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REITERATING THE CONTINUING EFFECTIVITY OF CESB RESOLUTION NO. 799, S. 2009

CESB RESOLUTION NO. 845, January 12, 2010

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WHEREAS, paragraph 2, Article IV, Part Ill of the Integrated Reorganization Plan I (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 Career Executive Service;

WHEREAS, in Eugenio vs. CSC, G.R. No. 115863, March 31, 1995, the Supreme Court recognized the existence, mandate and authority of the CESB over third level positions and its autonomy from the CSC;

WHEREAS, under the same case, the Supreme Court also enunciated that the CESB is attached only to the CSC for purposes of attaining policy and program coordination;

WHEREAS, CESB Resolution No. 799, circularized in Memorandum Circular No. 3, and Civil Service Commission (CSC) Resolution No. 8226, circularized in Memorandum Circular (MC) No. 2, s. 2009, both acknowledged that the third level shall be composed of CES position as well as those positions occupied by non-presidential appointees that are above Division Chief Level and performing executive or managerial functions;

WHEREAS, in the most recent case of Amores vs. CSC, G.R. 1700093, April 29, 2009, the Supreme Court upheld the requirement for CES Eligibility and the appointment to CES rank by the President to an incumbent of a CES position to complete the official's membership in the CES and be conferred security of tenure;

WHEREAS, in the above-said case, Jose Pepito Amores, a non-Presidential appointee, was occupying the position of Deputy Director in the Lung Center of the Philippines which was classified by the Career Executive Service Board as a CES Position;

WHEREAS, on November 19, 2009, CSC Acting Chairman Cesar D. Buenaflor, issued CSC Office Memorandum (OM) No. 67, s. 2009, ordering all heads of the Central, Regional and Field Offices of the CSC to (1) approve or validate all appointments issued to non-CES positions if the sole issue is the appointee's lack of third level eligibility; (2) recall the disapproval or invalidation of the approval of appointments previously made on appointments to non-CES positions if the only issue is the appointee's lack of third level eligibility and make proper coordination with the concerned government for the resubmission of such appointments; and, (3) act on all appointments or cases pending involving non-CES positions which were not acted upon by virtue of OM 50, s. 2008 and OM 37, s. 2009;

WHEREAS, in essence, OM 67 has classified positions not requiring Presidential appointments, which are above Division Chief Level and performing managerial and executive functions, as part of the second level and thus only require second level eligibility for appointment thereto, which is in contradiction to what was stated in paragraph 1(b) and (c), Section 8, Chapter 2, Subtitle A, Title I, Book V of the Administrative Code of 1987 and the Supreme Court rulings in the cases of Caringal vs. PCSO, G.R. No. 161942, October 13, 2005, and Abella vs.

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CSC, G.R. No. 152574, November 17, 2004;

WHEREAS, after the issuance of OM 67, numerous inquiries from CESOs and CES Eligibles from various government offices were received by the CESB Secretariat expressing therein their reactions and apprehensions regarding their status and the qualification standards being set for positions similar to theirs within their agency, particularly, the eligibility requirements thereof;

WHEREAS, there is a need to clarify the confusion in the implementation of the policies of the CSC and CESB resulting from the issuance of OM 67;

NOW THEREFORE, foregoing premises considered, the Board hereby resolved pursuant to its mandate and authority over third level positions and its autonomy from the Civil Service Commission (CSC), the CESB hereby lays down the following guidelines pertaining to the third level:

1. The CESB reaffirms the continuing effectivity of CESB Resolution No. 799, dated May 19, 2009, circularized in Memorandum Circular No. 3, s. 2009, especially the provisions classifying the following positions as within the coverage of the Career Executive Service (CES), to wit:

a. The Career Executive Service includes the positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director (department-wide and bureau-wide), Assistant Regional Director (department-wide and bureau-wide), and Chief of Department Service;

b. Unless provided otherwise, all other managerial or executive positions in the government, including government-owned or controlled corporations with original charters are embraced within the CES provided that they meet the following criteria:

i.) The position is a career position;
ii.) The position is above division chief level; and,
iii.) The duties and responsibilities of the position require the performance of executive and managerial functions.

2. The CESB hereby clarifies that the positions in the CES and/or Third Level shall also be composed of positions occupied by non-presidential appointees that are above division chief level and performing executive and managerial functions.

3. For non-presidential positions comprising the CES, the CESB maintains, for purposes of policy and program coordination, that the appropriate qualification standards for appointments thereto is CES/third level eligibility, as stated in Section 2 of Civil Service Commission CCSC) Resolution No. 8226, dated December 2, 2008, circularized in CSC Memorandum Circular No. 2, s. 2009, as well as the authority of the CESS to prescribe entrance to the third level, as set forth in Section 8 (2), Chapter 2, Subtitle A, Title I, Book V of the Administrative Code of 1987.

4. The CESB further clarifies that OM 67 did not, in anyway, amend, revoke nor negate the enforceability and effectivity of CESB Resolution No. 799, stating therein the coverage of the CES.

Adopted: 12 January 2010

(SGD.) BERNARDO P. ABESAMIS

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