



MC No. 2, s. 2009

## MEMORANDUM CIRCULAR

**TO :** ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL AND LOCAL GOVERNMENT UNITS, INCLUDING STATE UNIVERSITIES AND COLLEGES, AND GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS

**SUBJECT :** Policy Guidelines Governing Managerial and Executive Positions in the Civil Service.

Pursuant to CSC Resolution No. 08-2226, dated December 2, 2008, the Commission has reaffirmed its guidelines governing the third level and managerial and executive positions in the civil service. These guidelines were formulated to address questions regarding the scope and coverage of the third level in the Philippine civil service to advance morale, meritocracy, and excellence in the bureaucracy.

Cognizant of the various jurisprudence on the matter as exemplified by the cases of **HIGC vs. CSC (G.R. No. 95450, March 19, 1993)** and **Ombudsman vs. CSC (G.R. No. 162215, July 30, 2007)**, on the one hand, and the cases of **Caringal vs. PCSCO (G.R. No. 161942, October 13, 2005)**, **Abella vs. CSC (G.R. No. 152574, November 17, 2004)**, and **Erasmio vs. HIGC (G.R. No. 139251, August 29, 2002)**, on the other hand, the Commission has seen fit in the prudent and circumspect exercise of its rule-making authority to lay down the following guidelines pertaining to the third level:

1. It reaffirms the continuing effectivity of **CSC Resolution No. 94-2925, dated May 31, 1994 (circularized in CSC Memorandum Circular No. 21, s. 1994)**, especially in classifying other positions as belonging to the third level with the following characteristics:
  - a. The position is a career position;
  - b. The position is above division chief level; and,
  - c. The duties and responsibilities of the position require the performance of executive or managerial functions.
2. The CSC takes this opportunity to clarify that the third level shall be composed of CES positions as well as those positions occupied by non-presidential appointees that are above division chief level and discharging managerial and executive functions.

3. For non-presidential positions comprising the third level, the CSC maintains its legal competence and authority to prescribe the appropriate eligibility requirement, which is third level eligibility, in line with its approving authority over qualification standards established and maintained by government agencies, as set forth in **Section 22 (2), Chapter 5, Title I-A, Book V of the Administrative Code of 1987**, as well as its power to control the administration of civil service examinations pursuant to the same Code;
4. Given the independent character of the constitutional offices, as pronounced in the case of **Ombudsman vs. CSC**, *supra.*, the CSC respects their authority to develop and prescribe their respective eligibility requirements for positions in their plantilla that may be categorized as third level within the parameters of CSC Resolution No. 94-2925, provided that their test of fitness shall be undertaken with the assistance and in coordination with the CSC and the resulting eligibility therewith shall be applicable exclusively to them.

Under the same Resolution, the Commission has expressly declared that all its existing issuances not in conformity with it are deemed superseded, repealed, amended or modified accordingly. Nevertheless, it is to be understood that all rights that have become vested under these existing issuances shall be observed.

For proper guidance and compliance.



**RICARDO L. SALUDO**  
Chairman

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January 14, 2009

*Ola/agr/apt/x27(24)*  
*Memo-third level/vog*

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CSC Res No. 082226 – published in the Official Gazette on January 5, 2009



**Authority of the Commission  
Over Third Level Positions**

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**RESOLUTION NO. 082226**

**WHEREAS**, the 1987 Philippine Constitution mandates the Civil Service Commission (CSC), as the central personnel agency of the government, to establish a career service founded on morale, efficiency, integrity, responsiveness and courtesy, and shall also endeavor to strengthen the merit and reward system as well as integrate all human resource development programs for all levels and ranks;

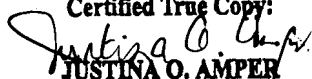
**WHEREAS**, the CSC is empowered under the Administrative Code of 1987 to administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the civil service;

**WHEREAS**, the CSC is likewise mandated to prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the civil service and other pertinent laws as well as to promulgate policies, standards and guidelines to promote economical, efficient and effective public personnel administration;

**WHEREAS**, the Administrative Code of 1987 provides for the three major levels of positions in the career service, as follows:

1. The first level, which shall include clerical, trades, crafts and custodial service positions having non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;
2. The second level, which shall include professional, technical and scientific positions involving professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to division chief level; and
3. The third level, which shall cover positions in the Career Executive Service (CES).

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**WHEREAS**, in the exercise of its rule-making power and authority to administer civil service laws for all levels and ranks in the civil service, the CSC promulgated **CSC Memorandum Circular (MC) No. 21, s. 1994**, defining and identifying the supervisory and executive positions above division chief that are within the coverage of the CES;

**WHEREAS**, **CSC MC No. 21, s. 1994**, provides that in addition to the CES positions enumerated in the Administrative Code of 1987 as well as those previously classified by the CESB, all other positions in government agencies shall belong to the CES and the third level based on the following criteria:

1. The position is a career position;
2. The position is above division chief level; and,
3. The duties and responsibilities of the position require the performance of executive or managerial functions.

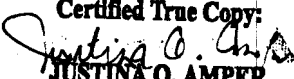
**WHEREAS**, the CSC likewise promulgated **CSC MC No. 1, s. 1997 (Revised Qualification Standards)**, specifying the parameters of a division chief position:

1. Career position;
2. Salary Grade 24; and
3. The highest position in the division/department or in the hierarchy as reflected in the Index of Occupational Services (IOS) carrying a salary grade of 24.

**WHEREAS**, the CSC takes note of the jurisprudential pronouncements of the Supreme Court in the cases of **Home Insurance and Guaranty Corporation (HIGC) vs. CSC (G.R. No. 95450, March 19, 1993)** and **Office of the Ombudsman vs. CSC (G.R. No. 162215, July 30, 2007)**, reiterating the statutory provision that the positions in the CES shall consist of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board (CESB), all of whom are appointed by the President;

**WHEREAS**, the Supreme Court, in the cases of **Caringal vs. PCSO (G.R. No. 161942, October 13, 2005)** and **Abella vs. CSC (G.R. No. 152574, November 17, 2004)**, has considered managerial positions, appointments to which were not made by the President, to be CES positions requiring the corresponding third level eligibility;

**WHEREAS**, in the other case of **Erasmus vs. HIGC (G.R. No. 139251, August 29, 2002)**, the Supreme Court has also accepted the view that a Vice-President position in the HIGC similar to the one involved in the **HIGC vs. CSC, supra**, was deemed to be a CES position, notwithstanding its not being a presidential appointee;

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**WHEREAS**, the Supreme Court, in the above-cited case of **Abella vs. CSC**, *supra*, sustained the constitutionality of **CSC MC No. 21, s. 1994**, as being in consonance with the rule-making authority of the CSC to issue guidelines defining and identifying positions covered by the CES;

**WHEREAS**, a careful analysis of the foregoing jurisprudence reveals that while CES positions come invariably within the appointing power of the President, there exists positions that are above the level of division chief performing managerial or executive functions that are occupied by non-presidential appointees;

**WHEREAS**, there is a need for the CSC to clarify the classification of these positions for purposes of eligibility requirement, among others, as they do not come within the purview of the second level as defined under the civil service law and rules;

**WHEREFORE**, pursuant to its mandate of promoting meritocracy and high morale in the civil service by prescribing uniform qualifications for positions performing executive and managerial functions, the CSC hereby lays down the following guidelines pertaining to the third level:

1. It reaffirms the continuing effectivity of **CSC Resolution No. 94-2925, dated May 31, 1994 (circularized in CSC Memorandum Circular No. 21, s. 1994)**, especially in classifying other positions as belonging to the third level with the following characteristics:
  - a. The position is a career position;
  - b. The position is above division chief level; and,
  - c. The duties and responsibilities of the position require the performance of executive or managerial functions.
2. The CSC takes this opportunity to clarify that the third level shall be composed of CES positions as well as those positions occupied by non-presidential appointees that are above division chief level and discharging managerial and executive responsibilities.
3. For non-presidential positions comprising the third level, the CSC maintains its legal competence and authority to prescribe the appropriate eligibility requirement, which is third level eligibility, in line with its approving authority over qualification standards established and maintained by government agencies, as set forth in **Section 22 (2), Chapter 5, Title I-A, Book V of the Administrative Code of 1987**, as well as its power to control the administration of civil service examinations pursuant to the same Code.

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4. Given the independent character of the constitutional offices, as pronounced in the case of **Ombudsman vs. CSC, supra**, the CSC respects their authority to develop and prescribe their respective eligibility requirements for positions in their plantilla that may be categorized as third level within the parameters of CSC Resolution No. 94-2925, provided that their test of fitness shall be undertaken with the assistance and in coordination with the CSC and the resulting eligibility therewith shall be applicable exclusively to them.
5. Existing issuances of the CSC not in conformity with this policy resolution are deemed superseded, repealed, amended or modified accordingly. Nevertheless, it is to be understood that all rights that have become vested under these existing issuances shall be observed.

Quezon City, **DEC 0 22 2008**

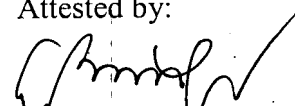
  
**RICARDO L. SALUDO**  
 Chairman

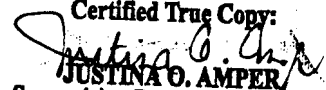
**CESAR D. BUENAFLOR**  
 Commissioner

**SEE  
 PLS. DISSENTING  
 POSITION ATTACHED  
 HERETO**

  
**MARY ANN Z. FERNANDEZ-MENDOZA**  
 Commissioner

Attested by:

  
**DOLORIS B. BONIFACIO**  
 Director IV  
 Commission Secretariat and Liaison Office

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## DISSENTING POSITION

This refers to the Resolution signed by the majority of my colleagues upholding the authority of the Commission over third level positions. With due respect to my colleagues, as an independent member of the Commission and as a lawyer as well, I beg to differ from the majority position taking into consideration the pertinent provisions of the Constitution, the Civil Service Laws, jurisprudence, and the administrative issuances/pronouncements on the matter.

### • CONSTITUTION

In dealing with the issue, the matter begins with the consideration of the pertinent provisions of the Constitution which is the supreme law of the land. A constitution is defined as a written instrument by which the fundamental powers of government are established, limited and defined and by which these powers are distributed among several departments for their more safe and useful exercise, for the benefit of the body politic.<sup>1</sup> *"In this definition, the fundamental purpose of a Constitution is presented primarily as both a grant and a limitation of governmental authority. It is in fact the organic instrument to which government owes its being: It is ... to the departments of government, what law is to the individuals – nay, it is that from which existence flows, and by which the powers (or portions of the right to govern), which may have been committed to them, are prescribed. It is their commission – nay, it is their creator."<sup>2</sup> "It is the written instrument agreed upon by the people ... as the absolute rule of action and decision for all departments and officers of the government ... and in opposition to which any act or rule of any department or officer of the government, or even of the people themselves, will be altogether void."<sup>3</sup>*

The **Constitution** starts with a **Preamble** which provides as follows:

*We the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society, and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity, the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution."* (Underscoring Supplied)

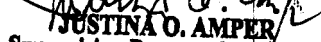
The foregoing provisions of the Preamble underscore the concept of "rule of law", *inter alia*. While it may be true that the Preamble is not a source

<sup>1</sup> Miller, *Lectures on the Constitution of the United States* 64 (1893); 1 Schwartz, *The Powers of Government* 1 (1963)

<sup>2</sup> *Kemper v. Hawkins*, 1 Va. Cas. 20,24 (1793)

<sup>3</sup> *Cooley, Constitutional Limitations* 3 (1868).

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of power or right for any department of government,<sup>4</sup> it, however, sets down the origin, scope and purpose of the Constitution and used as an aid in ascertaining the meaning of ambiguous provisions thereof. It can be termed, therefore, as a "source of light."

The phrase "rule of law" enshrined in the Preamble expresses the concept that government officials have only the authority given them by law and defined by law, and that such authority continues only with the consent of the people.<sup>5</sup> This concept is also expressed in varied ways, to wit: (1) "Respect for the rule of law." (2) "Ours is a government of laws and not of men." (3) "No one, no matter how exalted his position, is above the law." (4) "No one shall take the law in his own hands." (5) "Let us all respect the supremacy and majesty of the law and not in travesty thereof." and (6) "The delegate should not exceed the scope of his authority."

Administrative authorities, therefore, must strictly adhere to the standards, policies and limitations provided for in the Constitution and the statutes vesting power in them. They must respect the Rule of Law regardless of the individual sentiments of the people behind them.

Now, examining the entire texts of the Constitution, there is indeed no particular provision which specifically mentions about the concept of third level. However, in understanding this concept, **Sections 2 and 3, Article IX-B of the Constitution** can be considered pertinent, to wit

"Section 2.

"1. The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

"2. Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.

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"Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service. It shall strengthen the merit and rewards system; integrate all human resources development programs for all levels and ranks and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs." (Underscoring Supplied)

<sup>4</sup> Jacobson v. Massachusetts, 197 U.S. 22 (1905)

<sup>5</sup> Constitutional Structure and Powers of Government – Notes and Cases, Part I, page 7

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The foregoing provisions underscore the mandates of the Commission as the central personnel agency of the government and as administrator of the civil service system. Nonetheless, these provisions are not enough to reasonably infer about the legal nature or identity of the third level as a component of the civil service system. Indeed, these are mere motherhood statements insufficient to establish the relation of the Commission with the third level. The phrase "all levels and ranks" provided in Section 3 cannot justify the existence of the third level as it relates to the mandate of the Commission to integrate all human resources development programs. Neither can its power to establish a career service justifies the creation of another level of positions in the civil service system (e.g., Expanded Third Level) considering that the Commission, as a legal creature, has to exercise the said power only in accordance with laws. Relevant to this are the following words of the esteemed **Fr. Joaquin G. Bernas**, in his book entitled "**The 1987 Constitution of the Republic of the Philippines: A Commentary**", 2003 Edition, page 1028, to wit "The Commission is an administrative agency, nothing more. As such, it can only perform and can only be given powers, proper to an administrative agency."

But where can we exactly find the legal concept on the third level?

• **STATUTORY**

A cursory review of **Presidential Decree (P.D.) No. 1 (dated September 24, 1972)**<sup>6</sup> shows no particular mention about the term "third level." P.D. 1 mentions of "rank" but not "level" of positions. "Rank" under the said law is related to the CES concept on membership, compensation and security of tenure. P.D. 1 only mentions of "pool of well-selected and development oriented career administrators." It does not mention of "third level" per se in the career service.

The only statutes that mention about third level are **Presidential Decree (P.D.) No. 807 (dated October 6, 1975)**<sup>7</sup> and the **Executive Order (E.O.) No. 292 (July 25, 1987)**,<sup>8</sup> to wit:

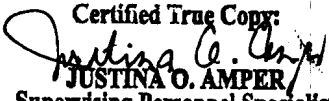
PD 807	EO 292
"Sec. 5. Career Service. - x x x.	"Sec. 7. Career Service. - x x x.
"The Career Service shall include: x x x	"The Career Service shall include: x x x
"(3) Positions in the <u>Career Executive Service</u> , namely, <u>Undersecretary</u> ,	"(3) Positions in the <u>Career Executive Service</u> , namely, <u>Undersecretary</u> ,

<sup>6</sup> Reorganizing the Executive Branch of the National Government

<sup>7</sup> Civil Service Decree of the Philippines of 1975

<sup>8</sup> Administrative Code of 1987

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Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.

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"SEC. 7. Classes of Positions in the Career Service. - (a) Classes of positions in the career service, appointment to which requires examinations, shall be grouped into three major levels as follows:

"(a) The first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

"(b) The second level shall include professional, technical and scientific positions which involve professional, technical or scientific work in a non-supervisory capacity requiring at least four years of college work up to Division Chief level; and

"(c) The third level shall cover positions in the Career Executive Service.

"(b) x x x. Entrance to the third level shall be prescribed by the Career Executive Service Board."  
(Underscoring Supplied)

Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.

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"SEC. 8. Classes of Positions in the Career Service. - (1) Classes of positions in the career service, appointment to which requires examinations, shall be grouped into three major levels as follows:

"(a) The first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

"(b) The second level shall include professional, technical and scientific positions which involve professional, technical or scientific work in a non-supervisory capacity requiring at least four years of college work up to Division Chief level; and

"(c) The third level shall cover positions in the Career Executive Service.

"(2) x x x. Entrance to the third level shall be prescribed by the Career Executive Service Board."  
(Underscoring Supplied)

Clearly, the provisions of E.O. 292 on the levels of positions in the career service were the exact reproduction of the provisions contained in P.D. 807. Pointedly, the last paragraphs on the third level provisions in both laws operate as exceptions to the general rule that the Commission administers the entire civil service system. Truly, it imposes a limitation on the Commission's role as the central personnel agency of the government. It appears that under these laws, the Career Executive Service Board (CESB), not the Commission, has the power to administer the third level. Specifically, it has authority to prescribe standards for entrance thereto and identify other positions in the CES provided all of whom are appointed by the President.

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But what are third level positions whose entrance are prescribed by the CESB? The answer to this question is readily available in Section 7 (3) of P.D. 807 and Section 8 (c), Book V of EO 292 which both provide that "*The third level shall cover the Career Executive Service.*" Read in relation to Section 5 (3) of P.D. 807 and Section 7 (3), Book V of EO 292, the third level shall therefore, mean certain government positions, namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the CESB provided all of them are appointed by the President.

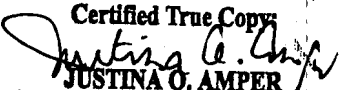
It would, thus, appear that the "CES" and the "third level" are one and the same thing. Elsewise stated, the third level is composed of CES positions only and no other. This premise is more evident from the phrase "*shall cover*" found in Section 7 (3) of P.D. 807 and Section 8 (c), Book V of EO 292 which suggests exclusivity.

While it is conceded that the third level is the CES itself under P.D. 807 and E.O. 292, it may be argued, however, that there are positions in the career service whose primary functions are not clerical, custodial, professional, technical nor scientific in character which also need to be properly administered and regulated. Particularly, these are positions above Division Chief level performing managerial and executive functions which are non-presidential appointees.

It must be noted, however, that in Section 7 (a) and (b) of P.D. 807 and Section 8 (a) and (b), Book V of E.O. 292, the phrase "*shall include*" was used to describe the coverage of the first and second level. This phrase simply means that the types of positions stated therein are not exclusive in nature. From all indications, it suggests that other positions similarly situated to those mentioned may also be considered as within the coverage of the first and second level depending upon the nature of the functions involved. On the other hand, the same thing is not obtaining in the case of the third level as provided for in Section 7 (3) of P.D. 807 and Section 8 (c), Book V of E.O. 292 considering that both laws used the phrase "*shall cover*" which suggests exclusivity. It would mean, therefore, that the legislature intended a distinction as to their respective coverages. Pointedly, these laws meant exclusivity for covered positions in the third level but not in the case of the first and second levels.

But where shall the said positions fall if not in the third level? While admittedly these positions do not entail clerical, trades and crafts and custodial services included in the first level, they can be considered as within the coverage of the second level. As earlier stated, P.D. 807 and E.O. 292 do not intend an exclusive second level. Other positions can be considered as belonging to the second level depending upon the nature of the functions attached to them. One must not be confused with the phrase "*up to Division Chief level*" found in the last portion of Section 7 (2) of P.D. 807 and Section 8 (b), Book V of E.O. 292 for such phrase simply refers to the "*professional,*

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*technical and scientific positions*" mentioned in the same provision but not to other types of second level positions which can also be included therein. Well-entrenched is the precept in legal hermeneutics that words are interpreted from the group of words they accompany or which they are associated or found.<sup>9</sup> This is the so-called Associated Words Principle in statutory construction. Verily, the phrase "*Division Chief*" does not operate as a benchmark position for other positions that can be considered as within the coverage of the non-exclusive second level.

Corollarily, in trying to justify the legal existence of the "*Expanded CES*", the following provisions of **Item No. 5 (e) of P.D. No. 1** can be cited, to wit:

**"e. Assignments, Reassignments and Transfers.**  
*Depending upon their ranks, members of the Service shall be assigned to occupy positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Board on the basis of the member's functional expertise." (Underscoring Supplied)*

It is noted that the phrase "*all of whom are appointed by the President*" does not appear in Item No. 5 (e) of P.D. 1. As such, it can be argued that there was an intention to include in the CES other managerial and executive positions in the executive department, not just presidential appointees. It must be remembered, however, that P.D. 1 was issued in September 24, 1972. Said provision was subsequently modified by Sections 5 (3) and 7 of P.D. 807 and Sections 7 (3) and 8, Book V of E.O. 292 which, as quoted and discussed above, provide that the third level is the CES itself whose positions are those enumerated by law or those identified by the CESB as of equivalent rank all of whom are appointed by the President. Since these provisions of P.D. 807 and E.O. 292 remain good and effective up to the present, it can be safely stated that the prevailing law is that the third level is only exclusive to CES positions all of whom are presidential appointees. Accordingly, entrance thereto is prescribed by the CESB and not by the Commission.

It may also be argued that the Commission's authority to prescribe third level eligibility for third level positions can be traced from **Section 22 (2), Book V of E.O. 292**, which provides, as follows: "*(2) The establishment, administration and maintenance of qualification standards shall be the responsibility of the department or agency, with the assistance and approval of the Civil Service Commission and in consultation with the Wage and Position Classification Office.*" (Underscoring Supplied). While such approval power of the Commission is expressed in generic sense, such cannot be considered as a sufficient justification for it to prescribe third level eligibility for purposes of appointment to third level positions, especially for those agencies which were given by their respective charters to prescribe their own qualification standards (e.g., Bangko Sentral ng Pilipinas, Landbank of the Philippines, Development Bank of the Philippines, Social Security System, Home Guarantee Corporation,

<sup>9</sup> *Buenaseda, et al. v. Flavier, G.R. No. 106719, September 21, 1993*

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etc.) Even then, the responsibility over qualification standards primarily rests on the heads of departments or agencies and not on the Commission.<sup>10</sup> Obviously, this is in recognition of the fact that heads of departments or agencies are in the best position to determine the needs peculiar to their respective organizations. Pointedly, the Commission's participation over qualification standards is just limited to technical assistance and approval thereof in consultation with the Wage and Position Classification Office.

Even then, the approval power of the Commission over qualification standards is not at all limitless as this has still to be exercised in accordance with the Constitution, Law and jurisprudence. On this score, it is explicitly provided in **Section 7 (b) of PD 807** and **Section 8 (2), Book V of E.O. 292** that: "Entrance to the third level shall be prescribed by the Career Executive Service Board." (Underscoring Supplied) Consequently, it is not for the Commission but for the CESB to prescribe qualification requirements for entrance or appointment to the third level. In fact, this can be deduced from the following provisions of **Section 4, Rule IV of the Implementing Book V of E.O. 292** which excluded third level from the coverage of service-wide positions whose qualification standards are subject to review by the Commission, to wit:

"Sec. 4. The Commission shall adopt qualification standards for service-wide positions in the first and second levels and shall review and update, whenever necessary those already established. Each department or agency shall establish qualification standards for positions unique to the department or agency concerned and shall submit the same to the Commission for approval. x x x." (Underscoring Supplied)

Clearly, based on statutory provisions, the Commission is bereft with any legal authority over the third level, much less without any authority to prescribe third level eligibility for purposes of appointment to third level positions.

#### • JURISPRUDENCE

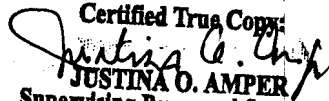
Oft-repeated is the legal precept that "*Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.*"<sup>11</sup> While it is true that jurisprudence are not laws *per se* following the separation of powers principle, court's interpretation of a statute, however, constitutes part of the law. Jurisprudence takes the form of an evidence as to what the law means, establishing the contemporaneous legislative intent that the interpreted law carries into effect.<sup>12</sup>

<sup>10</sup> *Ombudsman vs. Civil Service Commission*, G.R. No. 162215, July 30, 2007

<sup>11</sup> *Article 8 of the Civil Code of the Philippines*

<sup>12</sup> *Senarillos vs. Hermosissima, et al.* 100 Phil. 501

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In 1993, the foregoing premises on leveling of positions were somewhat validated by the following pronouncements of the Supreme Court *en banc* in **HIGC vs. CSC, 220 SCRA148**<sup>13</sup>, to wit:

X X X

"Respondent Cruz has not satisfactorily shown that his former position as Vice President in the HIGC belongs to the third level in the career service as prescribed by law. His former position as Vice President is not among those enumerated by law as falling under the third level, nor has he established that it is one of those identified by the Career Executive Service Board as of equivalent rank to those listed by law. Neither is it claimed that he was appointed by the President.

"We agree with the petitioner HIGC that the position of Vice President to which Cruz was formerly appointed belongs to the second level which under the law includes professional, technical and scientific positions involving professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level." (Underscoring Supplied)

Clearly, managerial and executive positions not included by law from the list of positions belonging the CES nor identified by the CESB as of equivalent rank to those listed and not being filled by presidential appointments, such as the Vice President position in the HIGC, fall within the non-exclusive second level. Consequently, appointment thereto shall require the appropriate second level eligibility for purposes of permanency and security of tenure. Similar pronouncements were made by the Court of Appeals in the case of **Khem Inok vs. Corazon Alma de Leon, CA-G.R. SP No. 49699, January 18, 2001**<sup>14</sup>, to wit:

X X X

"Thus, it can be gleaned from P.D. No. 1 of the Career Executive Service (CES), which has been grafted into Executive Order No. 292, that the letter and intent of the law is to circumscribe the Career Executive Service to CES positions in the Executive Branch of government. Verily, consistent with the principle of ejusdem generis in legal hermeneutics, the phrase 'other officers of equivalent rank' could encompass only such persons occupying positions in the Executive Department. x x x.

"... We are loathe to stamp our imprimatur to the Commission's stance that the 'positions of Director III, including that of the COA, belong to the third level. Hence, appointees thereto should possess the x x x Career Executive Service (CES) Eligibility in accordance with the Qualification Standards of the said position.'" (Underscoring Supplied)

<sup>13</sup> G.R. No. 95450 dated March 19, 1993

<sup>14</sup> Said decision attained finality on September 2, 2002 after the Supreme Court dismissed the Petition for Review filed by the Commission for the latter's failure to file reply to comments, per Supreme Court Entry of Judgment dated April 10, 2002, G.R. No. 148782

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It is argued, however, that the foregoing doctrine is no longer controlling considering that in 2002, the Supreme Court promulgated the case of **Erasmó vs. HIGC, G.R. No. 139251, August 29, 2002**, where it was ruled that:

X X X

"The principal issue to be resolved in this case is whether or not petitioner is entitled to be reinstated to the position of Vice President of TS/GCIG of respondent HIGC.

"We answer in the negative.

"The facts of this case indubitably show that petitioner's promotional appointment as Vice President of TS/GCIG is merely temporary in nature. Her appointment papers dated June 11, 1992 clearly indicate it. This is because petitioner does not possess a career executive service eligibility which is necessary for the position of Vice President of TS/GCIG, it being a career service executive office. Her new appointment, being temporary in character, was terminable at the pleasure of the appointing authority with or without cause, and petitioner does not enjoy security of tenure." (Underscoring Supplied)

Based on the foregoing pronouncements of the High Court, it can argued that the HIGC Ruling had been effectively abrogated or modified by the Erasmo Ruling, especially because the latter decision involved the same position in the same agency and was promulgated on a later date. The HIGC Ruling, however, remains good and in no way can it be said to have been overturned nor modified by the Erasmo Ruling. A cursory review of said rulings shows that the issues of both decisions are not identical, hence, modification or abrogation of doctrine is untenable. In the HIGC Case, the Supreme Court deal squarely on the issue whether a position belongs to the third level while the Erasmo Ruling dwell on appointment and security of tenure. It must also be noted that the HIGC Case had been promulgated by the Supreme Court *en banc* while the Erasmo Ruling was just issued by the First Division of the same Court. Pointedly, under **Section 4 (3), Article VIII of the 1987 Constitution**, it is explicitly provided: "...that no doctrine or principle of law laid down by the court in a decision rendered en banc or in division may be modified or reversed except by the court sitting in banc." (Underscoring Supplied). Hence, in no way can it be said that the Erasmo Ruling promulgated by the First Division of the Supreme Court had effectively modified or reversed the doctrine enshrined in the *en banc* decision of the same Court in the HIGC Case.

The majority position also cited the case of **Abella vs. Civil Service Commission, G. R. No. 152574, November 17, 2004**, where the Supreme Court *en banc* upheld the constitutionality of Section 4 of CSC Memorandum Circular No. 21, s. 1994<sup>15</sup> (Expanded CES). In said case, the Court ruled a quo:

X X X

<sup>15</sup> Coverage of the Career Executive Service (Expanded CES)

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"The Constitution mandates that, as 'the central personnel agency of the government', the CSC should establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the Civil Service.' It further requires that appointments in the civil service be made only through merit and fitness to be determined by competitive examination. Civil Service laws have expressly empowered the CSC to issue and enforce rules and regulations to carry out its mandate.

"In the exercise of its authority, the CSC deemed it appropriate to clearly define and identify positions covered by the Career Executive Service. Logically, the CSC had to issue guidelines to meet this objective, specifically through the issuance of the challenged Circular.

X X X

"Entrance to the different levels requires the corresponding civil service eligibility. Those in the third level (CES positions) require Career Service Executive Eligibility (CSEE) as a requirement for permanent appointment. (Underscoring Supplied)

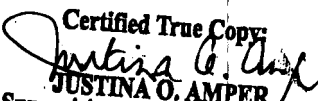
A cursory review of the Abella Decision shows that the Supreme Court upheld the quasi-legislative power of the Commission. Unlike the HIGC Decision which squarely focused on the legal nature of the third level/CES, the Abella Decision principally centered on the authority of the Commission to issue rules and guidelines in pursuit of its mandate. Pointedly, it never touched the core issue whether the very provisions of the subject CSC MC 21, s. 1994 are actually valid or legal. Basing from this fact, it cannot be safely stated that the Abella Decision has overturned the HIGC Ruling. As a matter of fact, the HIGC Case were not even mentioned nor cited in the Abella Decision. This premise is even bolstered by the fact that the Supreme Court categorically stated in the Abella Decision that: "Those in the third level (CES positions) require Career Service Executive Eligibility (CSEE) as a requirement for permanent appointment." (Underscoring Supplied). Judging from the afore-quoted texts in the Abella Decision, it can be said that the Supreme Court was of the understanding that the CES and the third level are one and the same thing. Truly, this premise does not negate but rather confirms the very doctrine enshrined in the HIGC Decision.

Even assuming *en arguendo* that the HIGC Doctrine has been overturned by the Abella Decision, the latter doctrine had been affected accordingly when the Supreme Court *en banc* subsequently promulgated the landmark case of **Office of the Ombudsman vs. Civil Service Commission, G.R. No. 159940, February 16, 2005**, to wit:

X X X

"From the above-quoted provisions of the Administrative Code, persons occupying positions in the CES are presidential appointees. A person occupying the position of Graft Investigation Officer III is not, however, appointed by the President but by the Ombudsman as provided in Article IX of the Constitution ...

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"To classify the position of Graft Investigator III as belonging to the CES and require thereto to acquire CES or CSE eligibility before acquiring security of tenure would be absurd as it would result either in 1) vesting the appointing power for said position in the President, in violation of the Constitution; or 2) including in the CES a position not occupied by a presidential appointee, contrary to the Administrative Code." (Underscoring Supplied)

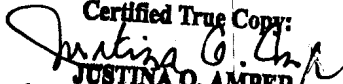
The majority position also cited the case of **Caringal vs. Philippine Charity Sweepstakes Office, G.R. No. 161942, October 13, 2005** which was issued by the Supreme Court *en banc* after the first Ombudsman decision. This case involves the appointment of Jose Caringal as Assistant Department Manager in the PCSO which was disapproved by the Commission for lack of CES eligibility. The Court denied the petition of Caringal for lack of merit. However, a cursory review of the said decision shows that, just like the Erasmo and Abella Decisions, the principal issue was not actually on the legal nature of the third level or CES. It was solely on the need to comply with the qualification requirements for purposes of permanent appointment and security of tenure. Pointedly, it does not dwell squarely on the issue whether the position involved belongs to the third level or not. Hence, it cannot be considered to have a controlling effect to the issue at hand.

It may be argued that the action of the Supreme Court in the Erasmo, Abella and Caringal Cases upholding the requirements of third level eligibility even to non-presidential appointees indicates that it affirms the so-called "Expanded CES." However, such thing cannot be reasonably inferred considering that the pertinent laws and jurisprudence on the matter are clear and unequivocal that the third level is the CES itself composed of presidential appointees governed by the CESB. Also, it has to be noted that the Supreme Court usually deals only with the issues raised in the litigation. Hence, in the absence of any categorical pronouncement from the High Court itself on that specific issue, it is not safe to conclude that it actually affirmed or upheld the so-called "Expanded CES".

Even assuming for the sake of argument that the Erasmo, Abella and the Caringal Decisions have actually overturned or modified the HIGC and Ombudsman Doctrines, the same cannot be said already at this point considering that the Supreme Court *en banc* subsequently promulgated the second Ombudsman Decision. This is the case of **Office of the Ombudsman vs. Civil Service Commission, G.R. No. 162215, July 30, 2007**, where the High Court ruled as follows:

"The CSC's opinion that the Director II positions in the Central Administrative Service and Finance Management Service of the Office of the Ombudsman are covered by the CES is wrong. Book V, Title I, Subtitle A, Chapter 2, Section 7 of EO 292 ... provides: x x x



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"Thus, the CES covers presidential appointees only. As the Court ruled in the Office of the Ombudsman v. CSC:

*'From the above-quoted provision of the Administrative Code, persons occupying positions in the CES are presidential appointees. x x x. (emphasis supplied)*

x x x

*"To classify the positions of Director II in the Central Administrative Service and the Finance and Management Service of the Office of the Ombudsman as covered by the CES and require appointees thereto to acquire CES or CSE eligibility before acquiring security of tenure will lead to unconstitutional consequences. It will result either in (1) vesting the appointing power for said position in the President, in violation of the Constitution or (2) including in the CES a position not held by a presidential appointee, contrary to the Administrative Code.*

*"Since the responsibility for the establishment, administration and maintenance of qualification standards lies with the concerned department or agency, the role of the CSC is limited to assisting the department or agency with respect to these qualification standards and approving them. The CSC cannot substitute its own standards for those of the department or agency especially in a case like this in which an independent constitutional body is involved." (Underscoring Supplied)*

In essence, the foregoing premises are similarly enshrined in the HIGC and the first Ombudsman Decisions. Consequently, given the line of argument that the Erasmo, Abella and the Caringal Decisions have overturned the HIGC and the first Ombudsman Decisions, it can now be said that this second Ombudsman Decision had also reversed or set aside the Erasmo, Abella and Caringal Doctrines. Stated otherwise, the second Ombudsman Decision effectively reinstated the Supreme Court rulings in the HIGC and the first Ombudsman Cases. Thus, it can be said that the prevailing ruling is that the third level is composed of CES positions which are enumerated in P.D. 807 and E.O. 292, including those identified by the CESB as of equivalent rank, all of whom are presidential appointees. Accordingly, their entrance is prescribed by the CESB, as decreed by the High Court *en banc* in the HIGC and the two (2) Ombudsman Decisions.

One must not be confused with the phrase "*especially in a case like this in which an independent constitutional body is involved*" contained in the second Ombudsman Decision. Such phrase merely emphasizes a point on the independent and constitutional character of the Office of the Ombudsman as an institution. Neither should it be taken as an indication that the ruling was meant to apply *pro hac vice* to the Office of the Ombudsman especially because no such pronouncement was ever made by the High Court in said case. It must be noted that the Supreme Court based its ruling on the Commission's opinion that the two (2) Director II positions in the Office of the Ombudsman was wrong principally from E.O. 292 which is a general law.

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The fact that the said decision made mention of laws or resolutions relating to the independent nature of the Office of the Ombudsman does not make the decision *pro hac vice*. On the contrary, it was just natural and expected understandably because it was the one involved in the controversy. In no way, however, that it made the decree inapplicable to other similar cases outside of that office.

It may not be amiss to point at this juncture that recently the Commission obtained reversals from the Court of Appeals in two (2) cases due to its wrongful appreciation of the foregoing rulings of the Supreme Court. In **PCSO v. CSC, CA-G.R. SP No. 99119, June 27, 2008**, the Court of Appeals stated as follows:

X X X

"After exhaustively considering the facts of the case and reviewing the applicable laws and jurisprudence on the matter, we are constrained to hold that the Career Executive Service does not cover the position of Assistant Department Manager II in the petitioner's Planning and Production Department. It follows that CSE/CES eligibility is not required for the said position. Thus, the respondent should have affirmed Ortega's temporary appointments to the said position." (Underscoring Supplied)

Subsequently, in **PCSO v. CSC, C.A-G.R. SP No. 98800, August 12, 2008**, the Court of Appeals again ruled:

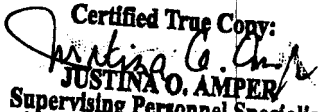
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"Since the position of Assistant Department Manager II of the PCSO is not among those enumerated under the above-mentioned provision, and neither was it identified by the Career Executive Service Board as equivalent to those listed in the law, it can readily be ascertained that the position of Assistant Department Manager II does not fall under the category pertaining to the Career Executive Service (CES).

"Moreover, in the case of *Office of the Ombudsman vs. Civil Service Commission* decided by the Supreme Court, the High Court had the occasion to clarify that persons occupying positions in the CES are limited to presidential employees. X X X.

"We note that *CSC Commissioner Cesar D. Buenaflores* did not concur with the majority opinion ... and instead submitted a dissenting opinion in which he emphasized that the position of Assistant Department Manager II and other similar positions in the Government Financial Institutions and Government-Owned and Controlled Corporations were erroneously classified by the CSC as belonging to the third level position in the Civil Service. **This Court agrees with the said opinion which is more in accord with existing laws and jurisprudence ...**" (Underscoring Supplied)

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• **ADMINISTRATIVE RULES AND OPINIONS**

In CSC Resolution No. 94-2925 dated May 31, 1994, the Commission adopted guidelines in identifying the coverage of the third level. This was reduced to **Memorandum Circular No. 21, series of 1994**<sup>16</sup>, which pertinently provides as follows:

**"1. Positions Covered by the Career Executive Service.**

*"(a) The Career Executive Service includes the positions of undersecretary, assistant secretary, bureau director (department-wide and bureau-wide) assistant regional director (department-wide and bureau-wide), and chief of department service;*

*"(b) In addition to the above identified positions and other positions of the same category which had been previously classified and included in the CES, all other third level positions of equivalent category in all branches and instrumentalities of the national government, including government-owned and controlled corporations with original charters are embraced within the Career Executive Service provided they meet the following criteria:*

- "1. the position is a career position;*
- "2. the position is above division chief level;*
- "3. the duties and responsibilities of the position require the performance of executive or managerial functions." (Underscoring Supplied)*

It is undisputed that the Commission possesses rule-making or quasi-legislative power as provided for in Section 12 (2), Book V of E.O. 292<sup>17</sup>. With due respect to the former members of Commission who caused the issuance of such Circular and without passing judgment to the wisdom thereof, a careful reading of the foregoing guidelines, however, shows that it suffers serious legal infirmity. For example, Item No. 1 (a) of MC 21, s. 1994 does not include positions of equivalent rank to those mentioned in the law identified by the CESB nor clarify that all of whom presidential appointees, pursuant to Section 5 (3) of P.D. 807 and Section 7 (3), Book V of E.O. 292. In the same vein, Item No. 1 (b) of the said MC provides for additional positions in the CES other than those provided by the law. Truly, it unduly increases the coverage thereof. Settled is the rule that the law itself cannot be extended by rules or regulations.<sup>18</sup> Hence, the foregoing provisions of CSC Resolution No. 94-2925 and Memorandum Circular No. 21, series of 1994 were *ultra vires*.

<sup>16</sup> Coverage of the Career Executive Service

<sup>17</sup> "(2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;"

<sup>18</sup> U.S. vs. Molina, 29 Phil. 119

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While it is true that in the Abella Decision, the High Court upheld the rule-making power of the Commission, it must be emphasized, however, that the core issue whether the provisions thereof (e.g., defining the coverage of the third level) faithfully comply with the law was never discussed nor ruled upon. Hence, it cannot be safely stated that the provisions thereof are actually valid and legal.

Settled is the legal precept that rules and regulations are valid only as subordinate rules and to be made within the framework of the policy which the legislature has sufficiently defined. It is a wholesome and necessary principle that an administrative agency must pursue the procedure and rules enjoined upon it by the statute creating it, and show substantial compliance therewith, to give vitality to its action. Administrative regulations which go beyond what the legislature has authorized have been said to be void and maybe disregarded.<sup>19</sup> It is fundamental rule that implementing rules cannot add or detract from the provisions of law it is designed to implement.<sup>20</sup> Pointedly, an administrative agency such as ours cannot amend an act of Congress.

Apropos, attention is invited to **Article 7 of the Civil Code of Philippines**, to wit:

*"Art. 7. Laws are repealed only by subsequent ones and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary.*

*"When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.*

*"Administrative or executive acts, orders and regulations shall be valid **only** when they are not contrary to laws or the Constitution."*  
(Underscoring Supplied)

Applying the foregoing statutory provision, it would mean that Sections 5 (3) and 7 of P.D. 807 and Sections 7 (3) and 8, Book V of E.O. 292 can only be repealed by subsequent law to the contrary. In the absence of any repealing or modifying law, the provisions of Sections 5 (3) and 7 of P.D. 807 and Sections 7 (3) and 8, Book V of E.O. 292 remain good and effective. Moreover, CSC MC No. 21, series of 1994 (Expanded CES) cannot be considered to have modified or repealed said provisions of PD 807 and EO 292 because laws are only repealed by subsequent statutes. Even then, as earlier ratiocinated, CSC MC No. 21, series of 1994 (Expanded CES) is *ultra vires* and legally infirmed.

It may be argued that CSC MC No. 21, series of 1994 is still applicable even up to the present because it has not yet been declared invalid by any court. It may also be posited that it enjoys the presumption of validity upon issuance until declared otherwise by a court of competent jurisdiction. With

<sup>19</sup> 42 Am. Jur. 428-429

<sup>20</sup> Cebu Oxygen & Acetylene Co., Inc. v. Drilon, 176 SCRA 24

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due respect, such cannot be the case considering that it is void *ab initio*. Under Article 7 of the New Civil Code of the Philippines, administrative regulations, such as CSC MC No. 21, series of 1994, are valid only when they are not contrary to law or the Constitution. Hence, unlike statutes, they do not enjoy presumption of validity. Consequently, in dealing with the issue, the Commission cannot just heavily rely on CSC MC No. 21, series of 1994 especially because it suffers serious legal infirmity.

At this juncture, it may also be enlightening to quote the following portions of the **Opinion No. 116, series of 1997, dated March 21, 1997**,<sup>21</sup> of the Department of Justice (DOJ), to wit:

X X X

*"Considering that the provisions of E.O. No. 292, with respect to the policy, organization and powers and functions of the CSC, are general provisions, such general provisions cannot, therefore, prevail over the provision in E.O. 292 and PD No. 1 concerning the charter of CESB, which are special provisions covering a highly specialized activity of the CESB to conduct third level examinations and to confer CES eligibility*

X X X

*"Viewed in the light of the foregoing, it is clear that the authority to prescribe the entrance requirements to third level is vested upon the CESB, which, as created by P.D. No. 1 ... still exists as an autonomous entity. Notably, the relevant provisions of E.O. 292, relative to the CESB and its express authority to prescribe the entrance requirements to the third level of the civil service, are but a reiteration of its powers and functions under .... the Integrated Reorganization Plan." (Underscoring Supplied)*

Corollary, the former Government Corporate Counsel, now Solicitor General, Atty. Agnes Devanadera, in her **OGCC Opinion No. 030, series of 2007, dated February 1, 2007**,<sup>22</sup> ratiocinated as follows:

X X X

*"We, however, conclude differently. There is no gainsaying on the cited provision on the CSC's power to administer and enforce the constitutional and statutory provisions on the merit system, for all levels and ranks in the Civil Service. However, Section 12 (1) should not be construed on its own, but rather consistent with the rules on statutory construction and the intent or meaning of a statute should be ascertained from the statute taken as a whole and not from isolated part or provisions thereof, it must be construed whether related provisions of Title I, Subtitle A, Book V of the Administrative Code specifically Sections 7 and 8, Chapter 2 thereof ...*

X X X

<sup>21</sup> addressed to then CSC Chairman Corazon Alma G. de Leon signed by then DOJ Secretary Teofisto Guingona

<sup>22</sup> addressed to the League of Water Districts

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"Moreover, construing the aforesaid provision, the Supreme Court held in *Office of the Ombudsman vs. Civil Service Commission* that persons occupying positions in the CES are presidential appointees. Hence, even if we recognize the authority of the CESB ... to identify positions as belonging to the CES and to prescribe entrance to the Third Level, the said office still cannot identify GM positions ... as belonging to the CES or as Third Level positions since the appointees thereto are not presidential appointees. x x x

"To recapitulate and by way of answer to the issues, it is our opinion that:

"(1) It is the CESB, not the CSC, which has authority to identify positions as belonging to the Career Executive Service or Third Level and

"(2) Not being presidential appointees, GM positions in LWDs, regardless of category, cannot be identified as belonging to the Career Executive Service (CES) or Third Level." (Underscoring Supplied)

• **CONCLUDING STATEMENTS**

It is undeniable that the Constitution, laws, jurisprudence and even administrative issuances and pronouncements are replete with legal indicators that the Commission has no legal authority over the third level. Pointedly, the authority lies with the CESB. Hence, with due respect to my colleagues in the Commission, I manifest my strongest dissent to the majority position.

My understanding is that the Administrative Code itself created the whole problem but the Commission is in no position to disobey it lest it may continue to suffer legal setbacks. In fact, to my mind, the decision of the Commission to push for the passage of the new CES Bill is an indication of the legal inadequacy of the present law which the Commission is mandated to implement. However, pending the passage of the new CES Bill, the Commission has no other recourse but to follow the law regardless of the personal opinions or sentiments of the members thereof. After all, the Commission, as a legal creature, is required by the Constitution to uphold the Rule of Law at all times. Pointedly, the following words of the Supreme Court in **Juliano vs. Subido, 62 SCRA 480** is rather instructive:

x x x


"1. We start with this relevant excerpt from *Villegas v. Subido*<sup>23</sup>, "Nothing is better settled in the law that a public official exercise power, not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such, there is no presumption that they

<sup>23</sup> L-26534, Nov. 28, 1969, 30 SCRA 498

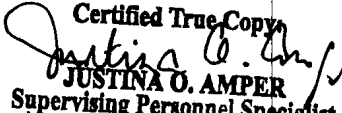
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are empowered to act. There must be delegation of such authority, either express or implied. In the absence of a valid grant, they are devoid of power. What they do suffers from a fatal infirmity? That principle cannot be sufficiently stressed. In the appropriate language of Chief Justice Hughes: 'It must be conceded the departmental zeal may not be permitted to outrun the authority conferred by statute.' Neither the high dignity of the office nor the righteousness of the motive then is an acceptable substitute. Otherwise, the rule of law becomes a myth. Such an eventuality, we must take all pains to avoid.' (Underscoring Supplied)

  
CESAR D. BUENAFLOR  
Commissioner

December 2, 2008  
3rdleveldissent

  
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