

MEMORANDUM OF LAW

DATE: January 8, 1987

TO: Rich Snapper, Personnel Director
FROM: City Attorney
SUBJECT: Validity of Random Selection as an Applicant
Reduction Technique

In a recent memorandum, you requested an opinion from this office on the following questions:

(1) Are there any City Charter sections, Civil Service Rules, Personnel Regulations or civil laws or other codes that clearly permit or prohibit the use of random selection as an applicant reduction technique? This concept involves reducing the number of applicants for a classified position by picking at random a limited number of applicants to be tested.

(2) Are there any state or federal laws or court cases that impact our ability to use random selection?

(3) Please specify and delineate the prohibitive or permissive factor(s) contained in the applicable case or law.

After a careful review of article VIII of the Charter of The City of San Diego, sections 115 et seq., the rules of the Civil Service Commission, Municipal Code section 23.0301 et seq. and the provisions of the Personnel Manual of The City of San Diego, we can find no provisions that either permit or prohibit random selection as an applicant reduction technique. A review of the California cases concerning the civil service system leads us to believe that, absent a specific provision requiring an open competitive examination for testing all applicants for a position, any rule adopted by the Civil Service Commission which allows all applicants to be considered for employment without invidious discrimination or unreasonable limitation will be held to be constitutional under the California Constitution. *Almassy v. L.A. County Civil Service Com.*, 34 Cal.2d 387, 210 P.2d 503 (1949); *Terry v. Civil Service Com.*, 108 Cal.App.2d 861, 240 P.2d 691 (1952); *Cooperrider v. Civil Service Com.*, 97 Cal.App.3d 495,

158 Cal.Rptr. 801 (1979). In addition, we have been unable in our legal research to locate any specific state or federal law which impairs the ability of The City of San Diego to adopt a random selection technique.

The only reported case regarding the random selection technique concerns procedures adopted by the civil service commission of the city of Minneapolis. A lawsuit was brought alleging that the civil service commission's procedures developed

to randomly reduce the number of applicants for position of firefighter were illegal. However, a court of appeals in Minnesota held that the Minneapolis civil service commission was not required under its rules to offer a competitive exam to every person who applied for the position of firefighter and who met the minimum qualifications for the position and that the procedures developed by the civil service commission to randomly reduce the number of applicants for firefighter were reasonable. *Anderson v. City of Minneapolis*, 363 N.W.2d 886 (Minn. App. 1985).

The facts in that case are interesting because they are similar to the problems The City of San Diego has encountered in recent years in conducting its examination for the position of firefighter. In 1983, the Minneapolis civil service commission, realizing that it had only twenty openings for the position of firefighter but that it would nonetheless receive thousands of applicants for those twenty positions, adopted a resolution containing a procedure to randomly reduce the number of applicants to be tested. When the commission received 2,770 applications for the twenty available positions, it rejected 353 as invalid for technical reasons. Pursuant to its random reduction plan, the remaining 2,417 names were placed in barrels and 800 names were drawn. The remainder of the applicants were notified that they would not be eligible to take the competitive examination. Of the 800 randomly selected, a significant number passed with scores high enough to satisfy the hiring needs of the fire department for the two-year life of the eligibility list. Several rejected applicants brought the lawsuit alleging that the commission's action violated the Minneapolis city charter and its the commission's own rules and regulations.

After a trial on the merits, the district court found that the random reduction plan and procedures were fair and reasonable in light of the commission's limited funds, small staff, the number of available openings and the cost of testing thousands of applicants. The appellate court concluded that the Minneapolis City charter did not require testing of all applicants; that the commission had a duty to exam a sufficient number of candidates;

that the examination would be competitive and would meet the city's employment needs for the foreseeable future; and that the commission used a reasonable and bias-free method to reduce the number of applicants. The appellants did not allege any violations of their constitutional rights under the United States Constitution, but the court, on its own volition, opined that such allegations would not have been valid. The court limited its opinion to the facts before it and did not grant a blanket

authorization for any other random reduction procedures by a civil service commission. It did state, however, that under the facts before it, the commission acted within its authority when it developed the random reduction plan.

The Charter of The City of San Diego gives the Civil Service Commission broad discretion to adopt rules necessary for the supervision and control of the civil service system. The only concern which surfaced during our analysis of this issue is the effect that a random selection of applicants would have on the veteran's preference provided for in Charter section 120. However, it should be noted that that veterans preference is only available during the examination process. In other words, the preference operates during the examination phase and not during the application procedure.

In summary, we believe that if The City of San Diego adopts a random selection program, which is only utilized under facts similar to those set forth in the above-cited case, it will withstand legal challenge.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:smm:142:(x043.2)

ML-87-7