

**MANAHAN, Julita S.**

**Re: Nepotism; Promotional Appointment**

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## **RESOLUTION NO. 001306**

Julita S. Manahan, Deputy Commissioner, Internal Administration Group, Bureau of Customs, Department of Finance, Manila requests the opinion of the Commission on issues pertaining to the rule on nepotism. In her letter-request, Manahan represented, as follows:

"xxx As the official-in-charge of personnel matters, I have been designated by the Commissioner of Customs as the Chairman of the Bureau's Promotions and Selection Board.

"In this connection, I would like to seek your opinion as to whether, the undersigned as the Chairman of the Promotions Board may be considered guilty of Nepotism' within the purview of Section 59, Chapter 7, Book 5 of Executive Order No. 292, otherwise known as the Administrative Code of 1987, if and when any relative presently employed in the Bureau will be recommended for promotions and finally appointed. Right now, a daughter and a brother are employees of the Bureau of customs. Both of them are not under my direct supervision. As career employees, however, they are also seeking promotions to positions they are qualified in their respective areas of concern. Despite the preliminary screening at the local level of the Board and the recommendations of their supervisors, the undersigned has not yet given due course to these applications from the time I was named to this Board in July 1998, specifically because this nepotism provision of the Code. (Emphasis supplied)

The specific provision of law which prohibits nepotism is Section 59, Subtitle A, Title I, Book V of the Administrative Code (Executive Order No. 292), which reads, as follows:

"Section 59. Nepotism - (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government owned or controlled corporations, made in favor of a relative [within the third degree] of the appointing and recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited."

Clearly then, all appointments extended to relatives within the third (3rd) degree of the following persons are prohibited, namely:

1. Appointing Authority;

2. Recommending Authority;
3. Chief of Bureau or Office; and
4. Person exercising immediate supervision over the appointee.

Moreover, in the case of *Debulgado vs. CSC*, 237 SCRA 184, the Supreme Court had the occasion to rule on the coverage and purpose of the prohibition on nepotism, as follows:

"The original appointment of a civil service employee and all subsequent personnel actions undertaken by or in respect of that employee must comply with the prohibition against nepotism. xxx The purpose of the prohibition against nepotism is to ensure that all appointments and other personnel actions in the civil service should be based on merit and fitness and should never depend on how close or intimate an appointee to the appointing power. xxx The prohibition against nepotism applies quite without regard to the actual merit of the proposed appointee and to the good intentions of the appointing or recommending authority. xxx The purpose of the prohibition against nepotism is precisely to take out of the discretion of the appointing or recommending authority the matter of appointing or recommending for appointment a relative."

Indubitably, the purpose or objective of the prohibition against nepotism strongly indicates that the prohibition was intended to be a comprehensive one. It covers not only original appointments but also subsequent personnel actions of an employee such as promotion, transfer, re-employment and the like.

Further, in the case of *ANTAO, Hashim* (Resolution No. 00-0516), the Commission rules, as follows:

"The issue to be resolved in this case is whether or not the appointment issued to Antao by the Board of Administration one member of which is a half-brother of the appointee, is considered nepotic.

"The issue is to be resolved in the affirmative. Half-brother relations is within the prohibited degrees of relations contained in Section 59, Chapter 7, Book V of Executive Order No. 292. xxx

"The expressed desire of Hasirani who is a member of the Board of Administrators to inhibit himself from the deliberations on the application of Hamsirani from the deliberations on Antao's application only makes unapparent the evil sought to be prevented by the law against nepotism. However, the actual danger that such evil poses, which is the granting of undue favor brought about the filial connections, pervades. It is a well-established principle that what cannot be done directly cannot be done indirectly. In the case of *MOYA vs. BARTON*, 76 PHIL 831, the Supreme Court cited the foregoing legal maxim, to wit:

"x x x It is a legal maxim that what cannot be done directly cannot be done indirectly. x x x"

It must be noted that in the prevailing rule on nepotism under the Civil Service Law, there is no distinction as to the limitations of the law on the persons prohibited from exercising certain rights in case their relatives are aspirants to a contested position. This is because the law wants to secure the integrity and objectivity of the concerned persons in exercising their authority in the selection of candidates to a contested position.

Hence, by way of analogy, the aforementioned Resolutions in the case of Antao is applicable in the instant case. Undeniably, a recommending authority has the same degree of influence as that of the appointing authority, chief of bureau or office and the person exercising immediate supervision over the appointees. In order to expel any tinge/iota of doubt in the integrity of the appointment of any relative-appointee, any act that would obliquely or indirectly contravene existing laws on nepotism is anathema. The Commission stands firm that in order to secure the integrity and objectivity of all appointments, the rules on nepotism must be strictly complied with. Accordingly, any act that would make unapparent the evil sought to be prevented by the law on nepotism, is abhorred.

WHEREFORE, the Commission rules that any promotional appointment extended in favor of a relative within the third degree of consanguinity or affinity of the Chairman and Members of the Promotional and Selection Board shall be considered nepotic.

Quezon City. June 01, 2000

**(Sgd.) ELMOR D. JURIDICO**

Commissioner

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

Chairman

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

Commissioner

Attested by:

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

Director III