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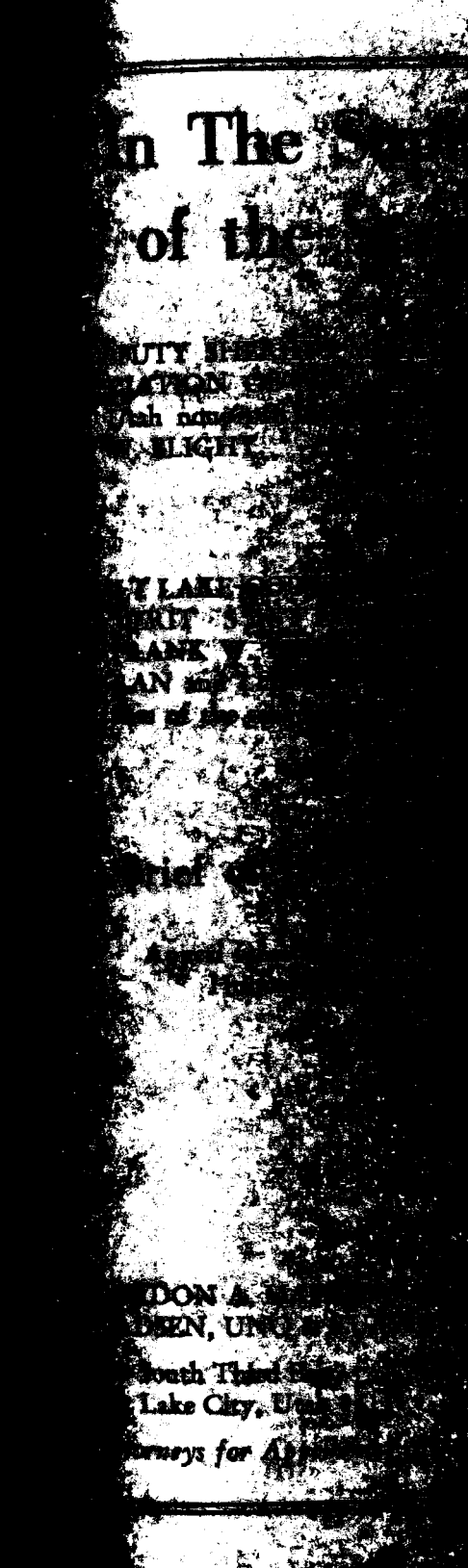
Deputy Sheriffs Mutual Aid Association Of Salt Lake County, A Utah Nonprofit Corporation, and Parley W. Blight v. Salt Lake County Deputy Sheriffs Merit System Commission and Frank W. Pennock, Joseph Mazuran and Leslie B. White, M.D., Members Of The Said Commission : Brief of Plaintiffs and Respondents



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In The Supreme Court of the State of Utah

DEPUTY SHERIFFS MUTUAL AID ASSOCIATION OF SALT LAKE COUNTY, a Utah nonprofit Corporation, and PARLEY W. BLIGHT,

Plaintiffs and Respondents,

vs.

SALT LAKE COUNTY DEPUTY SHERIFFS MERIT SYSTEM COMMISSION and FRANK W. PENNOCK, JOSEPH MAZURAN and LESLIE B. WHITE, M.D., members of the said Commission,

Defendants and Appellants.

Case No. 11856

Brief of Plaintiffs and Respondents

INTRODUCTORY STATEMENT

Nature of the Case

By this action the respondents as plaintiffs in the Court below sought a declaratory judgment determining that the eligible and promotional registers containing the names of persons eligible for appointment as deputy sheriffs or for promotion within the Sheriff's Department are public docu-

ments within the meaning of Section 78-26-1, Utah Code Annotated, 1953 and are therefore subject to public inspection. The action also sought an order compelling the defendants to make these registers available for inspection because they had refused upon proper request to permit inspection of the registers.

Disposition of the Case in the Lower Court

It is correct, as stated by appellants, that Judge Faux, presiding on the law and motion calendar in the Court below, denied a motion for judgment on the pleadings but appellants are in error when they state that it was Judge Faux's "view" that the registers are not public documents. Judge Faux did not make such a determination and there is no such indication in the record. Judge Faux merely ruled that he was not prepared to rule on the basis of the record before him that the requested order should be issued. It seems only fair in light of appellants' attempted effort to establish a conflict between lower court judges, to state that Judge Faux, at the conclusion of the hearing, specifically stated that his denial of the motion was without prejudice to full consideration of the issues by the trial judge. Thus, when respondents describe the "relief sought on appeal" to be clarification of inconsistent rulings, they are not properly characterizing this proceeding. Judge Faux's denial of a motion for judgment on the pleadings is not before the Court and only Judge Anderson's action in declaring the registers to be public documents and ordering that they be

made available for inspection is the matter in issue and appellants seek a reversal of this.

STATEMENT OF FACTS

The appellants have referred only to the Response to Requests for Admissions as the only facts. Pleadings, likewise, establish facts. Also, for the convenience of those referring to the briefs a short statement of facts will be set forth here:

The Deputy Sheriffs - Merit System Act was adopted November 8, 1960 as an initiative measure, Chapter 30, Title 17, *Utah Code Annotated,* 1953. Pursuant thereto the Merit System Commission was established shortly thereafter.

The statute requires the Commission to conduct open competitive examinations to determine the qualifications of applicants for positions as peace officers [§ 17-30-6] and for promotion of peace officers within the Sheriff's Department [§17-30-12 (2)] and further requires that the Commission prepare and maintain an "eligible register" of persons passing the application examination [§ 17-30-9] and a "promotional register" [§ 17-30-12 (3)].

The members of the Commission promulgated its original *Rules and Regulations* which included a provision that the "eligible lists" (meaning the eligible and promotional registers required by the statute) "shall include the names and final scores of all those who passed the examinations and shall be open to all interested parties." *Rules and Regulations for the Merit*

Service Commission for Salt Lake County Deputy Sheriffs, published September 1, 1961. Subsequently, after appointment of a new chairman, new rules were adopted in July, 1967. *Rules and Regulations of Salt Lake County Merit Service Commission Adopted July 27, 1967.*[1] The new *Rules and Regulations* make no provisions for inspection of the eligible and promotional registers and the current Commission has refused to let the individual plaintiff, representatives of the plaintiff Mutual Aid Association, or members of the public inspect the registers. (Paragraph 3 of complaint herein and paragraph 3 of answer, R. pp. 2 & 5.)

The plaintiffs in this action made the requisite demand to inspect these registers, but were refused access to them. (Complaint paragraph 5, answer paragraph 4; Answer to Requests for Admission; R. pp. 2, 5, 15.) Thereafter the complaint was filed seeking declaratory relief and issuance of a writ of mandamus or other appropriate writ compelling defendants to permit inspection and copying of the registers (R. pp. 1-4). Plaintiffs' motion for judgment on the pleadings was denied by the Honorable Merrill C. Faux presiding on the law and motion calendar (R. p. 19) and the case was placed on the trial calendar and tried before the Honorable Aldon J. Anderson. Judgment was entered for the plain-

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[1]It should be noted that although the title of new *Rules and Regulations* would lead one to believe that they apply to the entire Salt Lake County employee system, they are in fact applicable only to the Deputy Sheriffs and were adopted by the Deputy Sheriffs Merit System Commission pursuant to Chapter 30, Title 17, *Utah Code Annotated*, 1953.

tiffs (R. pp. 22-23) and a writ of mandamus issued (R. pp. 24-25).

Defendants then obtained an order staying all supplemental proceedings, quashing the writ of mandamus, and ordering that the registers be kept under seal by the Clerk of the Court pending appeal by defendants. Thereafter, because of circumstances arising as explained in the affidavit of Deputy Dale K. Gates, reprinted in the appendix to this Brief, plaintiffs moved that the promotional registers be immediately published and made available for inspection. That motion was heard on November 17, 1969, and it was upon suggestion of the Court stipulated by counsel that the motion could be disposed of by the Court revealing to counsel "... the promotional registers heretofore filed with the Court and that upon such inspection and upon opportunity to counsel for plaintiffs to examine the list of names submitted by the Merit System Commission to the Sheriff of Salt Lake County the motion could be dismissed. . ." (Order of Judge Anderson entered November 19, 1969.)

ARGUMENT

POINT ONE

THE ELIGIBLE AND PROMOTIONAL REGISTERS MAINTAINED BY THE MERIT SYSTEM COMMISSION ARE PUBLIC DOCUMENTS AND BY STATUTES OF THIS STATE APPELLANTS ARE REQUIRED TO

PERMIT THEIR INSPECTION BY INTERESTED CITIZENS.

This entire case is premised on the broad base that the public's business, conducted by the public's servants, should be revealed to the public and that suspicion, corruption, and inefficient administration of public business can be avoided by making official acts open to public scrutiny. It must be noted at the threshold, however, that no charges of corruption are made in this case. There is in this case no allegation that the defendants have falsified the registers or been guilty of any improper conduct, other than refusal to permit inspection of the registers. This is not to say, however, that such refusal does not create suspicion, engender a lack of confidence in the merit system, and lead to confusion and misunderstanding and in other circumstances may well lead to an opportunity for corruption.

This fundamental premise of the public's right to know has been for many years recognized by the statutes of this State. The Utah Code states clearly and simply:

> "Every citizen has a right to inspect and take a copy of any public writing of this state except as otherwise expressly provided by statute." and "Every public officer having the custody of a public writing which a citizen has the right to inspect is bound to give him, on demand, a certified copy of it, on payment of the legal fees

therefore." §§ 78-26-2, 3, *Utah Code Annotated*, 1953.

"Public writings" are defined to include "other official documents." § 78-26-1 (3), *Utah Code Annotated*, 1953. Appellants concede that the eligible and promotional registers are public documents which they are required by statute to maintain. It is generally conceded that under statutes such as this if a record is required to be kept, either by statute or by some other proper authority, it is a public record. See *Conover v. Board of Education of Nebo School District*, 1 Ut.2d 375, 267 P.2d 768, 770 (1954); *Kyburg v.* Perkins, 6 Cal. 674 (1856); *Walker v. Superior Court*, 155 Cal. App. 2d 134, 317 P.2d 130 (1957). Thus, appellants may refuse inspection only if such refusal is "otherwise *expressly* provided by statute." § 78-36-2, Utah Code Annotated, 1953, (emphasis added.)

There is no provision in the Utah Code, as there was in the California Code in the sole case relied upon by appellants, that provides that communications made to a public official which would otherwise be subject to inspection may be withheld if the communications were made to the official "in official confidence when the public interest would suffer by the disclosure." *City and County of San Francisco v. Superior Court*, 38 Cal.2d 156, 238 P.2d 581 (1951). The California statutory provisions are otherwise similar to those of Utah and the omission of this provision by Utah is significant. Appellants here can cite no Utah statutory authority whatsoever even though the controlling statute requires an *express* exception to its mandate.

The California decision relied upon by appellants is further distinguished upon the ground that the information there had been given to the public body on a promise of confidentiality that the information would not be disclosed (thus placing the situation clearly within the quoted California statutory exception.) But, here, there is no attempt to obtain any confidential information. We seek only the opportunity to examine a list of names declared by the Merit System Commission to be eligible for appointment or promotion as deputy sheriffs. When applying for a competitive appointment or promotion a candidate obviously knows that he will be ranked on the register in order of the merits of his qualifications—in the case of the promotional registers, as conceded by appellants, these qualifications are determined in part by other factors in addition to the written score. It is almost absurd to suggest any necessity for keeping the lists confidential or that a candidate would expect such secrecy.

There is no statutory exception permitting concealment of the registers

The appellants seek to support their refusal to make these lists available by reliance upon that portion of the Merit System Act which provides that "examination papers shall not be open to public inspection without court order." The entire section pertaining to examination papers reads:

> "All examination papers shall remain the property of the commission, and shall be preserved

> until the expiration of the eligible register for the preparation of which an examination is given. Examination papers shall not be open to public inspection without court order, but an applicant may inspect his own papers at any time within thirty days after the mailing of notice of his grade. The appointing authority may inspect the papers of an eligible applicant certified for appointment."
>
> § 17-30-8, *Utah Code Annotated*, 1953.

This is obviously referring to the papers of the written competitive examination required by an earlier section [17-30-6] pertaining to applicants for initial appointment as deputy sheriffs and not to the promotional examination required by a later section [17-30-12] for establishment of the promotional registers. But even if it is interpreted to also apply to the promotional examination papers, that is irrelevant, because no one is here seeking revelation of any "examination papers." We do seek, however, inspection of the "eligible register" and the "promotional register" provided for by Sections 17-30-9 and 17-30-12, respectively. There is no statement in the statute that the *registers* are not open to public inspection. Appellants *infer* such requirement from the requirement that an individual's *examination papers* not be revealed. Appellants' very argument admits the error of their position. The statute requires an *express* exception, but appellants' attempt to meet this requirement by an *inferred* exception and that suggested inference is one that is, at best, strained. The cases interpreting the word "express" are legion. It is defined as that which is "given in direct terms;

not implied; not dubious; directly stated; not implied or left to inference; . . ." *State v. Zangerle*, 101 Ohio 235, 128 N.E. 165, 167 (1920). See also, *Le Ballister v. Redwood Theatres*, 1 C.A. 2d 447, 36 P.2d 827 (1934); *R. J. Cardinal Co. v. Ritchie*, 218 C.A. 2d 124, 32 Cal. Reptr. 545, 552 (1963); *Hawkins v. Mattes*, 171 Okl. 186, 41 P.2d 880, 891 (1935); *McKeever v. Oregon Mortgage Co.*, 60 Mont. 270, 198 P. 752, 753 (1921); *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 76 S.W. 2d 685, 689 (1934); *Baxter v. Baxter*, 195 N.E. 2d 877, 882 (Ind. App. 1964); *Application of Lamb*, 67 N.J. Super. 39, 169 A.2d 822, 826, *affd.*, 34 N.J. 448, 170 A.2d 34 (1961).

Appellants argue that because the test papers are not to be revealed then neither can the score be revealed and because the score cannot be revealed then neither can the register be revealed because, although the register would not even reveal the score it would reveal the relative position of each man on the list. But that is not what the statute says. In the first place, the statute does not prohibit revelation of the score or the results of the examination; but not even this second step in appellants' tortuous argument is involved here. The statute's exception to the fundamental rule requiring that public papers be open for inspection is express and narrow and refers only to the written examination papers. The same section of the statute which provides that examination papers shall not be open to public inspection imposes no such restriction when speaking about the registers. Had it been intended that the registers should also not be made public the words for so stating were mani-

lest in this statute itself but were specifically and knowingly omitted when speaking about the registers.

Appellants are seeking to construe a statute that is clear and unambiguous. Where the language of a statute is plain and unambiguous there is no occasion to resort to rules of construction. 50 *Am. Jur. Statutes*, § 225. But if the rules of construction are to be resorted to, those rules clearly dictate that the registers shall be open for inspection.

The Commission by prior interpretation of the statute expressly permitted inspection

It is significant that even the Merit System Commission itself, of which two of the present commissioners were members, prior to the appointment of its present chairman and revision of its ***Rules and Regulations*** in July, 1967, provided in its ***Rules and Regulations*** published September 1, 1961 that the registers would be open for inspection by all interested parties. The earlier Rules and Regulations referred to the registers as "Eligible Lists" and Rule 4 in pertinent part read:

> "4.01 Lists Required.
>
> A register of eligibles shall be prepared and maintained by the Commission for all openings and promotions for Deputy Sheriffs.
>
> "4.02 Order of Priority.
>
> The names of applicants shall be entered upon the eligible list in accordance with their

> standing in the examinations, including credit for leadership, merit rating, seniority, character, and demeanor when applicable and said eligible lists shall include the names and final scores of all those who passed the examinations and shall be open to all interested parties, at the office of the Commission."
>
> (*Rules and Regulations for the Merit Service Commission for Salt Lake County Deputy Sheriffs,* published September 1, 1961)

Thus, the statement in appellants' brief (page 13) that they "in the past have refused" to make the registers public and "have felt it incumbent as a duty upon them to keep the registers as well as the examination scores confidential" is just not the fact.[2] It is a fundamental rule that in determining the meaning and defining the effect of particular words and phrases in statutes, ordinances, and regulations a practical construction by the officers charged with enforcing the matter being construed is given great weight. See 37 *Am. Jur. Municipal Corporations* § 187; 50 *Am. Jur. Statutes* § 319. This is especially so where the statute, ordinance, or regulation is ambiguous. At

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[2]The prior *Rules and Regulations* were not made part of the record in this proceeding but it is anticipated that appellants will not object to this reference. In any event, the Court should be able to take judicial notice of printed regulations of this public body. See McCormack, *Handbook of Law of Evidence* (1954) pp. 695-6 and *Final Draft of the Rules of Evidence,* prepared by Supreme Court Committee on Uniform Rules of Evidence (1959), Rules 9 and 12. In the alternative, it is respectfully requested that this be treated as a request for modification of the record pursuant to Rule 75(b), Utah Rules of Civil Procedure, and that the *Rules and Regulations* be incorporated as part of the record.

best all that appellants' argument does is introduce an ambiguity which should be resolved by the long interpretation obviously placed on the statute by the prior members of the Commission, including two of its present members, before appointment of its present chairman.

The plain meaning of the statute is clear. The obligation of the Court in interpreting and construing statutes is to ascertain and declare the intention of the legislature. In doing so, the Court may not read into the statute, as appellants are asking it to do, anything which is not the manifest intention of those enacting the statute as gathered from the act itself; statutes should not be construed any more broadly than their terms require. The Court may not infer that which is not intended to be there. 50 *Am. Jur. Statutes* §§ 223, 229, 243. As previously stated by this Court:

> The language of the statute, as it seems to us, is plain and its meaning clear, in which case there is no room for construction or license to search for its meaning beyond the statute itself and requires the application of the familiar maxim, that a thing expressed puts an end to implication (25 R.C.L. 958), and that no motive, purpose, or intent can be imputed to the Legislature in the enactment of a law other than such as are apparent upon the face and to be gathered from the terms of the law itself.
>
> *Riches v. Hadlock*, 80 Ut. 265, 15 P.2d 238 at 296 (1932).

POINT TWO

PUBLIC POLICY REQUIRES PUBLICATION OF THE ELIGIBLE AND PROMOTIONAL REGISTERS.

There can be no quarrel with appellants' statement that the purpose of the Merit System Act "is to require the hiring and promoting of officers in the sheriff's department on a basis of merit." This is amply manifest by the title to the Act, which reads:

> An act to establish the qualification, appointment, promotion, transfer, demotion, suspension, removal, discipline, re-employment and job tenure of deputy sheriffs of the several counties of the state of Utah based on merit; to provide for the establishment of merit system commissions in the several counties and to set forth the duties thereof and to improve law enforcement by professionalizing those engaged in law enforcement as employees of the several counties. (See Annotators notes to Section 17-30-1, *Utah Code Annotated*, 1953.)

Respondents heartily subscribe to this statement of purpose and it is because of their strong belief in this Act and its purpose that this action is brought. The quarrel comes with the appellants' contentions that the single most important product of the statute is to be kept secret. Public policy, rather than permitting such secrecy as advocated by appellants, cries for the publication of the eligible and promotional lists.

The appellants argue "that the registers in question are not public documents open to the citizenry for inspection" because of the provisions of the Merit System Act and "its over-riding purpose being to remove from political patronage the appointment and promotion of deputy sheriffs." (Brief of Appellants, p. 3.) It is obvious, however, that the Merit System Commission may not be any more immune to the disease of political patronage than is the Sheriff and his staff or any other administrator or commission. The public is interested in having its police officers hired and promoted on the basis of merit. To accomplish this, the public has statutorily supplemented the Sheriff's subjective evaluation of his men with the objective evaluation of them through competitive examinations administered by the Commission. The public has the right to scrutinize the evaluation of the men by the Merit System Commission to insure that it remains objective and impartial. We may well ask, as the New York Court did in a proceeding before it: "Instead of resisting a request for light, the commissioners might rather be expected to welcome an opportunity to justify their action; . . . 'Why was preference thus given?' . . . it can be answered fully only by a disclosure of all the documents which were the basis of action." *Egan v. Board of Water Supply*, 205 N.Y. 147, 98 N.E. 467 (1912). Indeed the appellants appropriately cite at page 10 of their Brief the prior words of this Court:

> "It is one of the cardinal rules of construction that a statute must be construed with reference to the objects sought to be accomplished by it."

Conover v. Board of Education of Nebo School Dist., 110 Ut. 454, 175 P.2d 209, 210 (1946) quoting from *Crockett v. Board of Education of Carbon County*, 58 Ut. 303, 199 P. 158, 159 (1921).

The appellants attempt to blunt the effect of their refusal to permit inspection of the lists by saying that the rules do permit an individual deputy to see his examination papers (even this is required by statute) and to learn of *his* individual position on the register without learning who else is on the list or in what positions. That is little comfort if there is a suspicion that appointments or promotions of others may not be in accord with the register, or that there may have been changes or amendments to the registers. A position on the register is a relative thing and it does very little good to know only one's own position. In the past vigilant efforts of some members of the Deputy Sheriffs Mutual Aid Association have resulted in errors on the lists being corrected by the Merit System Commission.[3] Publication of the lists would avoid some of these problems and, indeed, may reveal more that are concealed by the refusal to make the lists public.

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[3]For example, see affidavit of Deputy Dale K. Gates reprinted in appendix hereto. It should be noted that the problem arising from the circumstance shown by the affidavit of Deputy Gates was in part resolved by the Order of Judge Anderson in this case, entered after the appeal had been filed and after argument on a motion of respondents, permitting examination of a part of the list by respondents' counsel. It should also be noted that this case does not in any way involve a dispute as to which list of names involved in the Gates situation is accurate. That is a matter entirely separate from this proceeding. Apparently the Sheriff was using an old list given him by the Commission but which had subsequently been amended.

Moreover, the present Commission has superimposed on the examination required by the statute, wrongfully it is believed and contrary to the express wording of the statute, what is described by the Commission as a "personal interview with the Commission wherein the applicant will be rated on personality and decorum, background and personal history information, etc." *Rules and Regulations* adopted July 27, 1967—Rules 3.02(a) (4) and 3.02(b) (4). The statute, however, [§ 17-30-12 (2)] provides with respect to promotional exams that the examination will consist of only three parts: the competitive examination to test competency, the average of service ratings (prepared by the Sheriff's Department) for the preceding year, and a rating for seniority. According to the statute the combined weight of service rating and seniortiy is not to be more than 40% of the total score. But by the Commission Rule the interview with the Commission is given a weight of 20% by appellants, outweighing even the deputy's service rating by his superiors (given a weight of 15% by appellants) and the 5% weight given to seniority! *Rules and Regulations* adopted July 27, 1967, Rule 3.02(b) (4). The implication is obvious. Regardless of the objective scores on the written examination and the seniority and service ratings from the Sheriff's Department, the Commission has the opportunity through its own subjective determination to materially affect the position of a man on the register.

Appellants contend that the statute has "built in it the opportunity for application to court for inspec-

tion by any deputy or other party *thought* to be aggrieved in the examination and register-composing process." (P. 7 of Appellants' Brief, emphasis added.) Lawsuits must be based on something firmer than a mere "thought" and without publication of the registers a deputy really does not, as a practical matter, know his true standing. The problem shown by the affidavit referred to above and reprinted in the appendix was easily brought to the Court's attention on motion because this action, involving the very subject, was then pending. But deputies or other citizens cannot be expected nor required to bear the burden and expense of filing and prosecuting a lawsuit on every suspicion of irregularity in the promotional registers. Revelation of the registers would dispel much confusion and suspicion.

Appellants assert as their "second agrument" (p. 11 Appellants' Brief) that if the registers are published the Sheriff could "demand and receive not three names of the highest applicants as noted in the above section but the entire register" and could go shopping and "invent reasons" for passing over men to get to men lower on the register. This is a specious argument because the Sheriff could do so now if he chose to. It is a simple thing for the Sheriff to inquire of the man he wishes to appoint where he stands on the list. Appellants concede that each man is entitled to this information.[4] In addition, the Com-

[4]The promotions cannot be made until the Commission has properly certified the three highest names at any given time, although the entire list may be open for inspection, because at any given time there may be changes in the list by pass-overs, disqualifications, terminations, etc. and the Commission must make proper certification of the top three names.

mission's own regulations require the Sheriff to "submit in writing to the Commission his reasons for so refusing to appoint a certified candidate." Moreover, if the Sheriff passes over a man twice, a further explanation from the Sheriff is required and the appellants' present *Rules and Regulations* provide that:

> "In the event the Commission determines that said Sheriff's reasons are not justified, it shall so notify the Sheriff that no further lists of eligible candidates or applicants will be certified to the Sheriff, nor will any temporary appointments be approved by the Commission unless and until the nonappointed or overpassed candidate or applicant is, in fact, appointed or promoted."
>
> Rule 5.01 (b) (c) *Rules and Regulations of Salt Lake County Merit Service Commission* adopted July 27, 1967.

Thus, this supposed problem exists even without publication of the registers and, assuming the validity of this rule of the Commission, the problem raised is obviated by the rule. A more serious problem is created by failure to publish the register. There is, as suggested above, no assurance that the Commisison has correctly certified the three highest if the register is not open for inspection.

Appellants' final argument is that a merit system officer will hesitate to take an examination if his ultimate position on a promotional register were to

be revealed. By this argument we are now asked not to mollycoddle criminals but to mollycoddle police officers. Surely, mature police officers who themselves have asked for and support this merit system based on competitive examination are not afraid to take their position, openly and for all to see, on a promotional list. Moreover, each man takes the risk under the system that he may never be promoted: that is the clear implication of not only his comparative performance on the examination, but of his over-all performance as a deputy sheriff.

The arguments advanced for the cloak of secrecy are so weak and so out of harmony with the concept of the Merit System Act and the past regulations of the Commission itself that one wonders why. The words of this Court in *Conover v. Board of Education of Nebo School District*, 1 Ut.2d 375, 267 P.2d 768 at 771 (1954) are here pertinent:

> "The truth about the official acts of public servants always should be displayed in the public market place, subject to public appraisal. Any attempt to withhold information after a meeting, itself should be a subject for a wide publicity irrespective of the fact that withholding it might prevent someone's embarrassment because of inaccuracy."

CONCLUSION

The express language of the pertinent statutes and the policy underlying them sustain the action

of the trial court and the judgment should be affirmed.

Respectfully submitted,

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APPENDIX

IN THE DISTRICT COURT OF SALT LAKE COUNTY
STATE OF UTAH

DEPUTY SHERIFFS MUTUAL AID ASSOCIATION OF SALT LAKE COUNTY, ET AL., *Plaintiffs,* vs. SALT LAKE COUNTY DEPUTY SHERIFFS MERIT SYSTEM COMMISSION, ET AL., *Defendants.*	AFFIDAVIT OF DALE K. GATES Civil No. 187169

State of Utah }
County of Salt Lake } ss.

DALE K. GATES, being first duly sworn on oath deposes and says:

I am a first grade deputy assigned to the detective division in the Salt Lake County Sheriffs Department. On or about Tuesday, November 4, 1969, Captain N. D. Hayward advised me that the sheriff had determined to promote some new sergeants. He also advised that the sheriff had reviewed the current promotional register previously submitted to him by the Merit System Commission and that Deputy John Barnardo and I were in such position on the promotional register that we would be among the first grade deputies to be promoted. Deputy Bernardo also serves in the detective division with me.

On Wednesday, November 12, 1969, Mrs. Bates, the sheriff's secretary, called me and stated that I was requested to be in the sheriff's office Friday morning, November 14, at 10:00 a.m. I asked what it concerned and she said, "It is not bad news; it is good news." I then inquired if it concerned the promotions and she said that I would have to come down and see but that it would be extremely good news.

She also asked where she could contact John Bernardo so that the same invitation could be extended to him. I was asked to contact Deputy Bernardo and give him the same information, which I did. Early Friday morning, November 14, 1969, Deputy Bernardo and I were called into the sheriff's office. The sheriff stated to us that on Tuesday, November 11, he had telephoned Mr. Frank Pennock, chairman of the Merit System Commission, and advised Mr. Pennock that he would be appointing some new sergeants from the promotional register which he then had, and that he would appoint the men in order as they appeared on the register and would not jump over any man. The sheriff stated to us that Mr. Pennock advised that this was satisfactory. In this meeting Deputy Bernardo and I were shown the promotional register that was in the sheriff's possession at the time of his determination to make the promotions and at the time of his telephone conversation with Mr. Pennock. Deputy Bernardo was fifth on the list and I was fourth. Also on the list ahead of our names were Deputies Carl Evans, John Malmborg and Mike Wilkerson, al-

though we cannot recall specifically what order they were in.

The sheriff then advised that at 4:30 on the afternoon of Thursday, November 13, Mr. Pennock had appeared at the sheriff's office and advised the sheriff that the promotional register that the sheriff then had was not accurate and submitted to the sheriff six new names. The six names were not necessarily in order as follows: John Patience, Carl Evans, Mike Wilkerson, John Malmborg, Bruce Egan and Gary Anderson. Neither Deputy John Bernardo nor I was among the six names. We should also note that when obserivng the prior list we noted that Deputy Parley Blight was the sixth name following the name of Deputy Bernardo, and his name was not included among the six new names submitted to the sheriff.

The sheriff then informed us that because of this new list being given to him by the Merit System Commission he could not give us the promotions to sergeant which he had intended to do.

Dated: November 14, 1969.

/s/ Dale K. Gates

Subscribed and sworn to before me this 14th day of November, 1969.

/s/ Camille Kiger

Notary Public