during the absence of the person so on military leave shall, upon the latter's reinstatement, be transferred to a similar position if one is available, or if not, his name shall be placed on the appropriate reinstatement list in accordance with the rules of the civil service commission. [1941 c. 102]

16.352 Temporary appointments. (1) (a) When need exists for the filling of a position in the classified service for a period of not to exceed 6 months' duration, a temporary appointment shall be made for such period from the proper eligible list or as provided in subsection (5) of section 16.35. Such temporary appointment may be extended once for not to exceed 6 months by resolution of the county board after receipt by it of a recommendation for such extension from the civil service commission. The acceptance or refusal by an eligible of a temporary appointment shall not affect his standing on the eligible register for permanent employment nor shall the period of service of any temporary appointment be counted as a part of the probationary service required after appointment to a permanent position.

(b) This subsection shall apply to a position created on a temporary basis or to a temporary appointment to a position created on a permanent basis. As to either of such methods of filling a position which has existed for more than one year at the effective date of this subsection [June 19, 1941], the county board shall within 60 days after the effective date of this subsection provide for filling such position on a permanent basis or abolish the same.

(2) All persons serving in positions in the classified service of the county on a temporary appointment on the effective date of this section [June 19, 1941] who attained such position by appointment after certification as provided by law and who occupied such position on February 1, 1938, shall be deemed to have qualified for certification for permanent appointment and shall be certified in order of seniority for appointment to such position when such position is established on a permanent basis by the county board. [1941 c. 232]

[16.353 Stats. 1945 repealed by 1947 c. 483]

16.36 Applications for and nature of examinations; eligible list. (1) All applicants for such examination shall have been residents of this state for one year prior to their application for examination, and may be required by the commission to prepare and file written application blanks giving such information, bearing upon their fitness for the office or position in question, as the commission may deem necessary; and provided further, that for technical and professional services, the commission may open the examination to residents of other states who are citizens of the United States; and provided further, that the commission shall not, for other services, be precluded from requiring longer periods of residence within the county for entrance to examinations. Such application blanks need not be uniform for the different grades or classes of offices or positions, but the forms to be used shall be definitely specified in the rules of the commission. No questions pertaining to political affiliation or religious faith shall be asked of any applicant. The examination shall be such as to test fairly and practically the ability of each applicant to fulfill the requirements of the office or position in question. Wherever the commission believes it advisable it may substitute an actual demonstration by the applicant of his skill in performing the duties of the office or position for which he is applying in place and stead of a written test.

(2) Whenever the office or position is one in which the person to be appointed will hold a personal or confidential relation to the appointing power, the person having the power of appointment may be present at the examination for the purpose of advising the commission with relation to the relative personal fitness of the various candidates and this advice shall be given due weight in the markings of the applicant.

(3) The weights, if any, to be given to previous experience, training, age, sex, written or demonstration test, oral test, and the various other phases or elements of the examination to which the applicant may be subjected, shall be provided for in advance by the rules of the commission. The names of the persons passing the examination shall be placed on an eligible list in the order of their final grades in the examination. — Certification shall then be made as provided in section 16.35. [1935 c. 223]

16.37 Efficiency records; promotions. The chief examiner, under the direction of the commission and with the advice of the heads of the departments involved, shall devise and introduce as rapidly and extensively as practicable a system of efficiency records to be based, among other things, upon the quantity and quality of the work performed and the regularity and punctuality of attendance. After such system is introduced, the various departments thereby affected shall maintain it. The chief examiner shall also, under the direction of the commission, prepare a classification of subordinate positions in accordance with their natural tendency to fit their incumbents to fill higher offices or positions in the service of the county. The commission shall provide in its rules that the efficiency records of an employe in one of the aforesaid lower positions shall be given due weight in the examination of such employe for higher offices or positions to which they naturally lead, to the end that such higher offices or positions in the service shall be filled as far as possible by promotion. [1943 c. 457; 1947 c. 483]

16.38 Demotion; dismissal; procedure. (1) Whenever a person possessing appointing power in the county, the chief executive officer of a department, board or institution, the county park commission, county election commission, civil service commission, and county board of welfare as to officers and employes under their respective jurisdictions, believes that an officer or employe in the classified service in his or its department has acted in such a manner as to show him to be incompetent to perform his duties or to have merited suspension, demotion or dismissal, he or it shall report in writing to the civil service commission setting forth specifically his complaint, and may suspend the officer or employe at the time such complaint is filed. It shall be the duty of the chief examiner to file charges against any officer or employe in the classified service upon receipt of evidence showing cause for suspension, demotion or discharge of such officer or employe in cases where a department head or appointing authority neglects or refuses to file such charges. Charges may be filed by any citizen against an officer or employe in the classified service where in the judgment of the commission the facts alleged under oath by such citizen and supported by affidavit of one or more witnesses would if charged and established amount to cause for the discharge of such officer or employe. The commission shall forthwith notify the accused officer or employe of the filing of such charges and on request provide him with a copy of the same.

(2) The commission shall appoint a time and place for the hearing of said charges, the time to be within three weeks after the filing of the same, and notify the person possessing the appointing power and the accused of the time and place of such hearing. At the termination of the hearing the commission shall determine whether or not the charge is well founded and shall take such action by way of suspension, demotion, discharge or reinstatement, as it may deem requisite and proper under the circumstances and as its rules may provide. The decision of the commission shall be final. Neither the person possessing the appointing power nor the accused shall have the right to be represented by counsel at said hearing, but the commission may in its discretion permit the accused to be represented by counsel and may request the presence of an assistant district attorney to act with the commission in an advisory capacity. [1947 c. 192]

Note: Provision, in civil service commission's order suspending deputy sheriff, for reconsideration when suspension expired, unless sheriff recommended reinstatement, held void because delegating commission's power of dismissal; hence commission's dismissal of deputy thereunder was nullity. State ex rel. Sullivan v. Benson, 211 W 47, 247 NW 450.

16.39 Standard scale of compensation. The chief examiner, under the direction of the commission and in co-operation with the county clerk (or county auditor, if any) and with the heads of the various departments, shall devise and recommend to the board of supervisors a standardized scale of wages and salaries for all county offices and positions in the classified service, said scale to be graduated according to the duties performed, the length of service and efficiency records of the officers or employes. The supervisors shall consider and act in some way upon this scale at the last meeting of said board in the month of October next following its recommendation, and if adopted it shall go into effect on the first day of January following its adoption, or at such other date as may be provided by law.

16.40 Investigations; testimonial powers; witnesses. (1) Each member of the commission may subpoena witnesses, administer oaths, examine witnesses and compel the production of documents, records, and papers of all sorts in conducting such investiga-

tions as the commission may deem necessary or proper in order to ascertain whether or not the provisions of sections 16.31 to 16.44, inclusive, are being carried into effect. The commission may examine such public records as it requires in relation to any such investigation. All officers and other persons in the civil service of the county shall attend and testify when required to do so by the commission.

(2) In case of the refusal of any person to comply with any subpoena issued hereunder or to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county or the judge thereof, on application of any one of the commissioners, shall issue an order requiring such person to comply with such subpoena and to testify, or either, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

(3) Each person, not in the civil service of the county, who appears before the commission by its order shall receive for his attendance the fees and mileage provided for witnesses in civil actions in courts of record which shall be paid out of the appropriation to the commission. But no witness subpoenaed at the instance of parties other than the commission shall be entitled to witness fees or mileage unless the commission certifies that his testimony was relevant and material to the matter investigated.

16.41 Certification of pay rolls. No payment for personal services of any officer or employe in the classified service of any county wherein sections 16.31 to 16.44 are applicable shall be made by any county officer unless the commission has certified that the officer or employe claiming such payment is holding his position legally under the provisions of said sections 16.31 to 16.44 and the rules of the commission. Such certification shall be required on each and every pay roll for each and every office and position in the county service, which is subject to the provisions of said sections 16.31 to 16.44. County officers making payments in violation of this section shall be liable for the full amount thus paid and shall be deemed guilty of a violation of the provisions of said sections 16.31 to 16.44, and subject to the penalties provided in section 348.272.

16.42 Prohibited influences and practices. (1) Except as provided otherwise by subsection (2) of section 16.35, no factor or influence other than the fitness of a person to perform the duties of the office or position in which he is acting or employed, or to which he is seeking appointment, shall affect the determination of appointments, promotions, transfers, suspensions or discharges with respect to any office or employment within the scope of sections 16.31 to 16.44, inclusive.

(2) The following practices are especially forbidden in any county wherein sections 16.31 to 16.44, inclusive, are applicable: Pernicious political activity by any county officer or employe in the classified service; the giving of any consideration, whether financial or otherwise, in return for appointment to an office or position in the service of said county; the obstruction or deceiving of any person desiring to take an examination under the provisions of said sections, or desiring to secure information concerning any such examination; the deliberate mismarking or miscalculation of grades of any applicant taking an examination under said sections; the impersonation by any person of any other person in connection with the holding of any examination under said sections; and the giving to or receiving by candidates for examination information or assistance enabling such candidates to obtain an unfair or improper advantage over other candidates for the same examination.

(3) No county specified in section 16.31 or any department, officer or employe thereof shall hire or employ a person, subject to civil service in such county, at a wage or salary less than that advertised by the civil service commission of such county for the position to be filled, nor shall such county, department, officer or employe pay, or cause to be paid, salaries or wages of different amounts to persons in the same classification and stage of advancement, unless such difference in salaries or wages shall be based on difference of work performed; provided that where there has been a general reclassification of title and compensation of positions the county board is authorized to provide by ordinance that persons having civil service tenure at the effective date of such reclassification and occupying positions which have been reclassified, so as to result in a decrease in compensation, may continue to serve under the position title as it existed prior to such reclassification and receive the compensation thereof according to the former range during their tenure, and in the event that such general reclassification shall result in a position being reclassified to a higher grade, and the present incumbent of such position shall not have or by examination attain eligibility for certification to such higher grade, the status and compensation of such incumbent shall be retained by him during his tenure of such position in conformity with civil service. [1935 c. 218; 1945 c. 76]

16.43 Existing officers and employes, how affected. All persons included within the classified service of any county, at the time sections 16.31 to 16.44, inclusive, go into

effect therein, appointed for a definite term, shall be required to take examinations under said sections as soon as practicable after the expiration of such definite term, except persons who have been on the pay rolls of such county continuously for the four years immediately preceding the date upon which said sections go into effect in said county; and except that all such persons being in service and on the pay roll of said county less than four years preceding such date shall, in order to retain their offices or positions, be required to take a noncompetitive examination, and shall retain their offices or positions, unless upon such examination they be found and determined by said board to be insufficiently qualified. The foregoing provisions do not, however, prevent suspension, demotion or discharge of any officer or employe subject to the provisions of sections 16.31 to 16.44, inclusive, in the manner provided in section 16.38.

16.44 Appropriation for commission. A sufficient sum shall be provided each year by the county board of supervisors of each county in which sections 16.31 to 16.44, inclusive, become operative to enable the commission created thereunder, to exercise the powers and perform the duties therein specified.

MILWAUKEE CITY

16.45 Milwaukee city commission; appointment; terms. The mayor of each city of the first class, in this state, whether such city be incorporated by special act of the legislature or under the general laws of the state, shall, before the fifteenth day of June following the passage of this act, or the fifteenth day of June in the year next following the first state or national census, showing such city to belong to said first class, appoint five persons, citizens and residents of said city, who shall constitute and be known as the board of city service commissioners of such city, and shall designate one of the persons so appointed to serve for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years, and one for a term of one year, from the first Monday of July in the year of their appointment and until their respective successors are appointed and qualified; provided, however, that in cities having a board of city service commissioners the members of such board shall hold office and continue to be a member of such commission until the expiration of the term or terms of such member or members, and in each and every year after such first appointment, the mayor shall, in like manner, in the month of June, appoint one person as the successor of the commissioner whose term shall expire in that year, to serve as such commissioner for five years from the first Monday of July then next ensuing, and until his successor is appointed and qualified. The commission shall, at a meeting in July of each year, elect one member to act as president and one member to act as vice president, each for a term of one year, and until a successor is duly elected. Three commissioners shall constitute a quorum necessary for the transaction of business. Any vacancy in the office of commissioner occurring during the term shall be filled for the unexpired term by appointment by the mayor and all appointments, both original and to fill vacancies, shall be so made that not more than two commissioners shall at the time of the appointment be members of the same political party. Said commissioners shall hold no other lucrative office or employment under the United States, the state of Wisconsin, or any municipal corporation or political division thereof, and each commissioner shall before entering upon the discharge of the duties of his office and within ten days after receiving notice of his appointment, take and subscribe the oath of office prescribed by the constitution of this state, and file the same, duly certified by the officer administering it with the clerk of his city.

16.46 Duties and powers of board. It shall be the duty of every board of city service commissioners appointed under and in pursuance of the provisions of this act to investigate the enforcement of said act and of its rules, adopted in accordance with its provisions to carry out the purposes of said act and the action of the examiners in said act provided for, and the conduct and action of the appointees in the official service in its city, and may inquire as to the nature, tenure and compensation of all offices and places in the public service thereof. In the course of such investigation each commissioner shall have power to administer oaths, and said board shall have power to secure by its subpoena both the attendance and testimony of witnesses and the production of books and papers relevant to such investigation. Said commission shall have power to investigate the character and standing in the community of all applicants for examination and appointment in the city service under the provisions of this act.

Note: Where the teamsters in question did not become city employes in any manner, and the common council had not created the city service the position of teamster for persons driving teams for contracting team owners, 16.46, 16.50, 16.51, relating to civil service in the city of Milwaukee, were not applicable to require the city service commission to classify a position for such teamsters in the city service. State ex rel. Sottile v. Mensing, 238 W 189, 298 NW 620.

16.47 Compulsory attendance and fees of witnesses. Any person who shall be served with a subpoena to appear and testify or to produce books and papers, issued by

the board of city service commissioners in the course of any investigation conducted under the provisions of this act, and who shall refuse or neglect to appear and testify or to produce books and papers relevant to such investigation, as commanded in such subpoena, shall be guilty of a misdemeanor, and shall on conviction be punished by a fine or imprisonment or both in the discretion of the court, as provided in and by this act. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit courts of this state, and shall be paid from the appropriation for the expenses of the board. Any circuit court of this state or any judge thereof, whether in term time or vacation, upon application of the board, may compel the attendance of witnesses, the production of books and papers and giving of testimony before the board by attachment for contempt or otherwise, in the same manner as the production of evidence may be compelled before said court. Every person, who having taken an oath or made affirmation before a commissioner in the course of such an investigation, shall swear or affirm wilfully, corruptly and falsely, shall be guilty of perjury, and upon conviction shall be punished accordingly.

16.48 Annual report. Said board of commissioners shall, on or before the fifteenth day of March in each year, make to the mayor for transmission to the common council of such city, a report showing its own action, the rules in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act. The mayor may require a report from said board at any other time.

16.49 City and its officers to co-operate in carrying out the law. All officers of any such city shall aid said board in all proper ways in carrying out the provisions of this act, and at any place where examinations are to be held, shall allow the reasonable use of the public buildings for holding such examinations. The mayor of each city shall cause suitable rooms to be provided for said board at the expense of such city, and a sufficient sum of money shall be appropriated each year by each city to carry out the provisions of this act in such city.

16.50 Classification of officers. (1) The city service commission shall classify all offices and positions in the city service, excepting those subject to the exemptions of section 16.54, according to the duties and responsibilities of each position. Classification shall be so arranged that all positions which in the judgment of the commission are substantially the same with respect to authority, responsibility and character of work are included in the same class. From time to time the commission may reclassify positions upon a proper showing that the position belongs to a different class.

(2) The city service commission may, if it sees fit, receive any expert study or recommendation of the classification, allocation and compensation of offices and positions in the service of the city and transmit the same, with or without the commission's recommendations, to the common council. Any such report shall become effective when approved by the common council. [1945 c. 175]

Note: Where the city civil service commission created a new position and classified it, and the decision affected seniority rights, an objection made for the first time twelve years after that decision was too late. State ex rel. Thein v. Milwaukee, 229 W 12, 231 NW 653.

16.51 Commission to make rules. The said commissioners shall make rules adapted to carry out the purposes of the act and not inconsistent with its provisions, for the examination and selection of persons to fill offices and positions in the service of their respective cities, which are required to be filled by appointment and for the selection of persons to be employed in the service of such city. All rules so made shall be subject to the approval of the mayor of the city, and they may with like approval be from time to time altered or rescinded by said commissioners; however, if the mayor takes no action on a rule or an amendment to the rules, submitted to him, within a period of ten days from the date of its submission, then the rule or amendment to the rules shall become effective as though approved by the mayor. The said commissioners shall supervise the administration of rules so established.

16.52 Rules, what to require. The rules mentioned in this act shall provide among other things for the following:

First. For open, competitive examinations and for other examinations by which to test applicants for office or for employment as to their practical fitness to discharge the duties of the positions which they desire to fill, which examinations shall be public and free to all persons with proper limitations as to citizenship, residence, age, health, sex, habits, and moral character.

Second. For the filling of vacancies in offices and places of employment in accordance with the results of such examinations, and for the selection of persons for public employ-

ment in accordance with such results, or otherwise, as may seem most desirable to carry out the provisions of this act.

Third. For the promotions in offices or positions on the basis of ascertained merit and seniority in service, or by examination, or by both, as may seem desirable.

Fourth. For a period of probation before an appointment or employment is made permanent.

All rules made as provided in this act and all changes therein shall forthwith be printed for distribution by said board.

16.53 Appointments to conform to rules. From and after the adoption of such rules, all appointments to subordinate offices, positions and employments in the several departments of the service of such city, which are subject to such rules, shall be made by the respective heads of such departments under and in conformity with the provisions of such rules.

16.54 Rules not applicable to certain officers. Officers who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, one deputy in each department whose office was created and exists by reason of statute, members of any board of education, the superintendent and teachers of schools, heads of any principal departments of the city, all members of the law, fire and police departments, one private secretary of the mayor and any other officers, clerks or employes in the service of the city whose positions, in the judgment of the said city service commissioners, cannot, for the time being, be subjected, with advantage to the public service, to the general rules prepared under this chapter, shall not be affected as to their election, selection or appointment by such rules made by said commissioners. [1943 c. 524; 1945 c. 135]

16.55 Chief examiner, appointment, duties, salary, removal. The said board shall appoint a chief examiner, subject to the provisions of this act, whose duty it shall be, under its direction, to superintend any examinations held in such city under this act, and who shall perform such other duties as the board shall prescribe. Such chief examiner shall be ex officio secretary of the board, and under the direction of such board he, as such secretary, shall keep and record minutes of its proceedings, preserve all reports made to it, keep a record of all examinations held under its direction, and perform such other duties as the board may from time to time prescribe. The salary of such chief examiner shall be fixed by the board of city service commissioners, to be approved by the common council, and shall be paid by the city treasurer on the certificate of the president or vice president of said board, countersigned by the city comptroller, in the same manner as the salary of other city employes is paid. He shall be subject to removal at any time by said board. The said board may also incur such other expenses for personal services, printing, stationery, and other incidental matters as it shall deem necessary; provided, however, that the total amount of all expenditures by it incurred during any year, including the compensation of the commissioners, chief examiner, clerks and other employes, shall not exceed the amount of the special fund herein provided and known as the "City Civil Service Fund." All employes of the city service commission shall be subject to this act.

16.56 Tax for city civil service fund, disbursements. From and after the passage and publication of this act, the common council shall levy and collect annually upon all taxable property of the said city, at the same time and in the same manner as other city taxes are collected by law, a tax not exceeding seventeen one-thousandths of a mill upon each dollar of the assessed value of said taxable property, the amount of which shall be determined by said board of city service commissioners, and certified by it to the common council and to the city comptroller before the first day of October, in each year, and the entire amount of such tax shall constitute a separate and distinct fund to be known as the "City Civil Service Fund," and shall not be used or appropriated directly or indirectly, for any other purpose than paying the salaries of the commissioners, chief examiner, clerks and employes of said board, and the other necessary expenses of carrying out the purposes of this act. In addition to the aforesaid tax, the common council of any such city may annually, on request of the city service commission, levy a tax not to exceed an additional thirteen one-thousandths of a mill for the purposes aforesaid. For the year 1919 the common council may appropriate from its contingent fund such sum as may meet the needs of the city service commission for said year. All disbursements on account of such city civil service fund, except for the salary of the chief examiner, shall be paid by the city treasurer on the orders of the president or vice president and secretary of the board, countersigned by the city comptroller.

Note: The city of Milwaukee, by charter not apply to it, and has substituted other ordinance, has declared that this section does provisions therefor.

16.57 Applicants to be examined; character of examinations. All applicants for offices, places or employments in the civil service of such city, except those mentioned in section 16.54, shall have been residents of this state for one year prior to their application for examination, and shall be subject to examination under and in accordance with the rules so made by said commissioners; except that for technical and professional services the commission may open the examination to residents of other states who are citizens of the United States and except, further, that for other services the commission shall not be precluded from requiring longer periods of residence within the city, county or state for entrance to examinations. Such examinations shall be practical in their character and shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the particular service to which they seek to be appointed, and may include tests of physical qualifications, and, when appropriate, of manual skill. No question in any examination shall relate to political or religious opinions or affiliations, and no appointment or selection to an office or for employment within the scope of the rules established as aforesaid shall be in any manner affected or influenced by such opinions or affiliations. All such applicants may be examined by a competent physician as to the soundness of their health for the work to be performed. [1935 c. 223]

16.58 Examinations reasonable. The examinations held under this act shall consist of any reasonable and impartial method of ascertaining the fitness or relative merit of candidates.

16.59 Notice of examinations. Notice of the time, place and general scope of every examination shall be given by the board by publication at least four times on alternate days, beginning at least ten days before the date of such examination, in one or more daily newspapers of general circulation published in such city, and such notice shall also be posted by said board in a conspicuous place in its office at least ten days before such examination. Such further notice of examinations may be given as the board shall prescribe.

Note: The city of Milwaukee, by charter not apply to it, and has substituted other ordinance, has declared that this section does provisions therefor.

16.60 Application, contents. Every application, in order to entitle the applicant to appear for examination, or to be examined, must state the facts under oath on the following subjects: (1) Full name, residence and post-office address; (2) citizenship; (3) age; (4) place of birth; (5) health and physical capacity for the public service; (6) previous employment in the public service; (7) business or employment and residence for the previous five years; (8) education. Such other information shall be furnished by the applicant as may reasonably be required by the board concerning the applicant's fitness for the public service.

16.61 Appointment of examiners; compensation. (1) The board shall control all examinations, and may, whenever an examination is to take place, designate a suitable number of persons, either in or not in the official service of the city, to be examiners, and it shall be the duty of such examiners to make return or report thereof to such board. The board may, at any time, substitute any other person, whether or not in such service, in the place of any one so selected; and the board may themselves, at any time, act as such examiners, and without appointing examiners. The examiners, at any examination, shall not all be members of the same political party, and no person shall serve in an examination of candidates for office under the provisions of this act in case of a relative or connection by marriage within the degree of first cousin.

(2) Persons in the service of the city shall not be compensated for acting as examiners if they are public officers or if their service as examiners is rendered during their paid working schedule. But the board is hereby authorized to compensate employes of a school board or board of vocational education for serving as city service examiners beyond their regular working hours and beyond their regular duties as such employes. [1947 c. 252]

16.62 Board to keep a register of eligibles. From the returns or reports of the examiners, or from the examinations made by the board, the board shall prepare and keep a register for each grade or class of position in the service of such city, of the persons whose general average standing upon examinations for such grade or class is not less than the minimum fixed by the rules of such board, and who are otherwise eligible, and such persons shall take rank upon the register as candidates in the order of their relative excellence as determined by examination without reference to priority of time of examination; provided, however, that other conditions being equal, a preference shall be given in favor of veterans of any of the wars of the United States. Preference is hereby defined to mean that whenever an honorably discharged veteran competes in any examination before the board and passes the minimum grade he shall be accorded five points, and if such

veteran has a disability which is directly or indirectly traceable to war service, he shall be accorded another five points, in addition to earned ratings therein. The board shall impose no restrictions as to age in case of veterans. [1939 c. 244]

16.63 Persons examined not to be obstructed or aided; penalty. No person or officer shall wilfully and corruptly, by himself or in co-operation with one or more other persons, defeat, deceive or obstruct any person in respect to his or her right of examination, or corruptly or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined hereunder, or aid in so doing or wilfully or corruptly make any false representations concerning the same or concerning the person examined, or wilfully or corruptly furnish to any person any special or secret information for the purpose either of improving or injuring the prospects or chances of any person so examined, or to be examined, of being appointed, employed or promoted.

16.64 Vacancies, how filled. Whenever a position classified and graded under the provisions of this act becomes vacant, the appointing officer, if he desires to fill it, shall make requisition upon the commission for persons eligible for appointment thereto. The commission shall thereupon certify to the appointing officer from the list of eligibles, provided the vacancy cannot be filled by reinstatement, promotion or reduction, the names and addresses of the three persons standing highest thereon; provided, when there are less than three names upon an eligible list, certification shall be made and unless objection is made, by the appointing officer, to the person or persons so certified and said objection sustained by the commission, appointment shall be made under the rules. In case of more than one vacancy, an additional name shall be certified for each such vacancy. The appointing officer shall select solely with reference to merit and fitness, the number of persons for which he has made requisition. In case the commission cannot certify eligibles for appointment, it may grant to the appointing officer authority to make appointment for a period not to exceed two months or until regular appointment can be made.

16.65 Special expert class. (1) There is hereby created a new division of the classified service to be known as the special expert class. The board of city service commissioners shall place in this class all positions of a technical, scientific, or professional character, together with all positions where the qualifications are peculiar to the service in any department of the city government, and may in addition thereto temporarily classify as of the special expert class positions where the service is new and experimental in character.

(2) The provisions of the city civil service act now governing selections, appointments, promotions, reinstatements, removals, transfers or other changes, shall apply to the special expert class, except as may be otherwise provided in this section.

(3) For the filling of positions in the special expert class the appointing officer shall be free to suggest names of persons for consideration in examination together with all other applicants and all other persons whose names have been suggested to the board of city service commissioners, and the board shall inquire into the fitness of persons so nominated and may notify such persons and any other suitable person to participate in the examination.

(4) Previous to an examination to fill a position in the special expert class, the board of city service commissioners may provide in its published announcement that the resulting eligible list shall expire as soon as an appointment has been made therefrom, providing the appointing officer so desires. When an appointing officer makes objection in writing to names of persons in the special expert class, certified from an eligible list not especially appropriate for the position or group of positions in question, such certification shall be invalid.

(5) The appointing officer shall in all cases be consulted as to qualifications and requirements, examination standards, and procedure for filling positions in the special expert class.

(6) In filling positions in the special expert class the board of city service commissioners shall select a board of one or more experts to conduct the examination when requested in writing to do so by an appointing officer.

(7) Whenever the board of city service commissioners or the officer having the power of appointment shall deem it advisable in the interests of the service, no qualifications as to residence or citizenship shall be imposed in the examination for a position in the special expert class. Any restrictions contained in any law, or in any charter of any city of the first class inconsistent with this provision shall not be applicable in such case.

16.66 Vacancies in special cases, how filled. In case of a vacancy in a position, requiring peculiar and exceptional qualifications of a scientific, technical or professional character, upon satisfactory evidence that competition is impracticable and that the position can be best filled by the selection of some designated person of recognized attain-

ments, the commission may, after public hearing, by the affirmative vote of at least four commissioners, suspend competition, but no such suspension shall be general in its application to such position and all such cases of suspension shall be reported, together with the reason therefor, in the annual reports of the commission.

16.67 Notice to commissioners of all appointments, and of all offices abandoned. Immediate notice in writing shall be given by the appointing power to said board of city service commissioners of all appointments, permanent or temporary, made pursuant to this act and the rules made and established under the same, in those branches or departments of the civil service of such city which are subject to this act and the rules of said board, and of all transfers, promotions, resignations, other changes or vacancies from any cause in such branches or departments of the city service, and of the date thereof, and a record of the same shall be kept by said board. When any office or place of employment, subject to such rules, is created or abolished, or the compensation attached thereto is altered, the officer or board making such change shall immediately report the same in writing to said board of commissioners.

16.68 Removals for just cause only; reasons to be furnished in writing; hearings; decisions. (1) No person or employe holding an office or position classified and graded under the provisions of this act shall be removed, discharged or reduced, except for just cause which shall not be political or religious. A person removed, discharged or reduced shall be furnished, by the officer making the removal, with the reasons in writing, for such action when demanded by said removed, discharged or reduced person. When reasons are given by the officer making the removal, a copy of the same shall be immediately forwarded to the commission. Within three days after such removal, discharge or reduction an appeal may be made to the commission in writing, by the employe so removed, discharged or reduced. The commission, on receiving such notice of appeal, shall set a date for a hearing on or investigation of the reasons for the removal, discharge or reduction, which date shall not be more than thirty days after the date of removal, discharge or reduction. Notice of the time and place of such hearing or investigation shall be served upon the employe appealing, in the same manner that a summons is served in this state. Notice shall also be given the officer making the removal. The city service commission, or board or committee of such board or boards appointed by said commission, shall conduct the hearing or investigation. The employe appealing shall have full opportunity to be heard and may, at the discretion of the commission, be represented by counsel. When the employe is represented by counsel, the officer making the removal, discharge or reduction may be represented by the city attorney. If, however, such officer chooses to be represented by counsel other than the city attorney, he may so do, but any expense so incurred shall not be paid by the city. In the course of a hearing or investigation as herein provided for, any member of the commission and of any board or committee appointed by it, shall have the power to administer oaths and shall have power to secure by its subpoena both the attendance and testimony of witnesses and the production of books and papers relevant to such hearing or investigation. All evidence may, on the order of the board, be taken by a competent reporter.

(2) The decision and findings of the commission, or of the investigating board or committee, when approved by the commission, shall be final and shall be filed, in writing, with the secretary of the board and shall be forthwith certified to and enforced by the head of the department or appointing officer. Nothing in this act shall limit the power of an officer to suspend a subordinate for a reasonable period not exceeding fifteen days. In case an employe is again suspended within six months for any period whatever, the employe so suspended shall have the right of hearing or investigation by the commission on the second suspension or any subsequent suspension within said period, the same as herein provided.

Note: The action of the board in sustaining, by motion, charges against a sanitary inspector, recording the action of the board by the secretary and giving due and timely notice to the inspector of confirmation of his discharge, constituted compliance with the statute. *State v. Mensing, 228 W 34, 279 NW 659.*

rules of the city service commission defining its purpose and prescribing its calculation, and rules adversely affecting an employe's status based on his original employment would not amount to a "demotion" within the meaning of the statute. *State ex rel. Salvesen v. Milwaukee, 249 W 351, 24 NW (2d) 630.*

This section is not concerned with seniority. The seniority status arises out of the

16.69 Provisions for removals not to apply to certain departments. The provisions of the above section shall not apply to removals of persons in any department of the city where such department is under the supervision and control of a board or commission of three or more members, but every such board or commission shall establish rules relating to the removal, discharge or reduction of employes in its department; provided, however, that no such employe shall be removed, discharged or reduced for religious or political reasons and any removed, discharged or reduced employe shall have the right to a trial

and determination by such board or commission, or by a committee duly appointed by said board or commission as to whether there existed sufficient grounds for his removal, discharge or reduction and the determination of such board or commission, or of the committee when approved by the board or commission, shall be final in the matter. The right of suspension is granted boards and commissions included under this section the same as is elsewhere provided for in this act.

16.70 No payments approved or made of salary in the classified service except as provided. No treasurer, auditor, comptroller, or other officer or employe of the city in which this act is effective shall approve the payment of or be in any manner concerned in paying, auditing or approving any salary, wage or other compensation for services, to any person in the classified service unless a pay roll, estimate, or account for such salary, wage or other compensation, containing the names of persons to be paid, a statement of the amount to be paid each such person, the services on account of which the same is paid, bears the certificate of the commission that the persons named in such pay roll, estimate, or account have been appointed or employed in pursuance of and have complied with the terms of this act and with the rules of the commission, and that the rate of salary or wage is in accordance with the rate established by the proper authorities. The commission shall refuse to certify the pay of any public officer or employe who shall wilfully or through culpable negligence violate or fail to comply with this act or the rules of the commission. The city service commission shall certify to the city comptroller all appointments to offices and places in the office of the city service commission and all changes or vacancies that may occur therein.

16.71 Violations of this law a misdemeanor. Any person who shall wilfully, or through culpable negligence, violate any provision of this act or any rule promulgated in accordance with the provisions thereof, shall be guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment in the discretion of the court.

16.72 Conviction causes vacancy and ineligibility. If any person shall be convicted under the next preceding section, any public office which such person may hold shall, by force of such conviction, be rendered vacant, and such person shall be incapable of holding office for a period of five years from the date of such conviction.

16.73 Prosecutions for violations. Prosecutions for violations of this act may be instituted either by the attorney-general, the state's attorney for the county in which the offense is alleged to have been committed, or by the board acting through special counsel. Such prosecution shall be conducted and controlled by the prosecuting officers who institute them, unless they request the aid of other prosecuting officers.

16.74 No promotion or demotion for making or refusing political contributions. No officer or employe of such city shall discharge, or degrade, or promote, or in any manner change the official rank or compensation of any other officer or employe, or promise or threaten to do so for giving or withholding any contribution of money or other valuable thing for any party or political purpose, or for refusal or neglect to render any party or political service.

16.75 Use of money prohibited. No applicant for appointment in such official service, either directly or indirectly, shall pay or promise to pay any money or other valuable thing to any person whomsoever, for or on account of his appointment or proposed appointment, and no officer or employe shall pay or promise to pay, either directly or indirectly, to any person any money or other valuable thing whatsoever for or on account of his promotion.

16.76 The improper use or promise of political influence forbidden. No person while holding any office in the government of such city, or any nomination for, or while seeking a nomination for appointment to any such office, shall corruptly use, or promise to use, either directly or indirectly, any official authority or influence in the way of conferring upon any person, or in order to secure or aid any person in securing, any office or public employment or any nomination, confirmation, promotion or increase in salary, upon the consideration or condition that the vote or political influence or action of the last named person or any other shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt condition or consideration.

16.765 School board employes. All officers and employes of the school board of any city of the first class with the exceptions hereinafter set forth, shall be selected and have their tenure and employment status determined in accordance with the provisions of sections 16.45 to 16.76 and in accordance with the rules adopted thereunder

and the charter ordinances applying to the board of city service commissioners of each such city, the said exceptions to include the following employes who shall not be members of the classified service: superintendents, assistant superintendents, principals, teachers and substitute teachers actually engaged in teaching, high school librarians who qualify as described in subsection (1m) of section 43.22 but not including assistant or clerk-librarians, and, in any department of any such school board devoted wholly or principally to the subjects of municipal recreation and adult education, all employes of such department whose duties are peculiar thereto but not including employes whose duties are clerical or custodial. [1937 c. 107; 1939 c. 476; 1941 c. 148]

Note: The relationship existing between the school board of Milwaukee and the janitors is that of master and servant and the status of helpers hired by the janitors but supervised by the board is not that of employes of independent contractors but is that of employes of the board. State ex rel. Cooper v. Baumann, 231 W 607, 286 NW 76.

16.766 Employes; municipal and district courts. (1) Employes of the clerk of the municipal and district courts of the city and county of Milwaukee shall be selected and have their tenure and employment status determined in accordance with the provisions of sections 16.45 to 16.76 and in accordance with the rules adopted thereunder and the charter ordinances applying to the board of city service commissioners of such city. Residence at any location in Milwaukee county shall be permitted to said employes and no restriction shall be imposed to invalidate the payment of salaries. Present employes in said office, including any employes who are on military leave, shall be covered into the civil service and shall have tenure and all the rights, privileges and benefits of civil service employment.

(2) The positions and salaries of said employes shall be fixed by the common council in the same manner as the positions and salaries of city employes. [1943 c. 382]