

N A V Y D E P A R T M E N T

SOSED-4-SM

WASHINGTON

October 16, 1940

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C I R C U L A R L E T T E R

From: Secretary of the Navy.
To: All Naval and Marine Corps Activities Concerned.
Subject: Removal of undesirable persons from the Government Service.
References: (a) Dept's. Cir. Let. SOSED-4-SM of July 24, 1940.
(b) U. S. Civil Service Comm's. Departmental Cir. No. 222, file CX:JF:am of June 20, 1940.
(c) Dept's. Cir. Let. SOSED-O-Kr-9/11 (SC) LL/Pl9-1, CONFIDENTIAL, of Sept. 11, 1940.

1. Reference (b) is quoted below for information and guidance:

"TO HEADS OF DEPARTMENTS AND INDEPENDENT ESTABLISHMENTS:

Attention is invited to Section 1 of Civil Service Rule XII, regulating removals from the classified service, which reads as follows:

'No person in the classified service of the United States shall be removed therefrom except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Commission also shall, upon request, be furnished copies of the same.'

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It will be noted from the foregoing rule that all that is required to effect the removal of an employee from the classified service is that he be given notice of the charges against him in writing and afforded a reasonable time to answer in writing. No examination of witnesses is required nor any trial or hearing except in the discretion of the officer making the removal.

Section 2 of Rule XII requires that in removals, reductions, and other disciplinary actions, like penalties be imposed for like offenses and that no discrimination be exercised for political or religious reasons. Section 9A of the Act of August 2, 1939, the so-called Hatch Act, however, provides as follows:

'(1) It shall be unlawful for any person employed in any capacity by any agency of the Federal Government, whose compensation, or any part thereof, is paid from funds authorized or appropriated by any act of Congress, to have membership in any political party or organization which advocates the overthrow of our constitutional form of government in the United States.

'(2) Any person violating the provisions of this section shall be immediately removed from the position or office held by him, and thereafter no part of the funds appropriated by any act of Congress for such position or office shall be used to pay the compensation of such person.'

It will be noted from the foregoing statute that the removal of any person who is a member of a political party or organization which advocates the overthrow of our constitutional form of Government in the United States is mandatory. This ground for removal, therefore, constitutes an express statutory exception to the provision in Section 2 of Civil Service Rule XII prohibiting removals for political reasons.

The Civil Service Commission has implemented Section 9A of the Hatch Act by ruling that as a matter of official policy it will not certify to any department or agency the name of any person when it has been established that he is a member of the Communist party, the German Bund, or any other Communist, Nazi, or Fascist organization. This ruling is parallel to subsection (e) of section 15 of H. R. Res. 544, making appropriations for work relief and relief for the fiscal year 1941, which was passed by the House of Representatives on May 23, 1940. This subsection reads as follows:

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'No alien, no Communist, and no member of any Nazi Bund Organization shall be given employment or continued in employment on any work project prosecuted under the appropriations contained in this joint resolution and no part of the money appropriated in this joint resolution shall be available to pay any person who has not made or who does not make affidavit as to United States citizenship and to the effect that he is not a Communist and not a member of any Nazi Bund Organization, such affidavit to be considered prima facie evidence of such citizenship, and that he is not a Communist, and not a member of any Nazi Bund Organization.'

(NOTE:- The foregoing provision became law June 26, 1940. See Section 15(f) of Emergency Relief Appropriation Act for 1941.)

The attention of all departments is further invited to the fact that every employee of the Government who has taken an oath of office has sworn (or affirmed) that he will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that he will bear true faith and allegiance to the same.

In view of the exigencies of the times, the Commission believes that Government agencies may freely take these matters into consideration in determining whether the removal of a particular employee will 'promote the efficiency of the service' within the meaning of Section 1 of Civil Service Rule XII. Final decision in that respect in any event rests with the department or agency concerned, and the Commission is expressly prohibited by the civil service rules (Section 4, Civil Service Rule XII) from reviewing the findings of a removing officer or investigating any removal or reduction unless it is alleged with offer of proof that the procedure prescribed by Section 1 of Rule XII has not been followed, or that the removal was made for political or religious reasons. As stated above, however, membership in a political party or organization which advocates the overthrow of our constitutional form of government constitutes a ground for mandatory removal and the Commission, therefore, will not investigate any removal which the department or agency reports was made pursuant to Section 9A of the Hatch Act.

* * *

By direction of the Commission:

Very respectfully,
/s/ L. A. Moyer,
Executive Director and Chief Examiner."

2. In connection with the foregoing circular of the U. S. Civil Service Commission, attention is invited to references (a) and (c).

/s/ Lewis Compton
Acting.

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