

FRANCISCO, Onofre H. , Sr.

Re: Motion for Reconsideration

(CSC Resolution No. 00-0259);

Extension of Service

X-----X

RESOLUTION NO. 011272

Mayor Benjamin C. de Guzman, City Government of Davao, seeks the reconsideration of Civil Service Commission Resolution No. 00-0259 (CSC Resolution No. 00-0259) dated January 27, 2000, denying the request for the extension of service of Atty. Onofre H. Francisco, Sr., the dispositive portion of which reads as follows:

"WHEREFORE, the request for extension of the service of Atty. Onofre H. Francisco, Sr. is hereby denied."

In his motion, Mayor de Guzman alleges that the appointment and tenure of a City Legal Officer, being coterminous with the appointing authority, does not expire upon the reaching by the incumbent of the age of sixty-five (65). Furthermore, Mayor de Guzman asserts that if a person aged sixty-five or above can be appointed to a primarily confidential position, then there is no reason why a person who holds a primarily confidential position can be separated therefrom upon reaching the mandatory retirement age.

After due deliberation, the Commission finds the instant motion impressed with merit.

Section 12, Rule XIII of Civil Service Commission Memorandum Circular No. 40, Series of 1998 (CSC MC No. 40, s. 98), provides as follows:

"Sec. 12. No person who has reached compulsory retirement age of 65 can be appointed to any position in the government, except to primarily confidential positions, provided that the

appointment shall be under temporary status.

"x x x"

Meanwhile, **CSC MC 15, series of 1999** was promulgated and it provides that:

"Sec. 12. No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government.

"x x x"

To harmonize the two, the Commission, in the case of **Eleuterio C. Dumogho, CSC Resolution No. 01-0043 dated January 5, 2001**, elucidated thus:

"It is clear from the aforesaid rule that a person who has already reached the compulsory retirement age may still be appointed provided that the position to which he is to be appointed is considered primarily confidential and that it is under temporary status. It must be stressed that CSC Memorandum Circular No. 15, s. 1999 did not repeal, modify or alter the aforesaid rule. In fact, nowhere can it be found in the said MC 15 that it expressly repeals, modifies, or alters the abovementioned rule. Hence, said rule is still in force and effect.

"Considering, therefore, that the position to which Dumogho was appointed is deemed as primarily confidential and that his employment status is coterminous/temporary, his appointment as Director III (Personal Staff), may be approved, notwithstanding the fact that he already reached the compulsory retirement age." (underscoring ours)

It is worthy of emphasis that the nature of the position of City Legal officer has been categorically and conclusively determined by no less than the Supreme Court, in a number of cases, to be one which is primarily confidential. Among the more notable cases are **Cadiente vs. Santos, 142 SCRA 280**, and **Claudio vs. Subido, 40 SCRA 481**.

The essence of a primarily confidential position of City Legal Officer, is aptly stated in **Section 2 (d), Rule III of CSC MC No. 40, s. 98**, which reads as follows:

"d. Coterminous - issued to a person whose entrance in the service is based on trust and confidence of the appointing authority, xxx"

Said provision is bolstered by the ruling in the case of **De Buque (CSC Resolution No. 00-1565 dated July 7, 2000)**, which referring to the position of City Legal Officer, provides that, *"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 Motion for Reconsideration of Mayor Benjamin C. de Guzman of the City Government of Davao is hereby **GRANTED**. Accordingly, CSC Resolution No. 00-0259 dated January 27, 2000 is set aside. Atty. Onofre H. Francisco, Sr. may continue to hold office as City Legal Officer under co-terminous and temporary status.

Quezon City, **JULY 26, 2001**

Signed
KARINA CONSTANTINO-DAVID
Chairperson

Signed
JOSE F. ERESTAIN, JR.
Commissioner

O.B.
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

Signed
ARIEL G. RONQUILLO
Director III

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