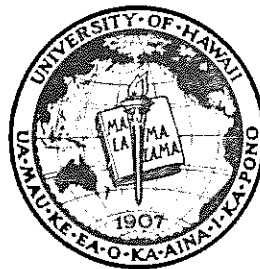


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in the
TERRITORY OF HAWAII



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CIVIL SERVICE IN THE TERRITORY OF HAWAII

by

Ada Mae Rich
Research Assistant

-- Report No. 6, 1948 --

(Request No. 282)

STATE OF HAWAII

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Civil Service - Hawaii

CIVIL SERVICE IN THE TERRITORY OF HAWAII

This report briefly outlines the present civil service system of the Territory of Hawaii and its component counties and describes the modifications which would result from the enactment of proposed Senate Bills No. 451, 452, and 453 of 1947. Where pertinent, references to comparable and contradictory mainland practices have been included in order to permit evaluation of these three proposed bills.

As presently organized the territorial and county civil service systems operate under civil service commissions, each commission appointing a director of personnel who acts as its executive officer under its supervision. These commissions also serve as personnel classification boards. The commissions are charged with three primary functions: (1) To determine policy and to formulate rules and regulations for the operation of the civil service system; (2) as personnel classification boards, to determine the scope of the classification system and formulate rules and regulations for its administration; and (3) to conduct hearings upon the appeals of employees within circumscribed bounds.

Major modifications of the present organization and operation of the merit system resulting from the enactment of proposed Senate Bills No. 451, 452, and 453 of 1947 will be:

I.e Upon the passage of S. B. No. 451 of 1947:e

(a)eThe civil service commission, as an administrative agency, will be replaced by a personnel department, at the head of which will be a personnel director appointed from the classified service. The director will assume the duties presently assigned to the civil service commission and the personnel classification board.

(b)eWithin the department of personnel there will be a civil service commission to advise the personnel director in the formulation of policy.

(c)ePresent statutory requirements with which rules and regulations must comply will be modified and extended, including an authorization to undertake an in-service training program and to establish a plan for the exchange and transfer of employees.

II. Enactment of S. B. No. 452 of 1947 will result in the creation of independent civil service appeals boards outside of the departmental organization for the Territory and each of the various counties. These boards will conduct hearings concerning dismissals, lay-offs, suspensions, demotions, and service ratings of employees.

III.e S. B. No. 453 of 1947 will require the civil service commissions (presumably the personnel director if S. B. No. 451 of 1947 is enacted) to institute a service rating system to be used as a factor in determining changes in salary, promotions, demotions, transfers, dismissals, and lay-offs.e

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CIVIL SERVICE IN THE TERRITORY OF HAWAII

1. Administrative Organization

a. Present organization:

Section 68 of the Revised Laws of Hawaii 1945 establishes for the Territory of Hawaii a civil service commission consisting of three members appointed by the governor for overlapping six year terms. To this commission is given the authority to make rules and regulations governing the selection, appointment, promotion, demotion, lay-off, transfer, termination of service, and leaves of absence of territorial employees. When these rules and regulations have been approved by the governor and have been published once a week for three successive weeks (three insertions) in a newspaper of general circulation throughout the Territory they have the force and effect of law. The commission is limited in the exercise of this authority by fourteen broad requirements which it must observe.¹ A director of personnel, appointed by the commission, serves as its administrator, chief examiner, and secretary but has no independent authority.

The members of the territorial civil service commission also constitute the territorial personnel classification board, as created by section 102 of the Revised Laws of Hawaii 1945. The latter board makes rules governing the scope and administration of a classification system for the public service. Nearly all public employees subject to the classification system are also under civil service. The director of personnel is ex-officio the director of classification and executive officer of the personnel classification board.

¹See p. 8 and following for discussion of changes which would be made in these statutory requirements by S. B. No. 451 of 1947.

The territorial civil service commission has its counterpart in the city and county of Honolulu and in the counties of Hawaii, Kauai, and Maui. The three members of the county commissions are appointed by the chairmen of the boards of supervisors with the approval of their respective boards and the members of the city and county board by the mayor with the approval of the board of supervisors. Each commission appoints a director of personnel, and as in the case of the territorial commission, he serves without independent authority. Similarly, the members of each county commission act as the personnel classification board for their respective counties.

b. Proposed organization:

Proposed S. B. No. 451 of 1947 will change the present organization of the territorial merit system by creating a department of personnel under the direction of a single administrator, to be known as the personnel director. To assist and advise the director there will be created within the department of personnel a civil service commission of five members, appointed by the governor subject to senatorial approval, whose primary duties will be:²

- (a) To represent the public interest in the improvement of personnel administration in the territorial service;o
- (b) To advise the governor and director on policies and problems concerning personnel administration;o
- (c) To advise and assist the director in fostering the interests of institutions of learning, civic, professional and employee organizations in the improvement of personnel standards in the territorial service.o

The members of this advisory commission will be chosen by the governor

²Section 1, paragraph 3, of S. B. No. 451 of 1947 adding section 62.010 to the Revised Laws of Hawaii 1945. Similar provisions, in addition to others, are found in the statutes of at least three states, namely Missouri, Rhode Island, and Tennessee, and in the model state civil service law. (A Model State Civil Service Law. Prepared by the National Civil Service League, Civil Service Assembly of the United States and Canada, and the National Municipal League. 1947.)

for overlapping six year terms and not more than three members may belong to the same political party. A comparable restriction on political affiliation now applies to the members of the existing civil service commission. A detailed provision stipulating the vocation of each member of the commission has been added in the proposed bill.³ Justification for this type of classification is that it brings a wider range of technical knowledge and practical experience to the formulation of personnel policy. Contrariwise, it is asserted that a civil service commission does not need to function as a quasi-representative body--that there are no groups in society which need to be given special representation.⁴

One of the first duties of the proposed civil service commission will be to appoint a special examining committee of three persons to conduct a competitive merit examination for the position of personnel director. From the list of eligibles established on the basis of the examination, the commission will submit to the governor for his consideration the names of the three highest ranking eligibles.

As proposed by S. B. No. 451 of 1947, the duties of the personnel director will approximate those presently exercised by the territorial civil service commission and the personnel classification board. To aid him in the execution of his duties and to act in his absence, the director will be

³The commission will be composed of: One member engaged in an administrative capacity in personnel administration for a large private employer; one member who is an individual employer or an officer of a corporate employer; one member who is an employee of a private employer, but not an officer of a corporate employer; one member who is an officer or employee in government service; and one member who is a professional man engaged in the practice of his profession.

⁴See Porter, Kirk H., State Administration. F. S. Crofts & Co., New York, 1938. p.186.e

authorized to designate a deputy. In addition he may select officers or employees in the territorial service to act as examiners in the preparation and rating of tests. The officers and employees so chosen will be excused from their regular duties for the time spent as examiners. Decisions of the director concerning matters within the scope of his authority will be final, subject only to appeal from specific decisions.

The proposed organization for the territorial department of personnel will have its counterpart on the county and city and county level. The personnel director of each county and the city and county will administer the respective merit system, and the civil service commissions will be increased in size to five members and be assigned only advisory duties.

In general, proposed S. B. No. 451 of 1947 follows the organizational pattern of the model state civil service law, but with a stronger director of personnel charged with the administration of the law and a relatively weaker commission. This is emphasized by the provisions relating to the rule making power, where there is a major difference between the proposed bill and the model law.

It would appear that S. B. No. 451 of 1947 contemplates placing the major responsibility for making rules and regulations upon the director of personnel, no specific provision having been made for their approval by the commission. As amended by the proposed bill, section 68 of the Revised Laws of Hawaii 1945 will read in part:

The personnel director, after consulting and advising with the commission, shall from time to time make such rules and regulations governing the selection, appointment, promotion, demotion, lay off, transfer, termination of service and leaves of absence of persons employed or to be employed in the civil service of the Territory as in his judgment shall secure the best service and such rules and regulations when approved by the governor after having been published once a week for three successive weeks (three insertions) in a newspaper of general circulation throughout the Territory shall

have the force and effect of law. The rules and regulations of the personnel department may be altered, amended or repealed in like manner as the same were adopted.

In contradistinction, the model state civil service law provides concerning the formulation of rules:

The Director of Personnel shall prescribe a code of rules for the classified service, which, upon approval of the Civil Service Commission after public notice and public hearing shall have the force and effect of law. Amendments thereto may be made in the same manner upon recommendation of the Director of Personnel. (Section 8. Emphasis added.)

c. Organization and administration in the states:

Among the twenty-five states⁵ having a state-wide merit system may be found wide variations in organization and allocation of duties and responsibilities, ranging from administration by a single administrator in Kentucky, Maryland⁶ and Virginia to the administration of the merit system by a commission in New York. Only the state of Connecticut has adopted a civil service law similar to that proposed by S. B. No. 451 of 1947 which provides for a personnel director and a commission, but does not grant to the commission the power either to adopt rules or to veto rules proposed by the director. In that state, as it would be in the Territory with the adoption of S. B. No. 451 of 1947, the governor must approve civil service rules before they have the force and effect of law.

⁵Alabama, California, Colorado, Connecticut, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Oregon, Rhode Island, Tennessee, Virginia, Wisconsin.

⁶Maryland has a Salary Stabilization Board of three members, composed of the commissioner of state employment and registration and the director of the budget serving ex-officio, and one member appointed by the governor, which is responsible for preparing and recommending to the governor pay schedules for the classified service.

With the exception of Georgia⁷ and the states noted above, the remainder of the state merit system statutes provide for both a commission and an executive officer or director of personnel; however, the degree of responsibility and autonomy given to the director varies from state to state and defies generalization. In addition to New York which has no specific provision for a director or executive officer, typical examples of a strong commission are found in Colorado, Illinois, and Ohio. In these states the director administers the rules and regulations adopted by the civil service commission under the direct supervision of the commission and has no independent authority. The personnel directors of Nebraska, New Jersey, and Oregon, although also under the direct supervision of the commission, have the added responsibility of recommending classification plans and compensation schedules for commission approval. Other states in which the director similarly proposes classification and pay plans are Alabama, Indiana, Kansas, Louisiana, Maine, Minnesota, Missouri, Rhode Island, Tennessee, and Wisconsin, but in these states the director is not so clearly the mere agent of the commission. For example, rules and regulations are also recommended by the director in Alabama, Kansas, Maine, Minnesota, Rhode Island, Tennessee, and Wisconsin. In California the personnel board is empowered to make rules and regulations and to specify pay and classification schedules, but all duties of the personnel board capable of being delegated are considered delegated to the executive officer of the board unless the board specifically votes to withhold a particular duty for its own action.

In several states the director, in addition to recommending rules and

⁷The constitution of Georgia, adopted in 1945, authorizes the creation of a state personnel board to administer a state merit system; no mention is made of a chief executive officer or director of personnel. No legislation has as yet been enacted to supplement this constitutional provision.

classification and pay schedules, is specifically assigned the responsibility of applying the rules and supervising the administrative and technical activities of the civil service agency. A similar authorization is included in the model civil service laws and in proposed S. B. No. 451 of 1947. The personnel directors of Massachusetts and Michigan are empowered to administer the provisions of the civil service act, even though they are not granted by statute the power to make recommendations to the commission.

In a few states the governor has a measure of control over the adoption of rules and regulations and classification and pay plans. In Massachusetts the rules and regulations of the commissioner are subject to the approval of the governor and his council; and in Connecticut, Maryland and New York, both the rules and the classification schedules must be approved by the governor. The director of personnel in Tennessee formulates rules and regulations, which become effective after public hearing and approval by the commission and the governor, and classification and pay plans which take effect upon approval by the governor, or after thirteen days from the time they are submitted to the governor if not rejected within that time. The Alabama statute requires rules and regulations approved by the personnel board, or which have not been acted upon by the board within thirty days after they are submitted to it by the director of personnel, to be forwarded by the director to the governor for his sanction. The rules become effective when approved by the governor, or within ten days after they are submitted to him if within that time he has not formally rejected them. Similar requirements for gubernatorial approval are found in Rhode Island and Wisconsin.

In approximately half of the states with state-wide merit systems the director of personnel is taken from the classified service and is chosen on the basis of a competitive examination. Appointment is commonly made by the

personnel board or civil service commission rather than by the governor.⁸

Possibly illustrative of the typical organization among these states having both a civil service commission and a personnel director is Missouri which specifically grants its commission authority to prescribe rules and regulations not inconsistent with the civil service act and to approve or modify, after public hearing, the position classification and pay plans prepared by the director. However, supervision of all administrative activities and the application of all rules and regulations after their approval by the commission is the duty of the director, and in doing so he is subject only to the advice of the commission and not to its control, other than through its power to remove him for just cause after public hearing.

2.s Statutory Requirements Governing Rules and Regulationss

Proposed S. B. No. 451 of 1947 will modify the statutory requirements with which the rules and regulations governing the territorial and county civil service systems must comply:

a. Examinations:

A statement of the minimum qualification to be ascertained by an examination together with the proposed examination questions for each position or class of positions to be filled will be submitted for approval to department heads in whose departments the applicants are to be placed. (Sec. 1, par. 9, of S. B. No. 451, amending section 68 of the Revised Laws of Hawaii 1945.) The most nearly comparable provision found in any state is that of Connecticut which requires examinations to be formulated in cooperation with the agencies appointing specific classes of employees. (Conn. Gen. Stat., 1939 Supp.;

⁸States in which the director of personnel is appointed by the governor are Connecticut, Maryland, Missouri, Rhode Island, Tennessee, and Wisconsin.

Ch. 105a, sec. 658e.)

b. Resignations:

If S. B. No. 451 of 1947 is enacted, the resignation of an employee will not be effective unless a written and signed statement is submitted to his appointing authority. Only three states--Connecticut, Indiana, and Maryland--expressly incorporate into their civil service statutes any provision relating to the determination of what will constitute a resignation. In Connecticut and Maryland resignation is declared subject to rules prescribed by the director or commissioner, respectively, and in Indiana the personnel board may prescribe the rules regulating resignations from the classified service.

c. Seniority of service:

Under S. B. No. 451, seniority of service is to be given weight in rating or grading examinations for promotions only when the employee is able to meet all of the other qualifications satisfactorily.⁹

Less than a fifth of all the states with civil service systems specifically refer by statute to the consideration of seniority in granting promotions. Unlike proposed S. B. No. 451, the provision in each of those states is a positive one requiring "due notice" to be given to the employees' seniority when making promotions. The most comprehensive statute is that of Ohio which sets forth the method for determining the credit to be given for seniority--

⁹In discussing the role of seniority in granting promotions Professor Leonard White states: "Within limits, seniority is entitled to consideration as a criterion of selection. It eliminates favoritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions.... When seniority is made the sole determining factor, it is a dangerous guide.... Consistent application of the rule of seniority up the scale to supervisory and administrative positions would in itself cause the resignation of the better men and thus invite progressive deterioration in the higher grades where special competence is particularly needed." White, Leonard D., Introduction to Public Administration, Revised edition. The Macmillan Company, New York, 1939, p. 373.

one per centum of the total grade attainable for each of the first four years of service and six-tenths per centum for each of the next ten years of service. (Throckmorton's Ohio Code Supp. 1940-45, sec. 486-10.)

d. Employee training:

The civil service commission will be responsible for initiating and providing an in-service training program in cooperation with the University of Hawaii and the department of public instruction under proposed S. B. No. 451 of 1947.¹⁰

According to the Council of State Governments, centralized training programs undertaken by state civil service agencies have not been widely developed.¹¹ Responsibility for the training of employees has been largely left to the head of each agency with the central personnel agency acting only in an advisory capacity. Exceptions include California and Michigan which have full-time training officers on the staff of the state personnel agency. The Illinois civil service commission, with the cooperation of the University of Illinois, conducts in-service training courses for state employees in public administration and budget administration. An intern program inaugurated in Kansas allows senior university students to work in the various units of the civil service department for a training period of six weeks.¹² In nearly all of the remaining states authorization for the establishment of educational and training programs for public employees by the state civil service agency exists

¹⁰In view of the commission being advisory in character, the assignment of these administrative duties to it, and not to the personnel director, may have been an oversight.

¹¹Council of State Governments. Book of the States, 1948-1949. Chicago, 1948, p. 198.

¹²Civil Service Assembly of the United States and Canada. Employee Training in the Public Service, Chicago, 1941, p. 138.

but this authority has not been utilized.

The bureau of training of the New York City civil service commission, which operates as a central training unit for all New York City employees, is the outstanding civil service agency for employee training at the municipal level of government.¹³

e. Transfer of employees:

Responsibility for the development of a program for the exchange and transfer of employees in the territorial service and with the several counties as well as between the Territory and the various states and their subdivisions will be given to the civil service commission by S. B. No. 451 of 1947. This provision extends a program presently authorized for the employees of the board of public health of the Territory by section 2014, Revised Laws of Hawaii 1945.¹⁴ Similarly, it continues a practice permitted during the period of the war years under Hawaii Defense Act rule, whereby transfer of employees between the territorial and county services was facilitated.¹⁵

Although most of the states have provided for the transfer of employees from one position to another within an agency and in many instances from one department or agency to another, few have expressly authorized transfers between various governmental jurisdictions. California and New York are notable exceptions. In California no reference is specifically made to the transfer of employees between the state and the various counties; the law merely

¹³Ibid.

¹⁴According to a statement made by Mr. John J. Stone, personnel administrator of the board of public health, no transfers of public health employees have been made with any mainland jurisdiction. However, there have been three employees transferred from the jurisdiction of the county branch units to the territorial board.

¹⁵No records are available to show the number of transfers made under this authority.

provides that "the board (state personnel board) may enter into arrangements with personnel agencies in other jurisdictions for the purpose of exchanging services and affecting transfers of employees." (Gov. Code, sec. 18709.) In contradistinction the New York statute narrowly limits the authorization to approve the transfer of employees between jurisdictions within the state to:

Persons holding positions in the competitive class, ...in the service of a city wholly including within its limits two or more counties, or in the county service or in the state service where the compensation of such position is paid directly from the treasury of such city, may be transferred to similar and corresponding positions interchangeably.... Persons holding positions in the competitive class...in the service of any village or town within the limits of a county, where the compensation of such position is paid directly from the treasury of such village or town, may be transferred to a similar position in any other village or town within such county.... (Laws of New York 1945, Ch. 671, sec. 1.)

f. Sabbatical leave:

A new system for granting sabbatical leave at the end of eight consecutive years of service will be instituted by proposed S. B. No. 451 of 1947. In considering priority of applications for leave the department head will be required to consider length of service. At least one-third of the total leave must be spent in travel or educational work contributing to the value of the employee's service to the Territory or county employing him. Any replacement personnel may not receive more than the minimum compensation for the position held by the employee on leave and the latter will be paid the difference between this minimum compensation and the compensation he is entitled to receive at the time he takes leave.

3. Service Ratings

Enactment of proposed S. B. No. 453 of 1947 will require the personnel classification board (personnel director if S. B. No. 451 of 1947 is enacted)

to establish standards of performance and output of employees and a system of service ratings. Although the board is charged with the responsibility of acting "in cooperation with appointing authorities" the inclusion of the clause ". . . each appointing authority shall report to the board the service ratings of employees in his department or such information as the board may request as a basis for determining such service ratings (emphasis added)," may give the board discretionary power to determine the system to be used and to permit it to assume the responsibility of directly assigning service ratings. Service ratings are to be utilized in determining salary increases and decreases, the order of lay-offs, the relative position of employees on reemployment lists, as a factor in promotional tests, and as a means of discovering employees who should be promoted, demoted, transferred or dismissed. This proposal follows closely the recommendations found in the model state civil service law (Sec. 8(13)).

Under existing statute the heads of each department of the territorial, county, and city and county governments are required to record the service rating of each employee in their respective classified services. Such ratings, reported as "good," "fair," or "unsatisfactory" on forms prescribed by the personnel classification boards, are used as a basis for determining the eligibility of an employee to receive his annual within-grade increment. (Revised Laws of Hawaii 1945, sec. 110.)

Further use of an efficiency rating is presently authorized by the rules and regulations of the territorial civil service commission.¹⁶ Rule XIII requires an annual efficiency rating of all employees in the territorial civil

¹⁶In practice the same form has been adopted for both the efficiency rating used in determining annual increments and the efficiency ratings considered as a factor in making promotions, demotions, lay-offs, and transfers.

service to be made by the appointing authority on forms prescribed by the commission. The efficiency rating of an employee, which may be considered in determining promotions, the order of lay-offs and the advisability of transfers, is open to inspection by the employee concerned. This rule of the territorial civil service commission is paralleled by comparable rules of the county and city and county civil service commissions.

Almost all of the state-wide merit system statutes contain the general stipulation that the director of personnel or the civil service commission shall establish, in cooperation with appointing authorities, standards of performance for each position or class of positions and a system of service ratings based upon those standards. Only half of these statutes,¹⁷ however, specify in detail the use to be made of the individual rating given each employee; when they do, it is usually as a factor in determining salary increases and reductions, in making promotions, demotions, transfers and dismissals, and in determining the order of lay-offs and reemployment. Still fewer of these states¹⁸ have by statute provided for the right of the employee to inspect his rating and to discuss it with his rating officer. California furnishes an interesting example of the participation of the employee in the rating procedure. In that state the statute stipulates: "The rules shall provide that employees be shown the performance report covering their own service and shall be privileged to discuss it with the appointing power before it is filed. The board shall by rule prescribe the extent to which such ratings

¹⁷States which provide for the use to be made of service ratings are Alabama, California, Connecticut, Indiana, Kansas, Louisiana, Michigan, Missouri, New Jersey, New York, Oregon, Rhode Island, and Wisconsin.

¹⁸Alabama, California, Connecticut, Indiana, Kansas, Louisiana, Missouri, New Jersey, Rhode Island, Wisconsin.

or performance reports shall be open to the inspection of the public." (Gov. Code, sec. 19302.) A similar policy is found in Wisconsin, with the exception that the employee is not specifically entitled to discuss his rating before it is filed with the central civil service agency. In contrast, Louisiana specifically provides that no one outside of the department of civil service, with the exception of the affected employee, his appointing authority, and with the approval of the director of personnel, an appointing authority considering the transfer of the employee, may inspect service ratings. In both Alabama and New Jersey an employee may inspect his own rating and that of other employees in the same class. The personnel board of Indiana and the civil service commission of Rhode Island are directed to prescribe the extent to which service reports may be opened for inspection, and in Kansas the civil service commission is authorized to make rules concerning inspection.

Although adoption of the principle of service or efficiency ratings in public service is widespread, the type of rating system which should be adopted and the extent to which it should be relied upon are still highly controversial matters. Illustrating this viewpoint is the statement of Professor Leonard White:

Despite a long history no rating form has earned widespread adoption or maintained an undisputed record of successful achievement. Despite dissatisfaction with present forms, some type of written record of performance is indispensable in any large organization.¹⁹

The major problems of service rating systems appear to be their subjective nature and the reliance they place upon the wisdom and honesty of the rating officer. If privileges, salaries, promotions, and lay-offs are determined largely upon the basis of the service rating, extreme care must be

¹⁹White, op. cit., p. 375.

exercised to minimize the elements of personal discrimination and lack of careful consideration on the part of the rating officer.²⁰

4. Appeal Procedure

Appeals from the decisions of an appointing authority are presently made to the civil service commission, the same agency which formulates the rules and regulations under which the action by the appointing authority may have been taken. Combining these quasi-judicial and quasi-legislative functions under the same agency and the same individuals has been thought to prejudice the employee's right to an impartial hearing of his complaint. The same objection has been made in fields other than personnel administration where a commission or board is empowered to hear appeals from its own rulings and administrative actions.

In considering this problem as it relates to all agencies with the power to issue rules and regulations, the President's Committee on Administrative Management in 1937 recommended that the section charged with the duty of hearing appeals be made independent of the administrative section formulating and administering rules and regulations.²¹ There has been no widespread adoption

²⁰For a discussion of the problems involved in operating a service rating system see: Problems of the American Public Services, Georgia Commission of Inquiry on Public Service Personnel, Monograph 11. George A. Graham, 1935, pp. 398-401; Macdonald, op. cit., pp. 338-340; Pfiffner, John M., Public Administration, Revised Edition, The Ronald Press Co., New York, 1946, pp. 310-311; Efficiency Rating Systems, Library of Congress, Legislative Reference Service. W. Brooke Graves, May 1947; Goode, Cecil E., "Is there an Answer to the Service Rating Problem?" Public Personnel Review, Vol. 8, No. 4, October 1947, pp. 187-195; McCoy, W. A., "Improving the Rating of Training and Experience." Public Administration Review, Vol. 8, No. 2, April 1947, pp. 73-79.

²¹Administrative Management in the Government of the United States. The President's Committee on Administrative Management. Washington, D. C. January 1937, pp. 39-42.

of this recommendation. At present, the only state which has applied the principle of complete separation of rule making and appeals functions to civil service administration has been Connecticut.²² In that state an independent personnel appeals board was recently created to investigate, upon appeal, instances of demotion, suspension, fine, or dismissal.

Proposed S. B. No. 452 of 1947 amends chapter 2 of the Revised Laws of Hawaii 1945 by creating a territorial civil service appeals board to be appointed by the governor with the approval of the senate. Similar appeals boards, appointed locally, will be created in each county and the city and county of Honolulu. The three members of each board, who are to serve without compensation, will have overlapping six year terms. The boards will be assigned the duty of hearing civil service appeals arising in their respective jurisdictions. Appeals procedure will be changed by the proposed bill to include the right of the employee to be represented by counsel having the power to examine and cross-examine witnesses. However, just as at the present time technical rules of evidence will not apply under the proposed law.

The authority of the proposed appeals boards will be greater than that currently exercised under the civil service system. At present, if the civil service commission finds in favor of the employee who has been dismissed, demoted, suspended or laid off, it may order him reinstated without loss of pay only if it were found that the action was taken for political, religious or racial reasons. If other reasons were claimed the commission may recommend that he be reinstated, but the final decision remains with the appointing authority. If the employee is not reinstated the commission may direct that his name be placed on an appropriate reemployment list.

²²Connecticut General Statutes, 1943 Supp.; Title XVI, Ch. 105a, sec. 417g.o

Under proposed S. B. No. 452 of 1947, a dismissed or demoted employee will still be reinstated if an appeals board finds the action appealed from was due to political, religious, or racial reasons. In addition, the proposed bill will grant authority to the appeals boards to order the reinstatement of an employee dismissed or demoted for other reasons²³ if it finds by a preponderance of evidence that the charges are not substantiated. The appointing authority will no longer make the final decision. However, if the board feels that the good of the service will be served, it may give the employee first preference for a transfer to another department in which a vacancy exists for which he is qualified, or if the employee does not wish immediate placement, his name may be entered on the reemployment list. The proposed bill also eliminates the present sixty day maximum (Revised Laws of Hawaii 1945, sec. 69) on reimbursement for back pay lost by an employee cleared of charges.

The right of appeal from the decision of the civil service agency to the courts will differ under proposed S. B. No. 452 of 1947 from that in the existing civil service law, but to what extent is not clear. At present the final authority in cases of appeal from dismissal or demotion on grounds other than racial, religious or political discrimination rests with the appointing authority and is expressly declared not reviewable by the courts.²⁴ Proposed S. B. No. 452 of 1947 removes this limitation but contains no provision concerning court review of the decisions of the civil service appeals boards in case of dismissal, demotion, suspension, or lay-off, other than specifically providing that findings of the boards relative to efficiency ratings and

²³But apparently this power does not extend to employees suspended or laid off where there is no appeal on grounds of political, religious or racial discrimination.

²⁴Revised Laws of Hawaii 1945, Sec. 69(c).

classifications shall be final.²⁵

5. Errata

During the consideration of Senate Bills No. 451, 452 and 453 of 1945, several minor technical matters were noted which would appear to warrant correction prior to passage of the bills.

In S. B. No. 451 of 1947, the cross reference relating to the exchange of board of health employees proposed to be added in subdivision 16 of section 68 of the Revised Laws of Hawaii 1945 should be to section 201~~4~~ rather than to section 201~~5~~.

In S. B. No. 451 of 1947, section 1, par. 12, proposes to amend section 7~~4~~ of the Revised Laws of Hawaii 1945. This reference is incorrect, and should be changed so as to amend section 7~~5~~.

Although S. B. No. 451 of 1947 proposes to change the powers and jurisdiction of the civil service commission and creates a new office, that of the personnel director, no provision is made for the administration of the system during the interim between the bill becoming effective as a law and the selection and appointment of the personnel director.

In S. B. No. 452 of 1947, proposed section 77.01 does not state how the members of the new county appeals boards are to be appointed, although in

²⁵In the case of State ex rel Levy v. Pallotti (1947) 133 Conn. 334, 51 A. [2d]136 it was held under the Connecticut merit system law which provides for a personnel appeals board which may review dismissals from the classified service, that the board has no jurisdiction to review dismissal of an employee not in the classified service. In dicta it was stated that a decision of the personnel appeals board acting within the power conferred upon it is conclusive, where the merit system law makes no provision for appeal to the courts from the decision. The court, however, may invoke its jurisdiction to determine whether the position comes within the jurisdiction of the appeals board as being within the "classified service."

other sections provision is made for the appointment of the members of the territorial appeals board and the city and county appeals board.

The provisions of section 110, Revised Laws of Hawaii 1945, which relate to efficiency ratings, would be at least partially repealed by implication as a result of S. B. No. 452 and S. B. No. 453 of 1947. However, due to the failure to amend or expressly repeal section 110 it is not readily apparent the extent to which section 110 has been superseded.

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*LRB - Legislative Reference Bureau
UH - University of Hawaii