

POLICY ON THE COVERAGE OF THE ELECTION BAN ON APPOINTMENTS UNDER THE 1987 CONSTITUTION AND THE OMNIBUS ELECTION CODE

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WHEREAS, paragraph 2, Article IV, Part III of the Integrated Reorganization Plan (IRP), as amended, mandated the Career Executive Service Board (CESB) as the governing body of the Career Executive Service (CES), to promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the CES;

WHEREAS, under Article VII, Section 15 of the 1987 Constitution it is stated that, “Two months immediately before the next Presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety”;

WHEREAS, Section 261 (g) of the Omnibus Election Code states that:

“Section 261. Prohibited Acts. - The following shall be guilty of an election offense:

XXX

(g) Appointment of new employees, creation of new position, promotion, or giving salary increases. - During the period of forty- five days before a regular election and thirty days before a special election, (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office concerned, and that the position shall not be filled in a manner that may influence the election.

As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need: Provided, however, That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.”.

WHEREAS, under the ruling of the Supreme Court in the case of Binamira vs. Garrucho, G.R. No. 92008, July 30, 1990, appointment was defined as the “selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office”;

WHEREAS, paragraph (c), Article IV, Part III of the IRP states that, “Appointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank”;

WHEREAS, in Amores vs. Civil Service Commission, et al, G. R. No. 1700093, April 29, 2009, the Supreme Court ruled that appointment to rank made by the President completes an official’s membership in the CES and confers on him security of tenure in the CES;

WHEREAS, on 9 March 2010, in the case of PEZA Board of Directors and Lilia B. De lima vs. Gloria J. Mercado, G.R. No. 172144, the Supreme Court ruled that, it is settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts;

WHEREAS, for purposes of preventing any future confusion that may arise regarding the coverage of the election ban on appointments embodied in the 1987 Constitution and the Omnibus Election Code, it is imperative for the CESB to address the matter;

NOW THEREFORE, foregoing premises considered and pursuant to the mandate of the CESB as the governing body of the CES, to promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive Service, the Board hereby RESOLVES and ADOPTS the following:

1. In its legal sense, appointment to a position pertains to selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office;
2. Appointment to a CES rank cannot properly be deemed synonymous to an appointment to a position in the legal sense for it is merely a completion of a previous appointment and does not entail the conferment of an authority to exercise the functions of an office.
3. In the CES concept, the word 'appoint' means a step in the bestowal of a CES rank, to which one is entitled after having complied with all the requirements prescribed by the CESB.

APPROVED this 2[nd] day of June 2010 in Tacloban City, Leyte, Philippines.

(SGD.) BERNARDO P. ABESAMIS

Chairperson

(SGD.) FRANCISCO T. DUQUE III

Vice-Chairperson

(SGD.) PROCESO T. DOMINGO

(SGD.) ANTONIO D. KALAW

Member

Member

(SGD.) SUSAN M. SOLO

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(SGD.) SUSANA D. VARGAS

Member

Attested by:

(SGD.) GLENN NINO M. SARTILLO

Board Secretary

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