



PERFORMANCE AUDIT REPORT

State Hiring Practices: Determining Whether Requirements Related to Veterans' Preferences Are Being Met

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
April 2007**

Legislative Post Audit Committee

Legislative Division of Post Audit

THE LEGISLATIVE POST Audit Committee and its audit agency, the Legislative Division of Post Audit, are the audit arm of Kansas government. The programs and activities of State government now cost about \$10 billion a year. As legislators and administrators try increasingly to allocate tax dollars effectively and make government work more efficiently, they need information to evaluate the work of governmental agencies. The audit work performed by Legislative Post Audit helps provide that information.

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April 17, 2007

To: Members, Legislative Post Audit Committee

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This report contains the findings, conclusions, and recommendations from our completed performance audit, *State Hiring Practices: Determining Whether Requirements Related to Veterans' Preferences Are Being Met*.

The report includes recommendations for the Division of Personnel Services to implement a strategy to ensure a determination of veterans' eligibility is made and recorded; for the Department of Commerce to work with the Division of Personnel Services to narrow minimum qualifications for certain positions, if necessary; and for Winfield Correctional Facility to begin entering information in the SHARP system for all its vacancies. We also recommended that the Legislature amend State law to clearly state what, if any, veterans' preference applies to State unclassified jobs.

We would be happy to discuss these recommendations or any other items in the report with any legislative committees, individual legislators, or other State officials.

Barbara J. Hinton
Legislative Post Auditor

Get the Big Picture

Read these Sections and Features:

1. **Executive Summary** - an overview of the questions we asked and the answers we found.
2. **Conclusion and Recommendations** - are referenced in the Executive Summary and appear in a box after each question in the report.
3. **Agency Response** - also referenced in the Executive Summary and is the last Appendix.

Helpful Tools for Getting to the Detail 🔍

- In most cases, an “**At a Glance**” description of the agency or department appears within the first few pages of the main report.
- **Side Headings** point out key issues and findings.
- **Charts/Tables** may be found throughout the report, and help provide a picture of what we found.
- **Narrative text boxes** can highlight interesting information, or provide detailed examples of problems we found.
- **Appendices** may include additional supporting documentation, along with the audit **Scope Statement** and **Agency Response(s)**.

EXECUTIVE SUMMARY
LEGISLATIVE DIVISION OF POST AUDIT

Overview of Veterans' Preference Laws in Kansas

State laws give veterans a hiring preference when they apply for public government jobs. page 2
With the enactment of K.S.A. 73-201 in 1886, all State, county, and city governments were required to give a hiring preference to honorably discharged veterans. However, a subsequent amendment specified that the veteran must be deemed "competent" to perform the job duties in order to receive the job.

In a 1907 case, the Kansas Supreme Court defined what's required of veterans to be considered "competent" to perform the job duties, and made it clear the applicant must be more than minimally qualified for the job. On several other occasions, the Court has interpreted the law as giving the hiring authority significant discretion to determine an applicant's competence.

The veterans' preference for certain jobs was altered with the passage of the Kansas Civil Service Act (K.S.A. 75-2955) in 1941. That Act established a merit-based hiring system for State jobs and defined all positions as either classified or unclassified. It created a veterans preference for State classified jobs. K.A.R. 1-6-21, which implements the provisions of this Act, requires that veterans applying for State positions be granted an interview if they meet the minimum qualifications for the position. It doesn't guarantee that veterans will be hired.

In 2006, veterans applied for more than 1,400 State jobs. page 4
For calendar year 2006, nearly 3,400 State job openings were posted in SHARP, the State's personnel and payroll system. Of those jobs, 1,421 had at least one veteran apply, and about 12% of those 1,421 jobs ultimately were filled by a veteran.

Are State Agencies Following the Requirements of State Law and Regulations Related to Granting a Preference to Veterans In the Hiring and Competitive Promotion Process?

Several concerns were raised about whether State agencies are following veterans' preferences laws. page 5
Legislators and veterans' organizations we talked with said the types of complaints they'd heard generally fell into three general areas—veterans weren't receiving interviews, interviews that were given appeared to be "token," and veterans weren't receiving jobs they thought they were qualified for. They also said these complaints most frequently related to Lansing and Winfield Correctional Facilities and the Departments of Commerce and Transportation.

We selected a sample of 61 classified positions posted by these four State agencies during the first 10 months of 2006 for an in-depth review. In all, 144 veterans applied for these 61 positions.

Only 3 of the 144 veterans we reviewed weren't interviewed when they should have been. page 6
In all, 102 of the 144 veterans who had applied for the positions in our sample received an interview. For the 42 veterans who weren't interviewed, we reviewed applications materials to determine if veteran applicants met minimum qualifications and were eligible to receive a veterans' preference.

Most of those 42 veterans either didn't meet minimum qualifications for the job, withdrew from the process, or hadn't submitted a DD-214 form, which is required to verify eligibility for veterans' preference.

However, we found that two qualified veterans didn't receive the interviews they were entitled to because of administrative oversights by agency staff. In the third case, the veteran met minimum qualifications as written, but agency officials applied an interpretation of the minimum qualifications that led them to conclude the veteran wasn't qualified.

We saw no evidence that veterans received only "token" interviews. page 9
We compared interview records for the 102 veterans in our sample who had received an interview with the interview records of non-veteran applicants for the same position. We saw no evidence that veterans were being treated differently than non-veteran applicants. In all cases, records indicated the same people interviewed all applicants for a particular position, standard interview questions or standard tests were used, and all interviews were conducted before the position was filled.

Although we didn't do a content analysis of the interview notes, we reviewed enough to assure ourselves that interviewers were taking notes during interviews with veterans, and that those notes, on the surface, didn't suggest a "token" interview.

It's unclear whether State unclassified positions are subject to any veterans' preferences. page 10
The Kansas Civil Service Act created a new type of veterans' preference for State classified jobs, but makes no mention of veterans' preference for unclassified positions. Unclassified State positions include most policy-making positions within the executive branch, many positions at the Regents' universities, and all positions within the legislative and judicial branches of government. Agencies aren't required to post unclassified job openings, the positions don't have to be filled competitively, and employees hired for unclassified positions can be fired at-will.

Officials with the Division of Personnel Services haven't interpreted the law as requiring State agencies to apply veterans' preference for unclassified positions, but it could be interpreted in several different

ways. On the one hand, because the Kansas Civil Service Act created unclassified positions and is silent on veterans' preference for those positions, it could be argued no veterans' preference exists for State unclassified positions. That would be consistent with the Division's interpretation.

On the other hand, because the Kansas Civil Service Act creates a veterans' preference only for classified positions, it could be argued that unclassified positions remain subject to K.S.A. 73-201, which would require agencies to hire eligible veterans who apply for unclassified jobs for which the agency determines them to be competent.

House Bill 2562, which at the time of this audit had only passed the House during the 2007 legislative session, explicitly states that veterans' preference doesn't apply to State unclassified positions or any other "at-will" employment.

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This audit was conducted by Lisa Hoopes and Brad Hoff. Cindy Lash was the audit manager. If you need any additional information about the audit's findings, please contact Lisa at the Division's offices. Our address is: Legislative Division of Post Audit, 800 SW Jackson Street, Suite 1200, Topeka, Kansas 66612. You also may call us at (785) 296-3792, or contact us via the Internet at LPA@lpa.state.ks.us.

State Hiring Practices: Determining Whether Requirements Related to Veterans' Preferences Are Being Met

Kansas has had laws in effect since 1886 that grant a hiring preference to military veterans. K.S.A. 73-201 is a broad statute saying that veterans shall be preferred for appointments and employed to fill positions for the State of Kansas and all counties and cities of the State. K.A.R. 1-6-21, which implements the provisions of K.S.A. 75-2955, requires that veterans applying for State positions be granted an interview if they meet the qualifications for the vacant position.

Legislators have heard complaints from veterans who have said they weren't allowed an interview when they applied for a position with the State, and they want to know whether there's a significant problem with the law not being followed.

This performance audit answers the following question:

Are State agencies following the requirements of State law and regulations related to granting a preference to veterans in the hiring and competitive promotion process?

To answer this question, we talked with legislators and various veterans organizations to determine the types and frequency of complaints they were hearing regarding veterans' preference. Based on that information, we conducted a file review focused on four agencies that veterans expressed concerns about. We selected a sample of vacancies posted by these agencies during the first 10 months of 2006, and reviewed application files, position descriptions, minimum requirements for positions, and interview questions and answers. We followed up with the agencies on all cases in which we questioned whether the law was followed. We also reviewed the statutory history of the State's two veterans' preference laws.

A copy of the scope statement for this audit approved by the Legislative Post Audit Committee is included in *Appendix A*.

In conducting this audit, we followed all applicable government auditing standards set forth by the U.S. Government Accountability Office. Our findings begin on page 5, following a brief overview of veterans' preference laws in Kansas.

Overview of Veterans' Preference Laws in Kansas

State Laws Give Veterans A Preference When They Apply For Public Government Jobs

With the enactment of K.S.A. 73-201 in 1886, all State, county, and city governments were required to give hiring preference to honorably discharged veterans. A subsequent amendment to the law specified that the veteran must be deemed “competent” to perform the job duties in order to receive the preference.

The Kansas Civil Service Act, passed in 1941, established a merit-based hiring system for State jobs. The Act defined all positions as either classified or unclassified, and created a veterans' preference for State classified jobs. **Figure OV-1** compares the type of preference given, as well as the requirements of the two laws.

The veterans' preference contained in the 1941 law appears to “carve out” State classified employees from the veterans' preference given in the 1886 law. However, as we talked with representatives of several veteran organizations during this audit, it was apparent that many of them thought the original law overrode the Civil Service Act, and that qualified veterans applying for classified State positions were entitled to the job, not just to an interview.

Even under the broadly written 1886 law, veterans' preference isn't absolute. Several court cases reached the Kansas Supreme Court in the years after the 1886 preference law was created. In one of the more significant cases, the Supreme Court in 1907 defined what is meant by requiring veterans to be “competent” to perform the job duties, as follows:

“...when used to indicate the qualifications which a public officer should possess, must necessarily include every qualification essential to the prompt, efficient and honest performance of the duties pertaining to the office to be filled.”

The Court's ruling went on to say that anything less than meeting that standard would be unacceptable—the applicant must be more than simply minimally qualified for the job. A 2006 Attorney General Opinion (2006-21) interpreted the Court's sentiments to mean that the veteran has to be more than minimally qualified, but doesn't have to be the best qualified candidate in order to receive the preference and be hired.

That Opinion also pointed out that the Kansas Supreme Court has on several occasions interpreted the law as giving the hiring authority significant discretion to determine competence, and also has repeatedly declined to second guess or substitute the Court's judgment for that of a hiring authority that acted in good faith.

Figure OV-1
Kansas Veterans Preference Laws
(statutory language is in italics)

Category	Requirements K.S.A. 73-201 (passed in 1886)	Requirements K.S.A. 75-2955 (passed in 1941) and K.A.R. 1-6-21
Type of preference awarded	A job	A job interview
Type of jobs the preference applies to	All public government jobs (except State classified jobs) <i>"...in every public department and upon all public works of the state of Kansas, and of the counties and cities of this state..."</i>	All classified State civil service jobs <i>"All personnel administration actions regarding employees in the state classified service..."</i>
Which veterans are eligible to receive the preference	Those who have served during specific times of war, and have been honorably discharged. <i>"In grateful recognition....of persons who served...in World War I and World War II, and of persons who have served...during military, naval and air operations in Korea, Viet Nam or other places under the flags fo the United States and the United Nations....and have been honorably discharged..."</i>	Those who meet certain service criteria, and have been honorably discharged. <i>"Any person who entered the armed services before October 15, 1976, and separated... under honorable conditions, if on active duty: (A) during any war; (B) during the period of April 28, 1952 through July 1, 1955; (C) in any campaign or expedition for which a campaign badge or service medal has been authorized; or (D) for more than 180 consecutive days since January 31, 1955."</i> <i>"Any person who entered the armed service on or after October 15, 1976, and separated...under honorable condition, if such person was awarded a service medal or campaign badge."</i> <i>"Any person who separated...under honorable conditions and has a disability certified by the United States department of veterans affairs..."</i> <i>"Any person who has voluntarily retired with 20 or more years of active service."</i>
Standards that must be met to receive the preference	Must be competent to perform the job. The hiring authority has the discretion to determine if a veteran is competent. <i>"...shall be preferred for appointments and employed to fill positions....if competent to perform such services..."</i>	Must meet the minimum qualifications for the job. <i>"Each veteran who meets the minimum requirements for a vacant position shall be offered an interview for that vacancy..."</i>

Source: Kansas Statutes Annotated 73-201, 75-2925, and 75-2955. Kansas Administrative Regulation 1-6-21.

***In 2006, Veterans
Applied for More Than
1,400 State Jobs***

Kansas Administrative Regulations require that virtually all State classified job openings must be posted in SHARP, the State's personnel and payroll system. Unclassified positions can be posted in SHARP, and some are, but it's not required.

SHARP data supplied by the State's Division of Personnel Services showed that nearly 3,400 State job openings were posted in calendar year 2006. As **Figure OV-2** shows, 1,421 of those jobs (42%) had at least one veteran apply. About 12% of those jobs ultimately were filled by a veteran.

Figure OV-2 Data on Posted State Job Openings in 2006		% of Total Posted Jobs
State Job Vacancies Posted:	3,397	100%
State Jobs With One or More Veterans Applying: <i>(3,339 veteran applications received)</i>	1,421	42%
Posted State Jobs Filled by a Veteran:	168	5%
Source: LPA analysis of Division of Personnel Services' data.		

Are State Agencies Following the Requirements of State Law and Regulations Related to Granting a Preference to Veterans In the Hiring and Competitive Promotion Process?

ANSWER IN BRIEF: *Under K.A.R. 1-6-21, eligible veterans who meet minimum qualifications must be given an interview for State classified job openings; there's no requirement that they be hired for the job. We reviewed four State agencies' practices' for interviewing veterans when the preference required an interview. Of the 144 veterans' applications we reviewed, only three didn't result in an interview when it was required—twice because of an acknowledged oversight, and once because the agency decided the veteran didn't meet minimum qualifications. We saw no evidence that veterans received only "token" interviews. Finally, the law isn't clear on whether a veterans' preference applies to State unclassified positions. These and other findings are discussed in the sections that follow.*

Several Concerns Were Raised About Whether State Agencies Are Following Veterans' Preference Laws

In planning this audit, we talked with legislators and several veteran organizations about the type and frequency of concerns they'd heard regarding the application of the veterans' preference laws. The types of complaints they said they receive fell into three general areas, as follows:

- veterans weren't receiving interviews, even when they were qualified for the job
- interviews that were given appeared to be "token," and veterans thought they weren't being seriously considered for the job
- veterans weren't receiving jobs they thought they were qualified for

Officials with veterans' organizations said the frequency of complaints varied—they might get one complaint one month, none for several months, then five or six the following month. They said the complaints they heard most frequently related to the Lansing and Winfield Correctional Facilities, and the Departments of Commerce and Transportation. As a result, we focused our review on these four agencies.

Our review focused on whether State agencies had granted interviews to qualified veterans who applied for classified positions. As *Figure 1-1* shows, the four agencies we selected for review had posted 584 openings in SHARP for classified positions in 2006 (both new hires and competitive promotions). In all, there were 288 positions for which at least one veteran had applied. At each agency, the types of positions we reviewed generally fell into the following categories:

- Department of Commerce: program specialist, economic development representative, administrative specialist
- Department of Transportation: engineering technician, equipment operator, administrative assistant
- Winfield and Lansing Correctional Facilities: corrections officer, corrections specialist

Figure 1-1
Summary Information About the Positions in Our Sample Agencies
For Which Veterans Applied, and the Sample Positions Reviewed In-Depth
(Calendar Year 2006)

	Dept. of Commerce	KDOT	Winfield Correctional Facility	Lansing Correctional Facility	Total
# job openings posted in SHARP	50	442	10 ^(a)	82	584
# of these openings with at least one veteran applicant	37	222	4	25	288
# of positions we reviewed in-depth	15	25	9 ^(a)	12	61
# of veterans who applied for these positions and claimed veterans' preference	60	53	14	17	144
range of veterans applying for each position reviewed	1-16	1-10	1-3	1-3	

(a) At the time of our review, officials at Winfield Correctional Facility weren't posting jobs in SHARP for which they continuously test and interview applicants, such as the Corrections Officer I position. These jobs were posted on the Department of Corrections' website. During our site visit to Winfield we reviewed five additional positions that hadn't been posted in SHARP and that had at least one veteran applicant.
Source: LPA review of agency records.

After excluding 16 positions for which all veterans who applied received the job, we selected a sample of 61 of the positions posted during the first 10 months of 2006 to review in-depth. As *Figure 1-1* shows, the Departments of Commerce and Transportation sometimes had many applicants for a single position claiming veterans' preference.

We reviewed the application file for each of the 61 positions in our sample, which generally included applications submitted by each candidate, interview notes for all candidates interviewed, a list of interview questions, and interview schedules. Resumes and copies of applicants' DD-214 forms, if submitted, also were in the file.

Only 3 of the 144 Veterans We Reviewed Weren't Interviewed When They Should Have Been

In all, 102 of the 144 veterans who had applied for the positions in our sample received an interview. For the 42 veterans who weren't interviewed, agency officials generally didn't record why not.

To determine whether these veterans had been entitled to an interview under veterans' preference requirements, we reviewed detailed information in the application files. That included

checking to see if veteran applicants met minimum qualifications and were eligible to receive a veterans' preference. We also talked to agency staff and reviewed other available documents. The results of our review are summarized in *Figure 1-2*.

Figure 1-2 Number of Veterans in Our Sample Who Applied for Job Openings in the State Classified Service But Who Didn't Receive Interviews, by Agency and by Reason					
Reason Why the Veteran Was Not Interviewed	KDOT	Department of Commerce	Lansing Correctional Facility	Winfield Correctional Facility	Total
Number of Veterans Who Weren't Interviewed, but Who Should Have Been					
Administrative oversight	1	1	0	0	2
Agency said veteran didn't meet minimum qualifications, but veteran did	0	1	0	0	1
Number of Veterans Who Weren't Interviewed for Legitimate Reasons					
Veteran didn't meet minimum qualifications	7	12	0	0	19
Veteran withdrew from the interview process	7	3	1	0	11
Veteran didn't submit proof of eligibility for preference	2	4	0	0	6
Veteran applied for the position after the closing date	0	1	0	0	1
Agency unable to contact the veteran	0	1	0	0	1
Applicant not eligible for veterans preference	0	1	0	0	1
Grand Total	17	24	1	0	42
Source: LPA review of agency records.					

The three cases we identified where veterans didn't receive interviews but should have are summarized below:

- In one case, a veteran applied for a Public Service Executive I position at the Department of Commerce. Based on the veteran's previous work history, we determined the veteran met minimum qualifications. In addition, the veteran already had been determined to be eligible for veterans' preference. Department of Commerce officials agreed that this veteran should have been interviewed.
- In the second case, a veteran applied for a Staff Development Specialist I position at the Department of Transportation. Agency officials said they notified the veteran that a DD-214 form needed to be submitted in order for them to determine eligibility for veterans' preference. The veteran submitted the DD-214 form, but it arrived after the agency had screened applicants for interviews earlier in the day. The veteran wasn't offered an interview because, at the

time of screening, the veteran hadn't been determined to be eligible for veterans' preference. Department of Transportation officials acknowledge that this was an administrative error and that the applicant should have been interviewed.

- In the third case, a veteran applied for the position of Economic Development Representative III at the Department of Commerce. The position description for this opening listed the minimum requirement as "two years of experience in economic development, workforce development, business management and/or marketing." Although the veteran had many years of experience in business management, Department officials told us the veteran didn't meet the minimum qualifications for this position. They said the minimum qualifications they had published for this position are used for many positions, but the specific type of experience they wanted for this position—which was in the international trade division—was two years of experience in economic development. Division of Personnel Services' officials told us that, based on the language in the position description, they would interpret the minimum requirements for this position as two years experience in any of the fields listed.

Most veterans who weren't interviewed either didn't meet minimum qualifications for the job or withdrew from the process. Examples of the most frequent reasons we identified are summarized below.

- About half the applicants didn't meet the minimum qualifications for the position. For example:
 - ▶ An accountant II position at the Department of Commerce required two years of experience in professional accounting/auditing work. The applicant's experience appeared to be in research and data entry.
 - ▶ A state auditor II position at the Department of Transportation required three years of experience in examining internal work processes, financial and operational records, and controls. The veteran's primary work experience appeared to be in real estate and social services.
- Another 11 veterans withdrew from the process. The veterans either declined to schedule an interview, cancelled an interview, or simply didn't show up for their interviews. These reasons typically were recorded in the veteran's file.
- In six other cases, veterans didn't submit a DD-214 form, which is required to verify eligibility for veterans' preference. Officials at both the Department of Commerce and the Department of Transportation said they send letters to these veterans asking them to submit copies of their DD-214 forms, but we couldn't verify that such letters had been sent. Department of Commerce officials told us they don't keep copies of these computer-generated letters, and Department of Transportation officials told us they only began keeping copies of these letters in November 2006—after our sample period.

We noted two other issues during our review that could affect veterans' ability to obtain employment with the State. These issues involve certain classified jobs not being posted in SHARP, and a weakness in the system for ensuring that veterans' eligibility for veterans' preference is recorded.

- At the time of the audit, Winfield Correctional Facility wasn't posting vacant corrections officer I positions on the State's website. State regulations require agencies to post all classified job vacancies in SHARP, the State's personnel and payroll system. Once in SHARP, job opportunities can be viewed easily on-line. Officials from Winfield Correctional Facility told us they weren't posting corrections officer I positions in SHARP because these positions were always open and were posted on the Department's own website, and there's continual testing when applications are received. Not posting classified positions in SHARP makes it less likely that potential applicants—including veterans—will become aware of those jobs. Officials from Winfield Correctional Facility and the Department of Corrections have since decided to post this position in SHARP.
- The system for documenting whether a veteran is eligible for veterans' preference has some weaknesses. Because not every veteran is eligible for veterans' preference, someone must review the DD-214 forms veterans submit to determine whether they meet the service and discharge requirements. Current instructions on the State's website say veterans should submit the DD-214 form the first time they apply for a State job (unless it's been more than three years since the form was submitted). The agency that receives the DD-214 form is responsible for determining the applicant's eligibility for veterans' preference and for recording that information in SHARP (where other agencies could confirm the veteran's eligibility for veterans' preference). If that information isn't recorded in SHARP, and if the veteran doesn't submit a DD-214 form for each job he or she applies for, State officials may incorrectly assume the veteran is ineligible for veterans' preference.

***We Saw No Evidence
That Veterans Received
Only "Token" Interviews***

Under K.S.A. 75-2955, veterans' preference for State classified positions simply requires that eligible veterans who meet minimum qualifications for the job receive an interview. However, one of the concerns we originally heard from veterans organizations was that veterans thought they weren't being considered seriously, that their interviews were simply a formality, and that some thought the position already had been filled by the time they were interviewed.

To address this concern, we reviewed the interview records for the 102 veterans in our sample who received an interview, and compared those to interview records of non-veteran applicants for the same position. For each position, we determined whether:

- the same number of people conducted the interviews for both veterans and non-veterans

- the same people interviewed all applicants
- all applicants were asked the same questions
- the interview was conducted before the position was filled

We saw no evidence that veterans were being treated differently than non-veteran applicants in the interview process. In all cases, records indicated the same people interviewed all the applicants for a particular position, standard interview questions or standard tests were used, and all interviews were conducted before the position was filled. In most cases, all interviews for a particular job were conducted over a one- to two-day period.

In addition, although we didn't do a complete side-by-side content analysis of interview notes, we reviewed enough of them to assure ourselves that interviewers were taking notes during interviews with veterans and that those notes, on the surface, didn't suggest a "token" interview.

***It's Unclear Whether
State Unclassified
Positions Are Subject to
Any Veterans' Preferences***

As described in the Overview, the 1886 veterans' preference law (K.S.A. 73-201) applied to all State, county, and city government jobs. When the Kansas Civil Service Act (K.S.A. 75-2955) was passed in 1941, it created classified and unclassified jobs at the State level, and created a new type of veterans' preference for State classified jobs. The Act makes no mention of veterans' preference for unclassified State positions.

Unclassified State positions include most policy-making positions within the executive branch, many positions at the Regents' universities, and all positions within the legislative and judicial branches of government. Agencies aren't required to post unclassified job openings, the positions don't have to be filled competitively, and employees hired for these positions can be fired at-will.

Officials with the Division of Personnel Services have not interpreted the law as requiring State agencies to apply a veterans' preference for unclassified positions. Although there is nothing in writing, Division officials told us that, to their knowledge, this provision has been interpreted this way for as long as anyone could remember.

Based on our reading of the law, we think it could be interpreted in different ways:

- on the one hand, you could argue that, because the Kansas Civil Service Act created a veterans' preference only for State classified positions, unclassified positions remain subject to K.S.A. 73-201.

That would require State agencies to hire veterans who apply for unclassified jobs and meet eligibility requirements, if the agency deems them to be competent for the job.

- on the other hand, you could argue that State unclassified jobs were created under the Kansas Civil Service Act, and because that Act is silent on veterans' preference for unclassified positions, no preference exists.

Whether a veterans' preference applies to State unclassified jobs likely will remain unclear until the Legislature clarifies the statute or a challenge is brought to the Kansas Supreme Court. House Bill 2562, as introduced and amended by the House during the 2007 legislative session, explicitly states that veterans' preference does not apply to State unclassified positions or to any other "at-will" employment. As of April 2, 2007, this bill had passed the House and had been referred to the Senate Federal and State Affairs Committee.

Conclusion

Veterans' preference under the Kansas Civil Service Act entitles eligible veterans to an interview for State classified positions, so long as the veteran meets minimum qualifications for the job. This guarantee of an interview, rather than a job, is in keeping with the merit-based foundation of civil service, which seeks to award jobs to the best-qualified candidate. Our review of 144 veterans found only 3 who didn't receive an interview when they should have, and we saw no evidence to suggest that interviews that did occur were "token" interviews. However, in cases where a veteran who meets only the minimum qualifications for a job is competing against a pool of applicants who possess preferred qualifications, the outcome is not likely to be in the veteran's favor. Such situations may be contributing to veterans dissatisfaction with the process.

Recommendations

1. To help ensure that veterans who apply for classified State positions receive the full consideration intended by the Legislature, the Division of Personnel Services should develop and implement a strategy to ensure that, when a veteran submits a DD-214 form to support a claim for veterans' preference, a determination of eligibility is made and recorded. Because it's difficult under the current policy to monitor whether individual agencies are consistently determining eligibility for veterans' preference and entering that information into the State's personnel system, a new strategy should consider centralizing that responsibility, perhaps within the Division of Personnel Services or the Commission on Veterans Affairs.

2. To ensure that it complies with State law and regulation regarding veterans' preference, the Department of Commerce should interview all veteran applicants who meet the minimum qualifications for a position. If those qualifications are overly broad, the Department officials should work with the Division of Personnel Services to revise job classifications to ensure that minimum qualifications are directly applicable to the position.
3. To comply with the requirements of K.A.R. 1-6-2, Winfield Correctional Facility should begin entering information to the SHARP system on each vacancy the agency seeks to fill.
4. To help ensure that veterans' preference is applied to the types of positions intended, the Legislature should amend State law to clearly state what, if any, veterans' preference applies to State unclassified jobs. Among the options the Legislature could consider is passing, or further amending, the provisions of Substitute for HB2562 which clearly specify that veterans' preference doesn't apply to State unclassified positions.

APPENDIX A

Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee for this audit on July 11, 2006. The audit was requested by Senator Derek Schmidt.

State Hiring Practices: Determining Whether Requirements Related to Veterans' Preferences Are Being Met

Kansas has had laws in effect since 1886 that grant a hiring preference to military veterans. Currently, two laws remain on the books related to this issue. K.S.A. 73-201 is a broad statute saying that veterans shall be preferred for appointments and employed to fill positions for the State of Kansas and all counties and cities of the State. K.A.R. 1-6-21, which implements the provisions of K.S.A. 75-2955, requires that veterans applying for State positions be granted an interview if they meet the qualifications for the vacant position.

In a 2004 opinion, the Attorney General indicated that, in any situation where the requirements of both of these statutes could not be met, the provisions of K.S.A. 75-2955 would supercede the provisions of K.S.A. 73-201.

Legislators have heard complaints from veterans who have said they weren't allowed an interview when they applied for a position with the State, and they want to know whether there is a significant problem with the law not being followed.

A performance audit of this topic would answer the following question:

1. Are State agencies following the requirements of State law and regulations related to granting a preference to veterans in the hiring and competitive promotion process?

To answer this question we would become familiar with the requirements for veterans preferences in hiring. We would contact officials from organizations such as the American Legion, the Veterans of Foreign Wars, the GI Forum, KAPE, and the Division of Personnel Services that might be aware of complaints from veterans who've applied for a job and not been granted an interview. Based on discussions with officials from these entities, we would select a small sample of agencies and review the documentation for recent positions they've filled to determine whether they met the requirements of State law and regulations for any veterans who may have applied for those positions.

Estimated Time to Complete: 4-6 weeks

APPENDIX B

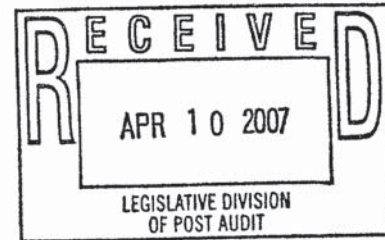
Agency Responses

On April 3, 2007 we provided copies of the draft audit report to the Departments of Administration, Commerce, and Transportation, and Lansing and Winfield Correctional Facilities. Their responses are included as this Appendix.

The agencies generally concurred with the report's findings, conclusions, and recommendations. Lansing Correctional Facility didn't submit a formal response to the report.

April 10, 2007

Barbara J. Hinton
Legislative Post Auditor
800 SW Jackson Street, Suite 1200
Topeka, KS 66612-2212



Dear Ms. Hinton:

Thank you for the opportunity to respond to the Legislative Post Audit's report on *State Hiring Practices: Determining Whether Requirements Related to Veterans' Preferences Are Being Met*. I am pleased to present the following official response.

On behalf of Department of Administration staff, I would like to thank you for your efforts during this audit. Your staff was courteous, knowledgeable and receptive during all discussions and meetings, and their professionalism was greatly appreciated.

With respect to Recommendation #1 of the report, a team of staff from the Division of Personnel Services and Human Resources staff from various agencies are currently examining the policies, procedures and practices involved in the veterans' preference process, including the submission and verification of DD-214 forms. The Division of Personnel Services and the team reviewing this subject both concur with the recommendation of the audit, so the process is currently underway to revise the current procedures and system in order to centralize the verification of DD-214's within the Division.

Staff from the Division of Personnel Services would welcome the opportunity to meet with members of your staff to discuss this revision in order to insure that our efforts will address the issues found by your staff with the current process. Once the revisions are finalized, the Division will obtain feedback from the State's Human Resource Community and work in partnership with agency Human Resource staff to implement the new process. The Director of Personnel Services will inform your staff of the final changes to the process that are made as a result of this review.

We will continue to refine our current policies as well as look to develop new initiatives to attract this highly qualified group of applicants to State service. While we believe offering these men and women a preference is an important recognition of their dedication and sacrifice, we also believe that veterans represent a tremendous resource of motivated and skilled applicants for State jobs and we are committed to finding other ways to assist veterans in employment with the State of Kansas.

Barbara Hinton
April 10, 2007
Page 2

Again, thank you very much for the opportunity to review the report.

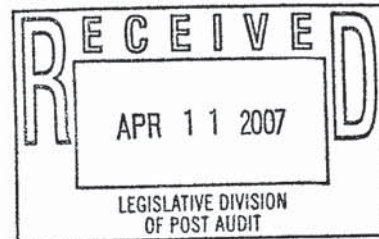
Sincerely,

A handwritten signature in black ink, appearing to read "Duane A. Goossen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Duane A. Goossen
Secretary of Administration

April 10, 2007

Legislative Division of Post Audit
800 SW Jackson St, Ste 1200
Topeka, KS 66612-2212



Dear Ms. Hinton:

Thank you for the opportunity to provide comment regarding the draft LPA report, *State Hiring Practices: Determining Whether Requirements Related to Veterans Preferences Are Being Met*.

Though we question how you selected your random sample of agencies to review for the purposes of this audit we will confine our remarks to the following:

1. Based on your findings Commerce committed an administrative oversight involving one out of 60 veterans who applied for vacancies with our agency but was not interviewed. Though statistically this appears quite low, we take our commitment to our nation's veterans very seriously and will make every effort to ensure such oversight does not occur again in the future.
2. Your report also indicates that Commerce did not provide adequate clarification of minimum requirements during the interview process for a vacant EDRIII position in the Trade Development Division. We will collaborate with DPS guidelines to improve the minimum requirements to address the current needs of EDR positions. Position descriptions for posted vacancies will include the specific "minimum requirements" statement rather than a reference to class specifications. This modification will begin immediately and will continue as vacant positions are posted.
3. On page 7 of your draft report you state, "Department of Commerce officials agreed that this veteran should have been interviewed, and said they had no explanation for why no interview was offered." We believe that statement mischaracterizes our response. We would ask that sentence be replaced to indicate that we acknowledged our oversight and indicated we would make every effort to ensure it did not happen in the future.
4. Finally, we would respectfully suggest that LPA add context to their report by providing a little more history regarding the statutes that govern Veteran's Preference because the statute dates back to 1886 and because Veteran's Preference was the topic of

Legislative debate during the 2007 session. Additional background would be beneficial to the LPA Committee members as well as other Legislators who read the report.

Sincerely,

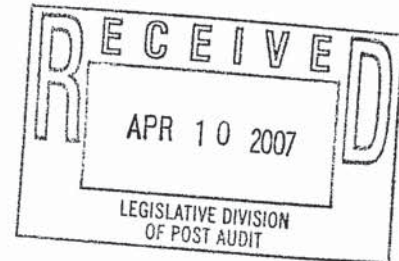

David Kerr
Secretary

DK:PC:JJM

cc: George Vega
Patty Clark

April 9, 2007

Barbara J. Hinton, Legislative Post Auditor
Legislative Division of Post Audit
800 Southwest Jackson Street, Suite 1200
Topeka, Kansas 66612-2212



Dear Ms. Hinton:

This letter is in response to the recently completed draft of the performance audit *State Hiring Practices: Determining Whether Requirements Related to Veterans' Preferences Are Being Met*. The Kansas Department of Transportation (KDOT) was one of the four agencies that were reviewed based on concerns expressed by veterans.

The audit indicated that KDOT had posted 442 job openings in SHARP during the audit period and 222 openings had at least one veteran applicant. The audit found that KDOT has consistently granted interviews to qualified veterans who applied for classified positions, with only one instance in which a veteran was not in the interview pool due to an administrative error.

KDOT has taken steps to avoid this type of occurrence in the future. Since November 2006, KDOT tracks all applicants claiming veterans' preference and the receipt of the DD-214. Our objective is to receive the DD-214 as soon as possible in order to verify status and to include those eligible in the interview pool of candidates. When an applicant claims veterans' preference but has not submitted a DD-214 the applicant is contacted by email (in reply to their application) and by phone or letter requesting the submission of the DD-214.

I am pleased with the findings of the audit in that KDOT, in nearly all cases reviewed, is appropriately interviewing veterans and following the requirements related to Veterans' Preference. Furthermore, I concur with the recommendation to centralize the determination of veterans' preference eligibility. Having one designated entity responsible for determining eligibility and verification will result in a more efficient and consistent process.

Sincerely,



Deb Miller
Secretary of Transportation

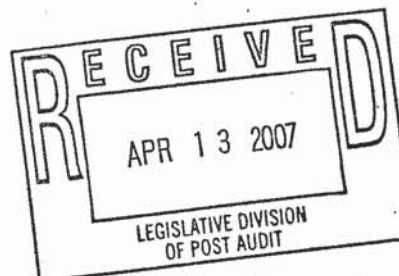
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WINFIELD CORRECTIONAL FACILITY/WICHITA WORK RELEASE FACILITY
Emmalee Conover, Warden

March 12, 2007



Barbara Hinton, Legislative Post Auditor
Legislative Division of Post Audit
800 SW Jackson Street, Suite #1200
Topeka, KS 66612-2212

Dear Ms. Hinton:

I have reviewed the draft copy of the completed performance audit, *State Hiring Practices: Determining Whether Requirements Related to Veterans' Preferences Are Being Met*.

I was pleased, but not surprised, to see that Winfield Correctional Facility had no deficiencies in any of the areas audited.

The one recommendation for our agency has already been implemented.

Sincerely,



Emmalee Conover, Warden
Winfield Correctional Facility

Xc: File

Emmalee Conover, Warden

Winfield Correctional Facility
1806 Pinecrest Circle
Winfield, KS 67156
Phone: (620) 221-6660
Fax: (620) 221-9229

Wichita Work Release Facility
401 South Emporia
Wichita, KS 67202
Phone: (316) 265-5211
Fax: (316) 262-5936