

TABUZO, Gloria V.

Re: Query; Honoraria

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RESOLUTION NO. 001523

Gloria V. Tabuzo, President, Catanduanes State Colleges Faculty Association, Inc., Catanduanes State College, Virac, Catanduanes, requests the ruling of the Commission on the validity of Board Resolution No. 30, s. 1993 (Authorizing the President of Catanduanes State College to Grant Service Credits to Faculty Members for Actual Teaching Overload in lieu of Honoraria provided that such Service Credits be Computed at the Rate of One Day Service Credits for Every Four Hours Overload).

In her letter, Tabuzo represented, as follows:

"In the name of the Catanduanes State Colleges Faculty Association, Inc., and most especially the individual faculty members affected, may we be given a legal opinion in the form of a Civil Service Resolution on the following:

"1. Can the honoraria to be paid to instructors/professors for teaching in excess of their regular teaching load be converted to service credits?

"2. Is service credit the same as leave credits?

"3. When there's a conflict between a Board of Trustees Resolution and a DECS Order which is also incorporated in the Leave Administration Course for effectiveness Manual of the Civil Service Commission (p.46 and p.145) which will prevail?

"In the past, we were always paid in full our honoraria (sic). However, today only the faculty members in the graduate school are paid in full, whereas the undergraduate faculty members are being paid only Two thirds (2/3) of their honoraria.. This school year the undergraduate faculty members are being paid only one half (1/2) of their honoraria.. The unpaid part are (sic) being converted into service credits.

"The Catanduanes State Colleges President insists that what he is doing is legal based on a Board Resolution of the CSC Board of Trustees which states: 'Board Res. No. 30 s. 1993 – Authorizing the President

of the Catanduanes State Colleges to grant Service Credits to Faculty Members for Actual Teaching Overload in Lieu of Honoraria, Provided that such Service Credits be Computed at the Rate of One Day Service Credits for Every Four Hours Overload." Lately, several faculty members are requesting that they should be paid in full their honoraria due to economic difficulties brought about by typhoon "Loleng." The Faculty Association have even written the Colleges (sic) President a demand letter last December 10, 1998 for us to be paid our remaining unpaid honoraria, but up to this date there's no answer . . . "

In order to judiciously resolve the issues presented, the President of the Catanduanes State Colleges was requested to comment. In his Comment, Adolfo S. Bagadiong stated that:

"Faced with the bleak prospect of incurring continuous shortfall in the honorarium for overload, I recommended to the Board of Trustees for favorable action the recommendation of the Dean of the College of Business Administration to convert the honorarium for overload of the faculty members in said College to service credits. The recommendation was unanimously approved by the Board of Trustees to apply not only in the College of Business Administration but in all colleges which may later be affected by the same funding constraint. Hence, Resolution No. 30, s. 1993 was passed . . . "

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"Conformably to this resolution, every Memorandum on overload teaching issued to faculty members always indicate that a portion of the honorarium shall be converted to service credits.

"Subsequently, Republic Act No. 8292 which is known as the Higher Education Modernization Act of 1997 was passed which gave the Board of Trustees the power to grant, at its discretion, leaves of absence under such regulation as it may promulgate provisions of existing laws to the laws to the contrary notwithstanding.

"Queries of Dr. Gloria Tabuzo:

"1. Can the honoraria to be paid to instructors/professors for teaching in excess of their regular load be converted to service credit?

"The answer is in the affirmative by virtue of the broad powers of the Board of Trustees provided under Republic Act 8292 particularly its power to grant, at its discretion, leaves of absence under such regulations it may promulgate, provisions of existing laws to the contrary notwithstanding. The answer is likewise based on the same reason why DECS Order No. 67 s. 1987 grants service credits instead of cash to teacher who are authorized to render service during long and Christmas vacations and during Saturdays and Holidays.

"Elucidating further on this answer, perhaps it would be helpful to consider the definition of leave of

absence in relation to service credit and vacation/sick leave of absence.

"Leaves of absence (sic) is generally defined as a right granted to officials and employees not to report for work with or without pay (CSC Memorandum Circular No. 41, s. 1998) as may be provided by law and the Civil Service Commission in the interest of the service (Chapter 8, sec. 60, the Revised Administrative Code of 1987). Sick leave refers to leave of absence granted to an employee on account of sickness or disability on the part of the employee concerned or any member of his immediate family as distinguished from vacation leave which is likewise a leave of absence granted to officials and employees for personal reasons (Rule 1, MC No. 41 s. 1998). Service credits on the other hand refers to leave credits earned by school teachers. These leave credits are used to offset absences due to illness or to offset proportional deduction in vacation salary due to absence for personal reasons or late appointment (Rule 1 (11) of MC NO. 41, s. 1998). Service credit is also know as vacation service credit.

"The foregoing definitions will show that vacation/sick leave of absence and service credits/vacation service credits are earned by different set (sic) of employees (teaching and non-teaching) under different circumstances. However, both are used to offset absences with pay. Hence, while leave of absence as defined, is a right granted to an employee, vacation/sick leave of absence and service/vacation service credits are the manner of exercising such rights.

"It follows therefore that when the law, RA 8292 (Sec. 4h) which provides that the Board of Trustees may at its discretion grants leaves of absence, provisions of existing laws to the contrary notwithstanding, such leave of absence include vacation/sick leave of absence and service/vacation service credits. The very provision of law indicates that it would stand independently as against DECS Order No. 67 s. 1987 which merely provides for the different activities when service/vacation service credits are maybe earned. And, Unless such law is declared unconstitutional, it shall apply to all state colleges and universities.

"This is precisely the very reason why Memorandum Circular No. 41, s. 1998 was issued by the Civil Service Commission amending Rule XVI (Leave) of the Omnibus Rules implementing the Administrative Code of 1987. MC 41, s. 1998, expressly recognizing the fact that leave credits of faculty members of state universities and colleges shall be covered by special law. This special law is Republic Act 8292.

"2. Is service credit the same as leave credits?

"The answer is likewise in the affirmative. Service credit is also referred to as teacher leave credits or vacation leave credits of teachers.

"3. When there's a conflict between a Board of Trustees resolution and a DECS Order which is also incorporated in the Leave Administration. Course for Effectiveness Manual of the Civil Service Commission (p.

46 and p. 145), which will prevail?

"The answer depends on the following scenario:

"- If the resolution is based on the clear provision of Republic Act No. 8292, the resolution will prevail. This is clear from the Repealing Clause of the law which states that all laws, Presidential Decrees, Executive Orders, Letters of Instructions, State Universities and College's charters contrary or inconsistent with this Act are hereby repealed or amended accordingly.

"- Any other matter not specifically vested in the State Universities and Colleges' Charter, the Civil Service rules or laws shall prevail. This is conformably to the fact that the Civil Service Commission is the central personnel agency of the government and it is empowered by the Constitution to prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the civil service laws and pertinent rules."

As borne by the records of the case, a similar request was filed by Tabuzo before the Civil Service Commission Regional Office (CSCRO) No. V and which was answered by the latter, as follows:

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"On your first query, 'service credits' refer to the leave credits earned by teachers who were authorized by the proper authorities to render service during vacation period (summer and/or Christmas), including Saturdays, Sundays and Holidays provided that such services fall within the enumerated activities provided under DECS order No. 67, s. 1988 as amended by DECS Order No. 5, s. 1992. On the other hand, a 'leave of absence' is generally defined as a privilege granted to officials and employees in the government to be absent and not report for duty for one or more days with their positions held for them until their return. A leave of absence may be either with pay or without pay and may be taken by any officer or employee in the national, local government, state colleges and universities, including government-owned or controlled corporations whether holding permanent, temporary or casual appointments. Hence, service credit and leave of absence are distinct and different from each other.

"As regards issue number two, the Commission has the occasion to rule on the Modified Workload Scheme of the Central Visayas Polytechnic College that 'the same varies from institution to institution depending on the program thrusts of the State University or College concerned subject to the prior approval of their respective governing Boards. However, these must not violate existing Civil Service Laws and Rules. Otherwise, the same cannot be recognized and given effect. It should be stressed that the Civil Service Laws and Rules must be satisfied in order that a PASUC-developed rule or policy can be validly implemented. (CSC Resolution No. 962875 dated April 30, 1996).

"Moreover, in a similar case, this Office ruled that the Board of Trustees, cannot grant service credits to certain employees at that college for services they have rendered beyond or in excess of their regular workload or functions as it is not in accord with existing policies on the matter (CSC RO letter to Dr. Adolfo S. Bagadiong dated August 20, 1998..."

Further, in a letter dated February 19, 1999, the Commission on Higher Education, through Joel Voltaire V. Mayo, Director, Legal Affairs Service, ruled on the query of Adolfo S. Bagadiong, President, Catanduanes State Colleges, Virac, Catanduanes, portions of which read, as follows:

"Anent your query no . 1 on whether or not the implementation of Resolution No. 30, s. 1993 up to the present is proper, it is a matter of record that the Civil Service Commission previously issued a legal opinion relative thereto in a letter dated 30 August 1998 addressed to Mr. Rene Salud, Assistant Professor II, of that college, the pertinent portion of which reads, thus:

"DECS Order No. 67 dated July 22, 1988 as amended by DECS Order No. 2, s. 1992, enumerate the following activities that a 'teacher' may be granted service credits:

"1. Service during registration and election days;

"2. Service for calamity assistance and rehabilitation when schools are used as evaluation (sic) centers;

"3. Teaching in non-formal education classes and the like;

"4. Service during summer in connection with civic action program; and

"5. Service rendered in connection with the early opening of a school year.

"It is understood that service credits are only allowed to employees who are under the teaching service and not to other officials and employee (sic) of the colleges.

"Under existing law, rules and regulations, payment of'overload pay'/honoraria in excess of the regular teaching load of professors and instructors are allowed but not the grant of service credits. (Underscoring ours)

" In view thereof, the practice of that college in converting 50% of the overload pay to service credits is not in order. However, if the college has no funds from which payment of said claims could be charge (sic), the college shall carry over this as a valid obligation to be paid out of the funds that will be generated in the future.

*"From the foregoing, it is apparent that the power to grant service credits in lieu of honoraria for actual teaching overload for faculty members at Catanduanes State College is not within the competence of the board, hence prior to the issuance of the assailed resolution, it is a **condition sine qua non** to ask the opinion of the Civil Service Commission relative thereto, it being the agency having the competence and expertise in the matter treated herein. Furthermore, DECS Order No. 67 was issued to implement Civil Service Commission Memorandum Circular No. 9, s. 1988. Thus, the idea that DECS Order No. 67 is not binding upon SUCs due to its independence, it having a separate charter, has no leg to stand as said agency issued the same merely to implement a CS (sic) issuance relative to the same. It still (sic) settled that the implementation of laws, rules and regulations relative to employees benefits and incentives is within the mandates of the Civil Service Commission which is vested with such power pursuant to paragraph (1), Section 2, Article IX of the Constitution, the material portion of which reads, thus:*

'Sec 2. (1) The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned and/or controlled corporations with original charters.'

"In view of the previous ruling or opinion rendered by the Civil Service Commission, Regional Office V relative to the instant query declaring among others impliedly that the issuance of Resolution No. 30, s. 1993 of the Board of Trustees of Catanduanes State Colleges is not in order, it is the firm belief of this Office that there exists no legal reason to uphold said board issuance considering that the opinions rendered by administrative agencies like the CSC is entitled to respect because of its presumed expertise along its areas of concern . . .

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"Going now to the solitary confinement of your second query, to settle the aforecited questions posed before Us, the pertinent provisions of Sec. 4 paragraph h of R.A. No. 8292 is worth mentioning. thus:

'h) to fix and adjust salaries of faculty members and administrative officials and employees subject to the provisions of the revised compensation and classification system and other pertinent budget and compensation laws governing hours of service, and such other duties and conditions as it may deem proper; to grant them, at its discretion, leaves of absence under such regulations as it may promulgate, any provision of existing law to the contrary notwithstanding; and to remove them for cause in accordance with the requirement of the due process of law.'

"Perusal of the above cited provision of law reveals that the power to grant service credits in lieu of payment of honoraria for actual teaching overload does not belong to the said board. Even the pertinent provision of the school charter does not include the subject in question before Us as part of the powers of the School's Board

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*"Thus, it is perfectly legal to conclude that the schools board has no power to issue the herein attacked resolution as there is no expressed power conferred upon it by law. It is in consonance with the latin maxim "**expressio unios est exclusion alterius**"(what is not include is deemed excluded), hence we are of the opinion that in the absence of an expressed provision to the contrary, the issuance of the herein assailed resolution is an **ultra vires act** of the governing board, thus, wholly inoperative."*

At this point, it is necessary to answer the queries posed by Tabuzo.

Vacation Service Credits¹ refer to the leave credits earned by public school teachers for services rendered during activities authorized by proper authorities during long and Christmas vacation. These credits are used to offset their absences due to illness or to offset proportional deduction in vacation salary due to absences for personal reasons or late appointment. The manner by which service credits may be earned by teachers is subject to the guidelines issued by the Department of Education, Culture and Sports (DECS).

Meanwhile, **leave of absence**² is generally defined as a right granted to officials and employees not to report for work with or without pay as may be provided by law and as the rules prescribe in Rule XVI of the Omnibus Rules on Leave.³

On the other hand, an **honorarium**⁴ is a gesture of appreciation for the service of one with expertise of professional standing in recognition of his broad and superior knowledge in specific fields. It is given to officials/employees not as a matter of obligation but in appreciation for services which admit of no compensation in money (**Teodoro Santiago vs. COA GR No. 92284, July 12, 1991**).

This also comes in the form of extra monetary remuneration paid to a government official and/or employee by virtue of his office, position or in connection with the function of his office or in the discharge of his duties, under the following circumstances:

- a. Resource persons by virtue of their expertise in a specific subject area or those who are experts in handling sessions which involve group processes, act as lecturers, discussants, paper presentors, panelists, or facilitators in group dynamic sessions.

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In general, government employees shall be entitled to fifteen (15) days vacation leave and fifteen (15) days sick leave with full pay which they may accumulate without limitation as to the number of days. Teachers do not generally earn leave

credits in the same way that other government employees do. They are covered by the provisions of Letter of Intent (LOI) No. 1509 which grant them **teacher leave status** or the right to enjoy Christmas and long vacation period with pay even if they do not render any service. They may, however, earn and accumulate vacation service credits for working on Saturdays, Sundays, holidays or during school vacations. DECS Order No. 67 dated July 22, 1988 as amended by DECS Order No. 2, s. 1992, enumerates the activities for which a teacher may be granted service credits:

1. Service during registration and election days;
2. Service for calamity assistance and rehabilitation when schools are used as evacuation centers;
3. Teaching in non-formal education classes and the like;
4. Service during summer in connection with civic action program; and
5. Service rendered in connection with the early opening of a school year.

Pursuant to Section 45 of CSC Memorandum Circular No. 14, s. 1999, **(Conversion of Vacation Service Credits of Teachers to Vacation and sick Leave Credits and Vice-Versa; Payment Hereof)** the unused vacation service credits earned by teachers can be converted into vacation and sick leave. The said section reads, as follows:

"Teachers and other school personnel on the teachers' leave basis who resigned, retired, or are separated from the service through no fault of their own on or after January 16, 1986 shall be paid the money value of their unused vacation service credits converted into vacation and sick leave using the formula:

"Vacation and Sick Leave = 30y/69

"Where: 30 = Number of days in a month

Y = Total number of Teacher's service credits

69 = 58 days of summer vacation plus 11 days of Christmas Vacation

"NO. OF DAYS DERIVED SHALL BE DIVIDED EQUALLY INTO VACATION AND SICK LEAVE CREDITS

"FORMULA IN OBTAINING 69 DAYS:

" 84 total number of days of Summer/Christmas vacation

- 15 (*12 days Saturday/Sunday during summer vacation
*39 days-Christmas Day, Rizal Day, New Year's Day

"69 days

"CONVERSELY, THE FORMULA IN THE CONVERSION OF SICK AND VACATION LEAVE CREDITS TO VACATION SERVICE CREDITS OF TEACHERS IS AS FOLLOWS:

" $Y = VL + SL$

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Based on the aforementioned rules, it is clear that the term **leave credits** encompasses the fifteen (15) days vacation leave and fifteen (15) days sick leave given to all government workers and the service leave credits granted to public school teachers. Thus, the term **leave credits** pertains to one of the benefits granted to a public servant upon entrance to government service, while **service leave credits** speaks of the specific leave credits limited only to teachers for services rendered in accord with DECS Order No. 67 dated July 22, 1988 as amended by DECS Order No. 2, s. 1992.

Anent the issue of whether an **honorarium** may be converted to service leave credits, the same is answered in the negative. It must be noted from the foregoing discussion that **service leave credits** are given in exchange for services rendered by teachers during Saturdays, Sundays, holidays or during school vacations. It is mandatory on the part of the government to grant the same to teachers who rendered the aforementioned services. However, **honoraria** is given to officials/employees not as a matter of obligation but in appreciation for services which admit of no compensation in money. Thus, it can safely be concluded that honoraria and service credits belong to different classes of benefits or allowances, hence, they cannot be interchanged nor converted in order to be fully enjoyed by an employee.

A question may arise whether said **honoraria** may be considered as **overtime pay**, hence convertible to **service leave credits**? This Commission maintains that the same is still not feasible.

Be it noted that under **Section 278 and 283 Chapter 4, Volume I, Government Accounting and Auditing Manual**, the nature of overtime services and pay are stated, as follows:

"Sec 278. Authority to render overtime service. – *In general, rendition of overtime services may only be authorized where the work or activity has to be completed on a fixed date and the scheduled date of completion cannot be met within regular work days and hours; or where although there is no fixed date of completion, the prolonged delay in, or non-completion of the work or activity, shall:*

"a. Cause financial loss to the government or its instrumentalities;

"b. Embarrass the government due to its inability to meet its commitments; or

"c. Negate the purposes of which the work or activity was conceived.

"Sec. 283. Compensation in lieu of overtime pay.- *"Compensation in lieu of overtime pay" refers to honoraria, allowances and similar payments usually applicable to special projects, teachers' overteaching (sic) or summer load, etc.*

"Officials and employees on assignment with special projects and are paid honoraria, allowances and other forms of compensation are barred from receiving overtime compensation. All such honoraria, allowances and other forms of compensation shall be considered as their full compensation in lieu of overtime pay; provided, that the total amount received by an individual in a given calendar year as additional compensation from special projects shall not exceed 50% of his annual salary (NBC 410, supra)."

Clearly then, an overtime pay may be converted to other forms of compensation, i.e honoraria, allowances and other similar payments. The above-mentioned manual, however, is silent as to whether an honorarium paid in lieu of overtime pay may be converted to other benefits. This finds basis under the familiar Latin maxim of ***expressio unius est exclusio alterius*** (the mention of one thing implies the exclusion of another thing upon which it is to operate, everything else must necessarily, and by implication be excluded from its operation and effect⁶).

In sum, even if the honorarium was received in lieu of overtime pay, the same cannot still be converted to service leave credits based on the foregoing ratiocination.

As to the issue of which will prevail in case of conflict between a DECS Order and a Board of Trustees' Resolution, the Commission rules in favor of the former. It is worth noting that **Section 4(a) of Republic Act No. 8292** (An Act Providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges), has clearly stated that the governing board shall only enact rules and regulations not contrary to law. Therefore, if a rule or regulation is enacted contrary to existing laws, the same cannot prosper if it was issued in contravention of the intention of the aforementioned section of RA No. 8292.

In the instant case, inasmuch as Board Resolution No. 30, s. 1993 was issued in contravention of existing Civil Service policies and the intent of RA No, 8292, the same cannot be given any legal effect.

WHEREFORE, the Commission rules that Board Resolution No. 30, s 1993 of the Board of Trustees, Catanduanes State Colleges, is invalid and without force and effect.

Quezon City, JUN 29 2000

(SGD.)
CORAZON ALMA G. DE LEON
Chairman

(SGD.)
JOSE F. ERESTAIN, JR.
Commissioner

(SGD.)
ELMOR D. JURIDICO
Commissioner

Attested by:

(SGD.)
ARIEL G. RONQUILLO
Director III

FPG/AML/A5/A8-tabuzo(win-38)/jrl
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¹ CSC MC No. 41, s. 1998

² ibid.

³ ibid

⁴ Section 288, Article 2, Chapter 5, Volume I
Government Accounting and Auditing Manual

⁵ CSC Resolution No. 962875, April 30, 1996

⁶ Statutory Construction, Rufus Rodriguez, p. 115, 1994 Edition.