NATIONAL ADMINISTRATIVE REGISTER · APRIL 4, 2011

RESOLUTION STATING THE POSITION OF NAPOLCOM ON THE INTERPRETATION OF THE LAST PARAGRAPH OF SECTION 25 OF R.A. NO. 8551 AND AMENDING THE LAST PARAGRAPH OF SECTION 27 OF THE IMPLE...

NAPOLCOM RESOLUTION NO. 2011-077, April 04, 2011

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WHEREAS, in a request for Opinion to the DOJ, dated October 14, 2010, the PNP sought advice on the proper interpretation of the last paragraph of Section 25 of R.A. 8551, which reads:

> "Attrition by Attainment of Maximum tenure in Position. The maximum tenure of PNP members holding key positions is hereby prescribed as follows:
>
> x x x
>
> Except for the Chief, PNP, no PNP member who has less than one (1) year of service before reaching the compulsory retirement age shall be promoted to a higher rank or appointed to any other position.":

WHEREAS, the PNP in its query, took the position that the one (1) year bar rule applies only to promotions but not to placements, designations and assignments and that a PNP officer who has less than one year before his or her compulsory retirement may not be promoted to a higher rank, but may still be assigned to a position as long as such position does not call for a higher rank;

WHEREAS, in DOJ Opinion No. 7, series 2011, the Department of Justice stressed that "Section 25 clearly states that the one year bar rule applies only to promotion and appointment, not to designation and assignment". It, thus agreed that the PNP's" observation – that only promotion to a higher rank can be considered as appointments, while designations and assignments are merely covered by General or Special Orders – is legally correct and should be considered in the interpretation of Section 25 of RA 8551 and Section 27 of its IRR." It further opined that "appointments are with regard to rank and not to specific positions, that positions are merely designated after the appointment to a particular rank is made, and that such designation does not carry a corresponding appointment"

WHEREAS, the DOJ further states that "appointment is the selection by the appointing authority vested with the power of an individual who is to exercise the functions of a given office. Once completed, the appointment results in security of tenure for the person chosen unless, due to the nature of his office, he is replaceable at pleasure. Designation, on the hand, connotes merely the imposition by law of additional duties on an incumbent official to be performed by him in a s special manner";

WHEREAS, the Commission finds merit in the position taken by the DOJ regarding the interpretation of the last paragraph of Section 25 R.A. No. 8551 and the need to amend Section 27, last paragraph of the IRR of R.A. No. 8551 even as it stresses that the above interpretation supports and bolsters the power of the Chief, PNP to direct and control tactical as well as strategic movements, deployment, placement, utilization of the PNP or any of its units or personnel including its equipment, facilities and other resources under Section 26 of RA 6975.

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WHEREAS, in view of the above considerations, the provisions of the last paragraph of Section 27 of the IRR of RA 8551, which includes the words “designated or assigned,” which unduly expanded the scope and ambit of the law, should be removed or deleted, for being ultra vires;

NOW THEREFORE, the COMMISSION, in the exercise of its constitutional and statutory authority to administer and control the PNP, RESOLVED, AS IT HEREBY RESOLVES, TO CLARIFY that the last paragraph of Section 25 of R.A. No. 8551 should be interpreted to mean that, except for the Chief, PNP, no PNP member who has less than one (1) year of service before reaching the compulsory retirement age shall be promoted to a higher rank or appointed to any other position that calls for a higher rank.

RESOLVED FURTHER, that the last paragraph of Section 27 of the IRR of RA 8551, which reads:

> “Except for the Chief, PNP, no PNP member who has less than one (1) year of service before reaching the compulsory retirement age shall be promoted to a higher rank or designated or assigned to any other position.”

should be, as it is hereby, amended as follows:

> “Except for the Chief, PNP, no PNP member who has less than one (1) year of service before reaching the compulsory retirement age shall be promoted to a higher rank or appointed to any other position that calls for a higher rank.”

This Resolution shall take effect fifteen (15) days from the date of publication in at least two (2) newspapers of general circulation and a copy of the same filed with the UP Law Center in consonance with the Administrative Code of 1987.

Adopted: 4 April 2011

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