

**DE BUQUE, Jorge**  
**Re : Appointment; Age 65 and above**  
x-----x

## **RESOLUTION NO. 001565**

Atty. Jorge Debuque of Molo, Iloilo City, requests a ruling on whether or not a retired government lawyer over 65 may be legally appointed to a co-terminus position of City Legal officer.

Portions of his letter are, as follows:

"May I respectfully request for the official written opinion of your good office on the following question:

'Can a retired government employee over age 65 be legally appointed to a co-terminus position in the government of the City of Iloilo, where the prospective retired appointee has all of the qualifications and none of the disqualifications for occupying such a co-terminus position?'

"I specifically refer to the position of Chief Legal Officer, Iloilo City Legal Office.

"Your opinion on this matter is needed by the Iloilo City Chief Executive before he appoints such prospective appointee to this co-terminus position of Chief Legal Officer."

The issue to be resolved in the instant case is whether or not a lawyer above the age of 65 may be appointed to the position of City Legal Officer.

The prohibition on appointment of persons beyond the mandatory retirement age of sixty-five is provided for under Republic Act No. 8291 (GSIS Act of 1977), as follows:

"Sec. 13. Retirement Benefits - - - xxx (b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age 21."

A similar rule is provided under Section 12, Rule XIII, Civil Service Commission MC 15, s. 1999, as follows:

"While it may be true that persons who reach the compulsory retirement age can no longer be employed or re-employed in government service, unless in a personal and confidential capacity and under a temporary status, it may admit of exceptions in meritorious cases.

"Thus considering the abovesited factors prevailing in the PCAGC, i.e., lawyer positions as dearth category, temporary structure of the PCAGC, and the fact that de Leon was extended a contractual appointment, it would be tantamount to a disregard of the need of the agency to fill its vacancies, in the exigency of the service, if the Commission is to disapprove said appointment on the mere basis of the appointee's age, when the position to which the appointee was appointed has no other qualified applicant at all."

It is thus clear that the Commission recognizes instances when the appointment of lawyers above age sixty-five (65) is justified in the exigency of the service. Said exemption is allowed so as not to paralyze vital government operations where the services of lawyers are essential, and that, there are not enough qualified lawyers to fill the position.

Finally, Section 481 of the Local Government Code (RA 7160), provides that the position of City Legal Officer is co-terminus with the appointing authority (Mayor). Appointments therefore to said position is understood to be based on trust and confidence of the appointing authority and co-existent with the term of the latter.

WHEREFORE, the Commission hereby rules that a retired government lawyer over age 65 may be appointed to the position of City Legal Officer under co-terminus status.

Quezon City, July 07, 2000

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

Chairman

O. B.

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

Commissioner

**ELMOR D. JURIDICO**

Commissioner

Attested by:

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

Director III

