



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE

CIVIL DIVISION

P.O. BOX 94005

BATON ROUGE

70804-9005

February 4, 2016

Opinion 15-0176

Mr. Robert Lawrence
State Examiner
Office of State Examiner
8550 United Plaza Boulevard
Suite 901
Baton Rouge, LA 70809

71-1-1 MUNICIPAL FIRE & POLICE CIVIL SERVICE

La. R.S. 33:2551

La. R.S. 33:2554

La. R.S. 33:2554(D) allows the governing authority to make an appointment from any name certified on the competitive employment list. While the names must be ranked by their final test scores, the names do not have to be selected by that rank under La. R.S. 33:2554(D).

Dear Mr. Lawrence,

Your opinion request sent to our office has been assigned to me for research and reply. Your request concerns provisions of the municipal fire and police civil service law. Specifically, you have asked us to clarify a provision in a previously released opinion, La. Atty. Gen. Op. No. 97-0039. This question is based on how a name is chosen from a competitive employment list to fill vacancies in the municipal fire and police civil service system.

In La. Atty. Gen. Op. No. 97-0039, our office stated:

In contrast, employees who share identical seniority and who attain a passing score on the competitive test are not placed equally on the competitive employment list. LSA-R.S. 33:2551(4) mandates that employees who pass the competitive test are ranked from highest to lowest according to their test scores and not according to seniority. If four employees with identical seniority took a competitive test their names would be placed on the competitive employment list from highest to lowest score. The result is that although all four employees share identical seniority, that factor is irrelevant when compiling a competitive employment list, *and the employee with the highest competitive test score would be chosen for the position.*

....

For purposes of the competitive positions, seniority plays no role, and *the individual selected must have obtained the highest test score on the competitive exam...* (emphasis added).

Your request asks our office to clarify this opinion in light of La. R.S. 33:2554(D), which states:

D. Certification and appointment from the competitive list shall be limited to those conditions and classifications for which the competitive test may be given as provided by R.S. 33:2552(7). Upon the appointing authority's request for the certification of eligible persons from which it may fill a vacancy, and if the competitive list is the appropriate list from which the names of eligible persons shall be certified, the board shall certify the names of the persons upon that list, in the order in which they appear thereon, for the class in which the vacancy is to be filled. *The appointing authority shall select and appoint to the first vacancy to be filled any one of the persons so certified to it for the vacancy.* In making such appointment to entry-level positions, the appointing authority shall give a preference to Louisiana residents. If any one or more persons so certified refuses the appointment, the appointing authority then shall select and appoint any one of the remaining persons certified by the board. This procedure shall be followed until the position has been filled by appointment of one of the persons certified from the list and willing to accept the appointment, or until each person whose name appears upon the list has in this manner been certified for the vacancy. (emphasis added).

La. R.S. 33:2554(D) provides that the governing authority shall appoint to the vacancy any name certified to it.

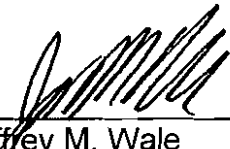
Therefore, there is a conflict between La. Atty. Gen. Op. No. 97-0039 and La. R.S. 33:2554(D). La. Atty. Gen. Op. No. 97-0039 failed to read La. R.S. 33:2551(4) in pari materia with La. R.S. 33:2554(D). While La. R.S. 33:2551(4) requires names on a competitive employment list to be ranked on the list according to the individuals' final test scores, La. R.S. 33:2554(D) allows for the governing authority to appoint any one of the names certified on the list, regardless of their final test score rank.

In conclusion, it is the opinion of our office that La. R.S. 33:2554(D) allows the governing authority to make an appointment from any name certified on the competitive employment list. While the names must be ranked by their final test scores, the names do not have to be selected by that rank under La. R.S. 33:2554(D). Based on the reasoning in *Stevens v. City of Baton Rouge*, 700 F. Supp. 869 (M.D. La 1988), we note that a municipal police and fire civil service system is not prohibited from optionally utilizing a system where scores are used as tie breakers on a competitive employment list. To the extent La. Atty. Gen. Op. No. 97-0039 is in conflict with this conclusion, that opinion is recalled.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 

Jeffrey M. Wale
Assistant Attorney General

JL: JMW