




Daniel Stralka
EXECUTIVE DIRECTOR

State of Illinois
CIVIL SERVICE COMMISSION
607 E. Adams Street, Suite 801
Springfield, IL 62701
Telephone (217) 782-7373
Fax (217) 524-3706
TTY (888) 261-2819
www.illinois.gov/icsc

Fredrick H. Bates
CHAIRMAN

COMMISSIONERS
Anita M. Cummings
Susan Moylan Krey
Casey Urlacher

To: Chairman Bates; Commissioners Krey, Cummings, and Urlacher
From: Daniel Stralka 
Date: June 17, 2015
Subject: Report on Section 4d(1) Exempt Positions.

This Report was initially prepared on August 11, 2010 and updated on November 19, 2010. This 2015 version was first provided to the Commissioners on April 15, 2015. No action was taken pending a response from Central Management Services (CMS) to this April 15 version. CMS finally responded on May 14, 2015. This final update takes into consideration the CMS response to specific concerns raised by Commission staff. Much of the report that follows addressing general issues as to these exemptions is a restatement of the 2010 report.

Section 4d(1) of the Personnel Code provides as follows:

In each department, board or commission that now maintains or may hereafter maintain a major administrative division, service or office in both Sangamon County and Cook County, 2 private secretaries for the director or chairman thereof, one located in the Cook County office and the other located in the Sangamon County office, shall be exempt from jurisdiction B; in all other departments, boards and commissions one private secretary for the director or chairman thereof shall be exempt from jurisdiction B. In all departments, boards and commissions one confidential assistant for the director or chairman thereof shall be exempt from jurisdiction B. This paragraph is subject to such modifications or waiver of the exemptions as may be necessary to assure the continuity of federal contributions in those agencies supported in whole or in part by federal funds.

In essence, each major State agency is allowed a total of three partially exempt positions to serve as private secretaries/confidential assistants. One must be in Sangamon County; one must be in Cook County; and there are no geographical restrictions on the third.

Commission Staff first started monitoring this provision in 2005 by requesting a listing of all Section 4d(1) coded positions from CMS. Informal monitoring continued over the years until 2010 when it was determined that a formal report be presented to the Commission to make a record of these activities.

June 17, 2015

Staff obtained an updated listing of all Section 4d(1) exempt positions prior to meeting with representatives of CMS in 2010 to discuss issues related to the positions classified as 4d(1) exempt in various agencies. A number of Staff concerns were raised and addressed at that meeting. These concerns were more fully set forth in the report attached to the November 19, 2010 Minutes (available on the Commission's website).

Staff requested and received a new listing of all Section 4d(1) exempt positions as of March 4, 2015. Initially, it must be noted that according to the listing provided by CMS, the vast majority of agencies are utilizing Section 4d(1) exemptions in accordance with this provision of the Personnel Code. Staff noted the following exceptions/anomalies:

- The Illinois Environmental Protection Agency (EPA) has a Section 4d(1) position located in Winnebago County. Private Secretaries are only allowed in Cook or Sangamon County. There is no geographical restriction on a Confidential Assistant, but that begs the question why the Director would need such a position in Winnebago County. The latest CMS records indicate that this position is vacant. (Additionally, please note that the listing provided by CMS does not distinguish between Private Secretaries and Confidential Assistants.)

The CMS response indicated that this is the Confidential Assistant position, and the position was established in Winnebago County in 2005 is indeed presently vacant. There is no limitation on what County a Confidential Assistant must be established in so there is no Personnel Code violation. However, it is out of the ordinary. EPA does maintain a Field Office in Winnebago County.

- The Illinois Historic Preservation Agency (IHPA) has three Section 4d(1) positions, all located in Sangamon County. No more than two may be located in Sangamon County. The latest CMS records indicate that one position is vacant.

The CMS response was that two of the positions are private secretaries reporting to the Director of IHPA, while the third is a Confidential Assistant for the Director of the Abraham Lincoln Presidential Library and Museum (ALPLM). The response indicated that it was the opinion of the Deputy General Counsel for Personnel that the Director of the ALPLM was entitled to a full slate of Section 4d(1) positions. CMS provided a copy of this opinion which appeared to indicate that the Director of the ALPLM would be entitled to a single confidential assistant, not a full slate of three Section 4d(1) exempt positions. Staff is in agreement with this opinion.¹

In any event, legislation (SB1728) was passed by the General Assembly and sent to the Governor which would drastically alter the present relationship between IHPA and ALPLM. If signed into law, it would have a distinct effect on the distribution of Section 4d(1) exempt employees for both entities. Staff will continue to monitor this legislation.

¹ The opinion also justifies the exemption based on the manner in which legacy agencies of the Department of Financial and Professional Regulation were allowed to retain their slates of Section 4d(1) exempt positions after they were consolidated into this larger agency. Staff does not agree with this position. Unlike the legacy agencies, the ALPLM was never independently entitled to a full slate of Section 4d(1) exempt positions.

- The Illinois Department of Natural Resources (DNR) has four Section 4d(1) positions, one more than allowed by the Personnel Code. In addition, one of the positions is located in DuPage County. This is problematic in the same manner as the EPA position located in Winnebago County described above.

The CMS response was that due to a late employee performance evaluation, the report it provided inaccurately listed a fourth Section 4d(1) exempt position. The record has subsequently been corrected. In addition, the position located in DuPage County is a Confidential Assistant position and, similar to EPA, would not be a violation of the Personnel Code but it is unusual. While DNR may have a conservation or recreation area in DuPage County, there is no indication that it has an administrative office there.

- The Illinois Liquor Control Commission (ILCC) also has four Section 4d(1) positions, one more than allowed by the Personnel Code. In addition, all four are located in Cook County. As previously indicated, no more than two can be located in any one county.

The CMS response was that there is an approved Additional Identical for one of the Private Secretary positions located in Cook County which expires in August which will correct the excessive number of Section 4d(1) exempt positions. As to all being located in Cook County, CMS stated that the ILCC “continues to have two confidential assistants in Cook County which is not appropriate.” Staff does not fully agree with this analysis. While any number of Confidential Assistants in excess of one is not appropriate, the loss of one Confidential Assistant would still result in three Section 4d(1) positions in Cook County. It appears that the ILCC would still have both Private Secretaries in Cook County which is not allowed. A further response from CMS indicated that this matter would be resolved upon one of the incumbents vacating his or her position, and the position then being relocated to Sangamon County prior to the next appointment.

- There is an issue with the Department of Financial and Professional Regulation (DFPR) that has persisted since 2010 but requires a brief review of the agency’s history.

Prior to July 1, 2004 the following four independent agencies existed in the State:

Department of Professional Regulation
Department of Insurance
Department of Financial Institutions
Office of Banks and Real Estate

Effective that date, Executive Order 2004-6 consolidated these four agencies into the DFPR.² (The Office of Banks and Real Estate was renamed the Division of Banking.)

On June 1, 2009 the Department of Insurance was reconstituted as a State agency independent of the DFPR by Executive Order 2009-4. As of today’s date, DFPR is made up of the

² This Executive Order also attempted to remove the Directors of these four agencies as State Officers subject to Senate confirmation. This was rejected by the legislature.

Department of Professional Regulation, the Department of Financial Institutions, and the Division of Banking.

At the time of the 2004 consolidation, CMS inquired as to how this consolidation would affect the status of employees in existing 4d(1) positions in these four legacy agencies. A strict interpretation of the 2004 consolidation would have had a significant negative impact on the number of Section 4d(1) exemptions, reducing them from twelve to three. Such a strict interpretation was rejected by both CMS and Commission Staff since some of the Directors of the legacy agencies remained as State officers subject to Senate confirmation. After discussion with CMS, it was the consensus that the legacy agencies would be allowed to maintain their own 4d(1) exempt positions in the new DFPR. That is why DFPR would have been entitled then to twelve 4d(1) positions.

DFPR presently has thirteen Section 4d(1) exempt positions and nine of them are located in Cook County. The Staff concern here is the number of Section 4d(1) exempt positions allocated to DFPR along with the legacy agencies as well as the number that are located in Cook County. Five of these thirteen positions are vacant.

The CMS response included a chart showing the thirteen Section 4d(1) exempt positions throughout all the legacy agencies of DFPR, while acknowledging that DFPR is allowed a maximum of twelve such positions. There does not appear to be any issue with the manner in which the Division of Banking and the Department of Financial Institutions have established and are utilizing their Sections 4d(1) exempt positions. The issues that remain appear to be with: 1) the utilization of a full slate of Section 4d(1) exempt positions by both DFPR as well as the legacy Division of Professional Regulation (DPR); and 2) the entitlement of a full slate of exempt positions by the Office of Real Estate. As to the former, when Executive Order 2004-6 came into existence, there was no clear indication as to what the impact would be on these exempt positions. Amendments to the Civil Administrative Code did not provide any definitive guidance as to whether it is appropriate to add a full slate of exempt positions for DFPR, or if DFPR would be entitled to those previously under the DPR. As to the latter, it is unclear how the Office of Real Estate was ever entitled to a full slate of exempt positions. Additional investigation as well as discussion with CMS and agency representatives is needed to come up with a resolution.

- The Pollution Control Board (PCB) issue as set forth in 2010 remains, though it appears to be more of a coding issue than potential violation of the Personnel Code. Essentially, CMS is coding positions that are exempt pursuant to Section 5(a) of the Environmental Protection Act as exempt pursuant to Section 4d(1). While this is inaccurate, it was agreed that they may remain coded as Section 4d(1) exemptions even though their exemption originates from the Environmental Protection Act to avoid creating a new coding exclusively for these PCB positions.

CMS response was that each member of the PCB is entitled to one Private Secretary and one Confidential Assistant based on its interpretation of a July 18, 1972 opinion of the Illinois Attorney General. Staff partially disagrees with this interpretation. It is agreed that each member is entitled to a secretary and an assistant, and that both these positions are exempt from Jurisdiction B. However, they are not exempt *pursuant* to Section 4d(1), but because the

Attorney General opinion drew an analogy to Section 4d(1) when analyzing the specific language of the Environmental Protection Act. The relevant language from the Attorney General opinion is as follows:

I direct your attention to the language of Section 5 of the Environmental Protection Act which provides “each Board member may employ one secretary and one assistant, and the Chairman one secretary and two assistants” and to the language in sub-paragraph (1) of Section 4d of the Personnel Code. The authority given to each Board member to employ his or her own secretary and assistant would not be necessary, given the authority of the Board to employ personnel in general, unless the intent was to permit the individual member the same flexibility in selecting his own closest associates that Section 4d of the Personnel Code gives to the various department heads and board or commission chairmen. The Pollution Control Board is unusual in that it is one of the few State boards that requires that its members devote full time to their positions. Its members are as of nearly equal authority as possible, and bear equal responsibility for the carrying out the duties of the Board. Accordingly, I am of the further opinion that the secretaries and assistants of the Board members are exempt from the provisions of Jurisdiction B of the Personnel Code.

While this may seem a minor detail, it is important that State agencies, boards and commissions not utilize Section 4d(1) to justify creating exempt positions unless specifically authorized by this Section to do so. Section 4d(1) does not allow for exempt positions for any board or commission members, only chairpersons.

There are two more global issues that remain from 2010 with respect to the administration of 4d(1) exempt positions. The first is addressing which State entities are eligible to establish 4d(1) exempt positions. The Personnel Code references “department, board or commission” as those being entitled to 4d(1) exempt positions. However, that term is not further identified in the Personnel Code. The next source for assistance in defining this term is the Civil Administrative Code (20 ILCS 5/1-1). Section 5-15 sets forth the “Departments of State government” and lists 21 agencies. However, that cannot be considered a comprehensive list as there is conflicting information within Section 5. For example, while not listed under Section 5-15 as a “Department,” Section 5-130 creates an Assistant Director in the “Department of Financial Institutions.” There is no Department of Financial Institutions listed as one of the 21 agencies in Section 5-15, yet it is specifically identified in a later provision. The same issue arises with the Departments of Insurance and Professional Regulation. That is why the list in Section 5-15 cannot be considered to be comprehensive and Section 4d(1) exemptions are not limited solely to those 21 agencies listed in Section 5-15.

In addition, the use of Executive Orders has further confused this issue with the creation of the DFPR being a prime example of why strict adherence to Section 5-15 has the potential to – for all practical purposes – create unnecessary complications in personnel management.

In further support of adopting this interpretation is the language of the Executive Orders which states, “The status and rights of such employees under the Personnel Code shall not be affected by the transfers.” (Note the use of the word “employees” and not “positions” though.)

Therefore, it remains Staff's recommendation that for purposes of ascertaining which Departments of the State are entitled to Section 4d(1) exempt positions, the primary source shall be those set forth in the Civil Administrative Code. If not specifically listed, it shall include those specifically referenced in the Civil Administrative Code so long as the head of the Department is subject to Senate confirmation. For any other entity to be considered a "Department" as set forth in Section 4d(1) of the Personnel Code, it must have some statutory basis for that designation outside the Civil Administrative Code. This would preclude entities such as the "Divisions of Shared Services" referenced in Executive Order 2006-6 from being allowed to create exempt positions under Section 4d(1).

The second issue is raised more as a point of information. The increased unionization of State positions has resulted in private secretaries and confidential assistants being included in this process. From the listing provided by CMS, it appears there has been a lack of uniform treatment of Section 4d(1) positions. Some have been excluded from collective bargaining agreements as confidential; some have been excluded as managerial; and others have been included in collective bargaining units. The Management Bill (P.A. 97-1172) may have had an impact on reducing the number of these positions that have been included in collective bargaining units. As it stands presently, there were 114 positions included in the CMS listing and seven of them are included in collective bargaining units. That is a reduction from sixteen in 2010. This is being raised for informational purposes only and no Commission action is required.

Finally, as another point of information, the Class Specifications contain a Private Secretaries series consisting of Private Secretary 1 and Private Secretary 2 titles. These titles are exclusive to positions that are exempt pursuant to Section 4d(1). Of the 114 positions included in the CMS listing, only 64 utilized one of these two titles. The other titles consisted of Executive 1, Administrative Assistant 1 and 2, Public Service Administrator, and Senior Public Service Administrator. There is no class series or title dedicated to Confidential Assistants though it appears to have been considered in the Private Secretary Series Discussion.