

### CHAPTER 43

#### DEPARTMENT OF CIVIL SERVICE

##### 43.01 DEFINITIONS

HISTORY. 1939 c 441 s 34; 1945 c 598 s 1; 1947 c 604 s 1; 1949 c 646 s 1.

##### 43.04 DIRECTOR, SELECTION

HISTORY. 1949 c 739 s 5; 1951 c 713 s 6.

##### 43.05 DIRECTOR; DUTIES, POWERS

Exhaustion of administrative remedies, clear violation of statutory right. 33 MLR 172.

A civil service employee cannot be granted sick leave for the weeks during which he is receiving compensation benefits for time lost, but he may be granted sick leave or vacation leave while receiving medical or surgical benefits under the compensation act. OAG June 7, 1948 (644-D).

Under the statutes, and under Rule 13.1 promulgated by the director of civil service, eight hours of work constitute a normal work day and 40 hours a minimum work week for state employees under the classified service. Supplemented by the rule that whenever necessary, essential services shall be rendered on Saturday mornings, and overtime so worked shall be compensated for by time off or cash payment. The statutes and rules apply to employees of the highway department other than the state highway patrol. Whether or not the state highway patrol shall work a 40-hour week is a matter for the determination of the state highway commissioner. OAG Aug. 2, 1948 (229-A-7).

Section 43.05 does not confer upon the governor any authority to provide for economic salary increases of salaries of state employees in classified civil service. The governor under the constitution has the duty to enforce provisions of the State Civil Service Act relating to economic increases. OAG Oct. 4, 1950 (213).

##### 43.06 BOARD; DUTIES, POWERS

HISTORY. Amended, 1951 c 685 s 1.

Remedial civil service rules are liberally construed. OAG Aug. 5, 1947 (645-E).

Laws 1945, Chapter 452, coded as sections 15.041 to 15.044, repeals by implication that portion of section 43.06 (1) relating to the promulgation of rules and regulations by the civil service board and, consequently, civil service Rules 1.2 and 2.4 should either be eliminated or modified so as to comply with the requirements of Laws 1945, Chapter 452. OAG Nov. 15, 1948 (644-A).

Neither an employee nor a representative of a deceased employee is entitled to cash payment for accrued non-used vacation in the absence of a provision therefor in the statutes or civil service rules. OAG Aug. 20, 1951 (120).

Laws 1953, Chapter 741, Section 59, governs all state agencies whether financed through current legislative appropriations or from dedicated receipts. The law is not limited to the appropriations set out in section 59. No agencies are exempted. A position becomes vacant when the occupant of that position, on July 1, 1953, or a person who becomes the occupant of such position after that date, no longer occupies the position. The suspension of an employee does not create a vacancy. If there is a conflict between the provisions of section 59 and certain provisions of the civil service act or rules, section 59 controls. OAG Aug. 13, 1953 (644-F).

## 43.07 TESTIMONIAL POWERS

Privilege against self-incrimination protects a person from the production of a writing in his position. 34 MLR 1, 34.

While an employee's civil service rights are not property, they are rights entitled to the protection of the law; and an appeal under section 43.12 to the state civil service board from an allocation of an employee to a position by the civil service director entitles the employee appellant to a public trial de novo before the state civil service board with all the incidents of a trial in a court of law, including the right of subpoena, production of witnesses and documents, the taking of testimony, examination and cross-examination of witnesses, representation by counsel, hearing, argument, and decision on the merits. *State ex rel v Civil Service Board*, 226 M 240, 32 NW(2d) 574.

## 43.09 UNCLASSIFIED SERVICE; CLASSIFIED SERVICE

**HISTORY.** 1939 c 441 s 9; 1941 c 533 s 1; 1943 c 543 s 1; 1943 c 605 s 1; 1945 c 586; 1947 c 482 s 1; 1953 c 408 s 1.

While an employee's civil service rights are not property, they are rights entitled to the protection of the law; and an appeal under section 43.12 to the state civil service board from an allocation of an employee to a position by the civil service director entitles the employee appellant to a public trial de novo before the state civil service board with all the incidents of a trial in a court of law, including the right of subpoena, production of witnesses and documents, the taking of testimony, examination and cross-examination of witnesses, representation by counsel, hearing, argument, and decision on the merits. *State ex rel v Civil Service Board*, 226 M 240, 32 NW(2d) 574.

Persons employed by the game and fish commission as bullhead fishermen are state employees and entitled to membership in the state employees retirement association. OAG June 8, 1948 (331-A-7).

Unclassified state employees whose salaries are not fixed by the federal government or by the provisions of Laws 1947, Chapter 634, are entitled to the same cost-of-living index salary increase as are classified employees. OAG June 17, 1948 (644-F).

Under the statutes, and under Rule 13.1 promulgated by the director of civil service, eight hours of work constitute a normal work day and 40 hours a minimum work week for state employees under the classified service. Supplemented by the rule that whenever necessary, essential services shall be rendered on Saturday mornings, and overtime so worked shall be compensated for by time off or cash payment. The statutes and rules apply to employees of the highway department other than the state highway patrol. Whether or not the state highway patrol shall work a 40-hour week is a matter for the determination of the state highway commissioner. OAG Aug. 2, 1948 (229-A-7).

The state highway commissioner determines whether state highway patrolmen shall work a 40-hour week. OAG Aug. 2, 1948 (229-A-7).

The superintendent of state institutions, being unable through circumstances, to take a full vacation each year was entitled to full unused portion of his vacation time, and, if separated from the state service by resignation, he is entitled to full payment for said unused vacation. OAG Oct. 19, 1948 (644-D).

Monitors employed at civil service examination are part time state employees and are in the unclassified service and temporarily employed. OAG Jan. 12, 1949 (644-B).

Section 268.14, as amended by Laws 1949, Chapter 605, authorizes the director of the division of employment security to establish auxiliary employment offices and to employ officials as agents or as employment and security representatives on a part time or temporary basis to perform certain services. These temporary employees are not under civil service. OAG May 4, 1949 (644-B).

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 43.10 DEPARTMENT OF CIVIL SERVICE

120

Employees of the bonus division of the department of veterans affairs are not "state employees" within the meaning of the state employees retirement fund law. OAG June 23, 1949 (331-A-7).

Deputy registrars of motor vehicles are entitled to membership in the state employees retirement association, notwithstanding the provisions of Laws 1949, Chapter 131, but the office of the secretary of state is not authorized to make any contributions to the fund on account of these deputy registrars. OAG Sept. 26, 1949 (331-A-7).

The Minnesota state archives commission is authorized to employ personnel to carry out the powers of the act with funds appropriated therefor. The records clerk and the clerk-stenographer of the commission are in the classified service under state civil service. OAG Feb. 14, 1950 (644-B).

Employees of the Union Bookstore at the Mankato Teachers College are not within the classified service or unclassified service of the state and are not eligible for membership in the state employees retirement association. OAG Dec. 5, 1950 (331-A-7).

If the director of the efficiency in government commission, employed by the commission, who was in the unclassified service, was employed by terms granting him sick leave and vacation, he would be entitled to unused leave and vacation at the termination of his employment. OAG May 25, 1951 (280-C).

State conciliators and commission members appointed under the State Labor Relations Act are in the unclassified service of the state civil service. OAG Dec. 6, 1951 (644-B).

### 43.10 TENURE

HISTORY. Amended, 1949 c 123 s 1.

Under civil service statutes and rules removal of a state employee to another state impairs his right to work for the state. OAG May 8, 1946 (644-B).

Federal employees wrongful discharge in violation of the Veterans Preference Act; declaratory relief. 35 MLR 659.

43.11 Repealed, 1951 c 371 s 1.

### 43.12 DIRECTOR TO CLASSIFY EMPLOYEES

HISTORY. 1939 c 441 s 12; 1943 c 639 s 1; 1945 c 598 s 2; 1947 c 604 s 2; 1949 c 646 s 2; 1951 c 161 s 1.

An appeal under section 43.12 to the state civil service board from an allocation of an employee to a position by the civil service director entitles the employee-appellant to a public trial de novo before the state civil service board with all the incidents of a trial before a court of law, including the right of subpoena, production of witnesses and documents, or taking of testimony, examination and cross-examination of witnesses, representation by counsel, hearing, argument, decision on the merits, and the like. The meaning of the word "appeal" when used in granting a right of appeal depends upon the legislative intention. Strictly speaking, it is a proceeding by which a case is removed from a lower court to a higher court for a trial there de novo either upon the record made in the lower court, or upon evidence newly introduced; and an appeal in a civil action from the district court to the supreme court is governed by principles applicable to a writ of error and is, in substance, a writ of error. *State ex rel v Civil Service Board*, 226 M 240, 32 NW(2d) 574.

While an employee's civil service rights are not property, they are rights entitled to the protection of the law; and an appeal under section 43.12 to the state civil service board from an allocation of an employee to a position by the civil service director, entitles the employee appellant to a public trial de novo before the state civil service board with all the incidents of a trial in a court of law, including the right of subpoena, production of witnesses and documents, the taking of testimony,

# MINNESOTA STATUTES 1953 ANNOTATIONS

121

DEPARTMENT OF CIVIL SERVICE 43.13

examination and cross-examination of witnesses, representation by counsel, hearing, argument, and decision on the merits. State ex rel v Civil Service Board, 226 M 240, 32 NW(2d) 574.

The civil service statute does not apply to district boiler inspectors who are paid on a fee basis, the compensation being fixed by law. OAG Nov. 6, 1945 (614-B).

The salaries of unclassified employees must conform to the provisions of Laws 1947, Chapter 634, and cannot be changed by the appointing power except as provided in section 48 of said chapter. OAG Jan. 7, 1948 (644-F).

## 43.121 SALARY RANGE ASSIGNMENT

HISTORY. 1945 c 598 s 3; 1947 c 606 s 2; 1951 c 715 s 1; 1953 c 717 s 1.

State employees paid from federal funds or from federal grant, who enjoy a civil service rating, may be paid the salary increases provided in laws such as Laws 1947, Chapter 634, Section 25. OAG July 11, 1947 (225).

Where positions held by members of the board of grain appeals were assigned to classification of classified employees performing comparable work, and it appeared that the two-step increase in that classification would mean an increase of less than ten percent of their salary, they were entitled to the ten percent minimum increase. OAG June 17, 1948 (644-F).

Where due to an error of the engrossing staff of the legislature in failing to delete certain amendments to a bill which was passed without such amendments, the bill signed by the governor was materially different from that which was enacted by the legislature, and the act was vitiated and is of no effect. OAG July 16, 1951 (64-F).

If the duties and responsibilities of a class in the classification plan are substantially changed, or if an apparent inequity exists in the assignment of a class to a salary range, that class shall be reassigned to another salary range by the director of civil service. The director of civil service may reclassify the position of guard at the Stillwater and St. Cloud institutions and assign to this classification a salary range permitted by the appropriation made by Laws 1953, Chapter 740, Section 31. OAG Sept. 18, 1953 (120).

## 43.122 ECONOMIC ADJUSTMENT INCREASE

Except as to salaries fixed by the federal government, the civil service director is required to adjust salaries of unclassified employees to the minimum of classified employees and to grant unclassified employees the same cost of living increases as are granted to classified employees performing comparable work. OAG June 17, 1948 (644-F).

Economic salary increases may not be made by a Governor's executive order. OAG Oct. 4, 1950 (213).

## 43.123 INVESTIGATION

HISTORY. 1945 c 598 s 5; 1947 c 606 s 3-5; 1949 c 701 s 1; 1951 c 695 s 1, 2; 1953 c 206 s 1-4.

## 43.13 EXAMINATIONS

HISTORY. 1939 c 441 s 13; 1953 c 516 s 1.

A state employee who gained permanent status under this chapter on the effective date thereof by virtue of the length of employment prior to April 2, 1939, loses his right of employment by the state by becoming a legal resident of another state. OAG May 8, 1946 (644-B).

The domicile of a person is not affected by enlistment or employment in the civil, military, or naval service of his country. When serving the government out-

## 43.171 DEPARTMENT OF CIVIL SERVICE

122

side his original domicile he may establish a residence for himself and wife and thus acquire a domicile, but it must be established outside a military post. A domicile by choice is one acquired through the exercise of his own will, by a person who is legally capable of changing his domicile. OAG Sept. 5, 1947 (644-C).

The director of civil service may refuse the privilege of examination to an applicant who has been guilty of any crime involving moral turpitude, or of infamous or notoriously disgraceful conduct, regardless of the fact that the applicant may be otherwise eligible to take the examination. But a person convicted of a felony under the jurisdiction of the state board of parole, and not having been restored to civil rights, is a citizen of the United States but without the right to vote or to hold public office. As a citizen, the director of civil service in his discretion, may permit such person to take a civil service examination if he is otherwise eligible therefor. OAG Feb. 14, 1950 (644-B).

A person not a resident of Minnesota is ineligible to take an examination for a civil service position by reason of section 43.13 (2). Therefore a nonresident cannot become a civil service employee with permanent status where the examination is a condition to employment. Section 43.20 (2) permits provisional appointments where urgency requires and lists of eligibles is not available. OAG Aug. 20, 1951 (644-C).

A noncitizen of the United States is barred from taking a competitive examination under section 43.13, subdivision 2. Where a noncitizen through error takes a competitive examination, is certified to a position and appointed thereto, such person must be separated from the state service. OAG May 8, 1952 (622-C).

### 43.171 STATE HIGHWAY PATROLMEN, VETERAN ELIGIBILITY

HISTORY. 1947 c 393 s 1; 1953 c 699 s 1.

### 43.19 VACANCIES; PROMOTIONS; DISMISSALS

The civil service board has the functions under clause 2 of approving or disapproving of any action of the director of civil service and may prescribe rules and regulations as to the method of conducting non-competitive examinations. OAG July 11, 1947 (644-E).

### 43.20 POSITIONS FILLED WITHOUT COMPETITION

HISTORY. 1939 c 441 s 20; 1951 c 685 s 2.

Temporary employees appointed under section 43.11 or section 43.20, subject to discharge at any time, do not have a right to appeal to the state civil service from an order of the director allocating or re-allocating a position to a classification. OAG Aug. 5, 1947 (644-E).

A person not a resident of Minnesota is ineligible to take an examination for a civil service position by reason of section 43.13 (2). Therefore a nonresident cannot become a civil service employee with permanent status where the examination is a condition to employment. Section 43.20 (2) permits provisional appointments where urgency requires and lists of eligibles is not available. OAG Aug. 20, 1951 (644-C).

### 43.21 PROBATIONARY PERIOD

HISTORY. 1939 c 441 s 21; 1947 c 489 s 1; 1949 c 490 s 1.

### 43.22 TRANSFERS, LEAVES OF ABSENCE; REINSTATEMENT

By virtue of the President's proclamation declaring cessation of hostilities on December 31, 1946, a leave of absence granted under the statutes expires 45 days after noon of December 31, 1946. OAG Jan. 30, 1947 (644-E).

# MINNESOTA STATUTES 1953 ANNOTATIONS

123

DEPARTMENT OF CIVIL SERVICE 43.24

A permanent employee who was reinstated during the suspension period and resumed his former position is in all respects a permanent employee. OAG May 26, 1947 (644-E).

Employees controlled by subdivision 6 of section 43.22 are without the privilege of appealing to the state civil service board from an order of the director allocating or re-allocating a position. OAG Aug. 5, 1947 (644-E).

Rights of persons who have been in the employ of the federal government on return to state service, are allowed credit for time spent in federal service. OAG Aug. 11, 1947 (644-E).

43.225, 43.226 Obsolete.

## 43.23 SENIORITY RIGHTS; POSITIONS ABOLISHED; PREFERENCE

HISTORY. 1939 c 441 s 23; 1949 c 611 s 1.

## 43.24 REMOVALS

An order by the state civil service board based upon its power to reinstate a discharged employee under such conditions as it deems proper, accomplished by ordering the employee to be reemployed in a position differing from the one to which he was legally entitled when he was discharged, and placing him on a waiting list for future employment, contingent upon creation of such a position when funds became available, is void as in a reinstatement. State ex rel v Civil Service Board, 226 M 240, 32 NW(2d) 574.

Mandamus is the proper remedy to compel the state civil service board to perform duties which the law clearly and positively requires. An administrative determination with respect to a matter of which the administrative agency had no jurisdiction is void and subject to collateral attack in a judicial proceeding. A decision of the state civil service board, in the exercise of its power under section 43.24, to reinstate a discharged civil service employee under such conditions as it deems proper, ordering the employee to be reemployed in a position different from the one to which he was legally entitled when he was discharged and to be placed on a waiting list for possible future employment contingent upon creation of the position in which he was ordered reemployed and funds being made available therefor, is not a reinstatement at all and as such is in excess of the board's statutory jurisdiction and void. An administrative agency has no power or jurisdiction to make findings for which there is no evidentiary support that a position has been abolished is void for lack of jurisdiction. Where an employee's right to a position having a particular classification in the civil service is established in a certiorari proceeding, mandamus will lie to compel the appropriate officers to allocate the employee thereto. Where an issue is settled as a matter of law by the record, this court will determine the question accordingly and thereby avoid the delay and expense of a retrial. State ex rel v Civil Service Board, 226 M 253, 32 NW(2d) 583.

Mandamus will not lie to direct the manner in which administrative discretion will be exercised. Mandamus will not lie to compel the proper state officers to pay an award in connection with back pay for a civil service employee until the award is finally made by proper authorities; mandamus lies only to enforce a clear and present duty. State v Civil Service Board, 230 M 199, 42 NW(2d) 729.

In certiorari proceeding by an employee to review finding of a civil service board as to the amount of back pay the employee was entitled to after wrongful reduction in grade prior to wrongful discharge and for the discharge period, it was for the board to show by fair preponderance of evidence not merely that the employee failed to seek employment but that by exercise of diligence he could have obtained it. Spurck v Civil Service Board, 231 M 183, 42 NW(2d) 720.

The filing for public office by relator, an employee in the classified public service of the state, accompanied by his resignation from the position he held, separated him from the classified service as of the date of his filing for such public office.

# MINNESOTA STATUTES 1953 ANNOTATIONS

## 43.28 DEPARTMENT OF CIVIL SERVICE

124

The statute is self-executed. He cannot recall his resignation. *State ex rel v Patterson*, 234 M 432, 48 NW(2d) 574.

The question as to whether or not a Minnesota state prison guard has established residence in the state of Washington is a question of fact to be determined upon proceedings under section 43.24. If he has established a residence outside of the state of Minnesota, his position becomes vacant. OAG June 10, 1947 (644-E).

When reinstatement of a state employee is ordered by the civil service board upon appeal from an order of the appointing authority, such authority should reinstate the employee and approve for payment any salary or wages lost by him. OAG Oct. 22, 1948 (644-C).

The office of legislative post-auditor may be created and filled by the legislature for a term of such length as the legislature shall deem proper, provided the duties are made incident to legislative functions, but all the functions and duties of the public examiner cannot be transferred to a servant of the legislature because that would result in taking over by a servant of the legislature certain powers belonging to the executive department. The public examiner at present not only serves the legislature but serves the executive department in many particulars. The creation of a post-auditor selected by the legislature and transferring to him all the present duties of the public examiner would be an unconstitutional act. OAG Apr. 13, 1953 (353-A-1).

### 43.28 POLITICAL ACTIVITIES PROHIBITED

HISTORY. 1939 c 441 s 29; 1951 c 655 s 11.

Constitutionality of provision prohibiting active participation in political management or political campaigns by federal employees. 32 MLR 176.

Where the relator on September 28, 1950, resigned from his position in the classified service of the state, to take effect November 6, 1950, and, having on the following day filed as an independent candidate for Congress, withdrew his resignation on November 6, 1950, the day before the general election, the attempt to have said resignation take effect in the future was ineffective. The filing for public office by relator, an employee in the classified public service in the state, accompanied by his resignation from the position he held, separated him from the classified service as of the date of filing for such public office. *State ex rel v Patterson*, 234 M 432, 48 NW(2d) 574.

An employee in the state classified service must resign if he occupies an appointive village office for which a salary is provided. OAG Mar. 27, 1952 (644-E).

### 43.29 ACCOMMODATIONS FURNISHED EXAMINERS

HISTORY. 1939 c 441 s 30.

### 43.30 VETERANS PREFERENCE

HISTORY. 1939 c 441 s 31; 1943 c 157 s 1; 1947 c 495 s 1; 1949 c 222 s 1; 1953 c 699 s 2.

Prior to the adoption of civil service by St. Louis County in November, 1942, the relator, an honorably discharged veteran of World War I, had a permanent five day a month position with the county. After its organization, the civil service commissioner of the county placed him on the civil service rolls as a permanent appointee and gave him a classification. For more than one year after January, 1946, he was not on the payroll of the county and the civil service commission, under its rules, dropped his name from the rolls. In an action in mandamus against the county and its commissioners for his reinstatement under the Veterans Preference Act, it is declared that the relator was a civil service employee of the county and whatever rights he might have reinstatement must be procured before the civil service commission, under its rules and regulations, and not by mandamus. *State ex rel v St. Louis County*, 233 M 128, 47 NW(2d) 776.

# MINNESOTA STATUTES 1953 ANNOTATIONS

125

## DEPARTMENT OF CIVIL SERVICE 43.36

Veterans preference in state employment is governed by section 43.30. 36 MLR 413.

Even if the person receiving an appointment is a veteran, the appointing authority must explain to a veteran not appointed the reasons for his rejection. OAG April 30, 1946 (644-G).

Laws 1949, Chapter 222, which includes Mexican Border war veterans within the preference permitted to veterans in section 43.30, applies to future examination ratings and is not retroactive in its application. Section 645.21 specifically provides that no law shall be construed to be retroactive in its application unless clearly so intended by the legislature. OAG Nov. 16, 1949 (644-G).

A veteran with a service connected disability rating by the veterans administration has no greater preference than a veteran without such disability rating. OAG Dec. 22, 1953 (120).

### 43.32 TRAINING PROGRAM

A trainee appointee appointed under section 43.32 and civil service Rule 8.9 is not eligible for membership in the state employees retirement association. OAG Dec. 4, 1950 (331-A-7).

43.33 Unnecessary.

### 43.34 LAWS SUPERSEDED

While an employee's civil service rights are not property, they are rights entitled to protection of the law. On certiorari it is not the province of the court to re-weigh the evidence and to determine which of conflicting versions of the facts should be adopted; but where the evidence as a matter of law compels a certain finding and the administrative finding is to the contrary, the finding so made constitutes error of law, which it is the duty of the court to reverse. Whereon certiorari an administrative agency's determination is reversed, the court's decision as to the rule governing the rights of the parties is final and conclusive upon the agency. Certiorari may be used as ancillary to mandamus, and where mandatory rights are established on certiorari they will be enforced by mandamus. State ex rel v Civil Service Board, 226 M 240, 32 NW(2d) 574.

### 43.35 VIOLATIONS; PENALTIES

Exhaustion of administrative remedies, clear violation of statutory right. 33 MLR 172.

There is no law or rule forbidding ownership of a dairy plant by a dairy and food inspector although it would be unreasonable for a dairy and food inspector to act for the state in inspecting his own plant. A rule by the commissioner that an inspector must cease to own within a reasonable time a dairy plant or be removed from office takes effect prospectively but not retrospectively. It would not apply to an inspector appointed prior to the date of the publication of the rule. OAG Apr. 25, 1951 (135-A-6).

43.36 Obsolete.