

**REYES, Carmencita O.**  
**Re: Appointment; Provincial Administrator**  
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**RESOLUTION NO. 001156**

Governor Carmencita O. Reyes, Province of Marinduque, appeals the Opinion dated July 24, 1998 of the Civil Service Commission Regional Office (CSCRO) No. IV, declaring the position of Provincial Administrator as career and coterminous with the appointing authority.

The Opinion, contained in a letter dated July 24, 1998, in response to a query posted by Pedrito M. Nepomuceno, Member, Sangguniang Panlalawigan of that Province, reads in part, as follows:

"There is a need to recall that the position of Provincial Administrator is one of the mandatory and existing positions under Section 480 of R.A. 7160. The qualification requirements, term, power and duties of the said item/position is specifically and clearly defined including its status and nature, which is career and co-terminous with the appointing authority. This is so because there are qualification standards prescribed for the position which implies that it is a career position.

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"On the basis of the above representations vis-<sup>27</sup>/<sub>21</sub>-vis the existing provisions of law, there is no doubt that the appointment of former Governor Luisito Reyes as the Provincial Administrator, being the brother-in-law of the new appointing authority - Governor Carmencita O. Reyes, is not in order, since it is not in accordance with the existing provisions of law on the matter. Thus, it is considered a nepotic appointment. It is clear that the relationship of the appointing authority and the appointee is within the prohibitive degree of relationship by affinity.

"In view of the foregoing, the appointment issued to ex-Governor Luisito Reyes, brother-in-law of the Hon. Governor Carmencita Reyes, the appointing authority is prohibited by law and therefore, considered null and void ab initio."

The appeal of Governor Reyes, reads, in part, as follows:

"The aforesaid letter of Dir. Fernandez raised three issues which we are submitting for your kind resolution, namely:

1. Whether or not the Position of Provincial Administrator is classified by law as a career service;
2. Whether or not the appointment which I extended to my brother-in-law to the Position of Provincial Administrator is nepotic within the meaning of Sec. 59(2), Book V of EO 292;
3. Whether or not the position of Provincial Administrator is classified as 'career and coterminous with the appointing

authority', as coined by Dir. Fernandez.

"On the first issue, I submit most respectfully that the position Provincial Administrator is not a career one; it is non-career because its tenure is co-terminous with that of the appointing authority.

"Senator Pimentel Jr., the principal author of Republic Act 7160, in his book entitled, the Local Government Code of 1991; Key to National Development, states in his commentary that:

'1. Officials Subject to Local Government Appointment and Exceptions. This Title (Title Five) lists some 22 officials for every municipality, city and province whose appointments, with three exceptions, are lodged with municipal mayors, city mayors and the provincial governors respectively: They are all career officials, except the Legal Officer, Information Officer and the Administrator whose terms of office are co-terminous with the mayor or the governor who appointment( sic) them.

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"As regard the second issue, it is respectfully submitted that the appointment extended by me to my brother-in-law as Provincial Administrator of Marinduque is not nepotic because it falls under the exception provided for in Sec. 59(2), Book V of EO 292.

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"The teaching of the Supreme Court is to the effect that the position is non-career or confidential if its tenure of office is coterminous with that of the appointing authority. Considering that the tenure of office of the Provincial Administrator is coterminous with that of the appointing authority, by force and logic, said position is non-career and the appointee is employed in a confidential capacity; perforce, the position of the Provincial Administrator falls within the exception to nepotism according to Sec. 59(2), Book V of EO 292.

"As regard the third issue, it is humbly submitted that the term 'career' position is the antonym of one which is coterminous with that of the appointing authority, otherwise known as non-career. The two terms should not be mixed into one. The coined classification that the position of Provincial Administrator is 'career and coterminous with the appointing authority, 'has yet no legal acceptance. In the eyes of the law, that hybrid position does not exist."

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Records show that Governor Reyes sought the assistance of the Commission relative to the appointment she extended in favor of former Governor Luisito M. Reyes, her brother-in-law, to the position of Provincial Administrator of Marinduque. It is her contention that since the position of Provincial Administrator is one of trust and confidence, it is exempted from the operation of the rules on Nepotism. Earlier, Director IV Rebecca A. Fernandez of CSRO No. IV, in response to a query of SP Member Pedrito Nepomuceno, issued an Opinion stating that the position of Provincial Administrator is career and co-

terminous, and that the appointment of former Governor Reyes is considered nepotistic.

Earlier, the Commission, in several cases (Resolution No. 92-1954 dated November 27, 1992 re Rosalia Umali; Resolution No. 93-432 dated February 11, 1993 re: Ortega, Manuel C.; Resolution No. 96-2081 dated March 21, 1996, re: Romulo Quimbo), ruled that while the term of office of an Administrator (Provincial, City or Municipal) is co-terminous with that of the appointing authority, it does not follow that the same is primarily confidential. The position still belongs to the career service because of the eligibility requirement under the Local Government Code.

To settle once and for all the issue of the nature of the position of Administrator, is imperative that the duties and functions of the position be reviewed as the Supreme declared in the case of Civil Service Commission v. Rafael Salas 274 SCRA 414, that "it is the nature of the position which finally determines whether a position is primarily confidential, policy-determining or highly technical".

In addition, in *De los Santos v. Mallari* (87 Phil 289, 1950), the Supreme Court had the occasion to define when a position is considered primarily confidential, as follows:

"Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which ensures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. x x x" (Emphasis supplied).

Paragraph (b), Section 480 of the Local Government Code, enumerates the duties and functions of the Administrator, as follows:

"(b) The administrator shall take charge of the office of the administrator and shall;

"(1) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;

"(2) In addition to the foregoing duties and functions, the administrator shall:

"(i) Assist in the coordination of the work of all the officials of the local government unit, under the supervision, direction, and control of the governor or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit;

"(ii) Establish and maintain a sound personnel program for the local government unit designed to promote career development and uphold the merit principle in the local government service;

"(iii) Conduct a continuing organizational development of the local government unit with the end in view of instituting effective administrative reforms;

"(3) Be in the frontline of the delivery of administrative support service, particularly those related to the situations during and in the aftermath of man-made and natural disasters and calamities;

"(4) Recommend to the sanggunian and advise the governor and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit; and

"(5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance."

A close scrutiny of the nature of the functions attached to the position of Administrator vis-a-vis the pronouncement of the Supreme Court in *De los Santos* (supra) clearly reflect the highly confidential nature of the position. Indeed, the position of Administrator requires a "close intimacy" with the office of the governor, its appointing authority, in order to be able to effectively develop, implement and administer the different programs of the local government unit concerned. As the Administrator shall recommend to the sanggunian and advise the governor and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit, the occupant thereof must enjoy the full trust and confidence of the appointing authority. And the appointing authority should be given enough flexibility and discretion to choose the person for appointment.

In the case of the Legal Officer which is of equal footing with the Administrator, Supreme Court in *Hilario vs. Civil Service Commission* (243 SCRA 206), held, as follows:

"We have consistently held in previous cases that the position of City Legal Officer is a confidential one. In the recent case of *Griño v. Civil Service Commission*, respondent was appointed provincial attorney at a time when Batas Pambansa Blg. 337 was in effect. We held that the position of City Legal Officer has its counterpart in the position of provincial attorney appointed by the provincial governor, both being positions involving the rendering of trusted services."

By analogy, the aforequoted ruling of the Supreme Court is applicable to the position of Administrator, considering that under the Local Government Code (LGC) both positions have terms of office which are coterminous with the appointing authority. Further, Senator Aquilino Pinmentel, Jr., the principal author of Republic act 7160, in a commentary contained in his book "The Local Government Code of 1991: Key to National Development," (p.514) stated, as follows:

"1. Officials Subject to Local Government Appointment and Exceptions. This Title (Title Five) lists some 22 officials for every municipality, city and province whose appointments, with three exceptions, are lodged with municipal mayors, city mayors and the provincial governor respectively: They are all career officials except the Legal Officer, Information Officer and the Administrator whose terms of office are co-terminous with the mayor or the governor who appointed them. xxx."

It is for these reasons that the Commission is inclined to abandon its previous pronouncements with respect to the nature of

the position of the Administrator. Considering that the Commission is given the authority under paragraph (9), Section 12, book V of the Administrative Code of 1987 to declare certain positions as primarily confidential in nature, we declare the position of Administrator (Provincial, City of Municipal as primarily confidential in nature, and the term of office of appointees to said positions, consistent with the LGC, to be coterminous with the officials they serve.

Having declared that the position of Provincial Administrator is primarily confidential in nature, the appointment of former governor Luisito Reyes, brother-in-law of Governor Reyes as Provincial Administrator is thus exempted from the operation of the law on Nepotism (paragraph (2), Section 59, Book V of the Administrative Code of 1987) and is hereby found in order.

WHEREFORE, the Appeal of Governor Carmencita O. Reyes is hereby granted. Accordingly, the position of Provincial Administrator is declared to be coterminous and highly confidential in nature.

Quezon City, May 12, 2000.

**(Sgd.) CORAZON ALMA G. DE LEON**

Chairman

**(Sgd.) JOSE F. ERESTAIN, JR.**

Commissioner

Attested by:

**(Sgd.) ARIEL G. RONQUILLO**

Director III

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