

SESE, Louis D.

Re: Nepotism; Request for Opinion

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RESOLUTION NO. 002596

Louis D. Sese, Deputy Administrator II, Cotton Development Administration, seeks clarification relative to the application of the rule on nepotism in appointments involving the position of Researcher.

In his request, Sese represented that while Executive Order No. 292 (The Administrative Code of 1987) does not include said position as among those exempted from the application of the law against nepotism, Presidential Decree No. 1502 (Incentives and Administrative Reform to Promote Efficiency and Productivity of Scientific and Technological Research) expressly declares that said position is exempted from said law.

Specifically, Deputy Administrator II Sese stated, as follows:

"We would like to seek assistance on the Rule on Nepotism. As provided under the Civil Service Law and Rules (Book V of EO 292 and amended Omnibus Rules) chapter 8 (sic), the following are exempted from the said rule:

"a) persons employed in a confidential capacity "b) teachers "c) physicians, and "d) members of the Armed Forces of the Phils."

Attached to the records of the case is a copy of Presidential Decree No. 502 as contained in Item No. 6 (Personal Services) of the AAMRO Book 1 which reads as follows:

"(6) Personal Services (01)

"General rule on nepotism xxx

" The appointment of research personnel to positions of research assistants and upwards shall not be covered by the civil service rule on nepotism in consideration of the highly technical nature of these positions. (Sec. 3, P.D. No. 1502)"

The foregoing request was initially filed with the Civil Service Commission - National Capital Region. But the same was forwarded by said office to the Commission Proper in view of the fact that resolution thereof would require interpretation of said law.

The Commission is of the view that Section 3 of Presidential Decree No. 1502 constitutes an exemption from the provisions of Section 59 of the Administrative Code of 1987. This is anchored on the fact that the former specifically deals with appointments of research assistant in the field of food and agriculture and the latter with all civil service positions in general. As between the two (2) statutes, the Decree shall prevail over the Code.

The rule on statutory construction that provides for the repeal of the old law in cases where a new law dealing on the same matter is enacted (People vs. Almuate (69 SCRA 410), does not apply in the case at bar because do not deal with the same subject matter. It is noted that while the Decree took effect on July 11, 1978 and the Code on November 23, 1989 (amending Civil Service Act of 1959 dated July 19, 1959), the executive branch, in the exercise of its quasi-legislative powers, has different intentions for their passage. The Decree was enacted to promote the efficiency and productivity of scientific and technological research; while the Code was enacted as an administrative restructuring of the government when the former President Corazon C. Aquino came into power.

The same findings hold true even with the passage of Republic Act No. 8439 also known as the Magna Carta for Scientist, Engineers, Researchers and Other Science and Technology Personnel in the Government approved on December 22, 1997. In fact, this Act specifically exempted Science and Technology personnel to positions of research assistant and upwards from the coverage of the attrition law and CSC rule on nepotism in consideration of the highly technical nature of these positions under Section 12 thereof.

Although it is noted that the intention of the legislature (in case of RA 8439) and the executive branch in the exercise of its quasi-legislative power (in the case of P.D. 1502) in exempting the research assistant position from the application of nepotism is the same, the similarity ends there. While the Act deals with the activities in support of scientific research and technical knowledge in the fields of natural science and technology (Section 3), the Decree relates to the research in agriculture and natural resources towards the full development of the country's food requirements and its scientific resources ("Whereas" statements). Thus, said statutes can stand together and is not inconsistent with each other.

IN SUM, appointments involving research positions are exempted from the law on nepotism whenever the same fall within the provisions of Presidential Decree No. 1502 and Republic Act No. 1502 and Republic Act No. 8439.

WHEREFORE, the Commission hereby rules that appointments to positions of research assistant up to its highest category are exempted from the rule on nepotism whenever the same falls within the coverage of Presidential Decree No. 1502 or Republic Act No. 8439.

Quezon City, NOV. 15 2000

(Sgd.) CORAZON ALMA G. DE LEON

Chairman

JOSE F. ERESTAIN, JR.

Commissioner

(Sgd.) J.WALDEMAR V. VALMORES

Commissioner

Attested by:

ARIEL G. RONQUILLO

Director III