MEJIA, Paula G.
VALENCIA, Luisa S.
CAMATO, Dionisio O.
ASADON, Ponciano B.
Re: Appeal; Legal Opinion;
Designation of a Commissioner
x----------x

RESOLUTION NO. 01-1305

Paula G. Mejia, Luisa S. Valencia, Dionisio O. Camato, and Ponciano B. Asadon (Mejia, *et al.*, for brevity), all employees of varying positions in the Commission on Higher Education (CHED), appeal from the legal opinion rendered by the Office for Legal Affairs, this Commission, on their previous query relative to the propriety of the designation of a CHED Commissioner as Head of the CHED Higher Education Development Fund Secretariat (HEDFS).

The assailed legal opinion reads, as follows:

> *"This pertains to your letter dated February 9, 2001 together with three other employees of the Higher Education Development Fund Secretariat, Commission on Higher Education (CHED), Pasig City, requesting clarification relative to the implementation of CSC Resolution No. 97-3970 dated October 5, 1997. The dispositive portion of said Resolution reads, as follows:*
>
> > *'WHEREFORE, foregoing premises considered, the Commission hereby resolves to reiterate, adopt and promulgate the policy of prohibiting the designation of consultants, contractuals, and other non-career employees as officers-in-charge, executive directors or supervisors who exercise the power of supervision over regular and career personnel in the agency.'*

"You represented that Chairman Ester A. Garcia of CHED designated Commissioner Manuel D. Punzal as Officer-in-Charge of the Higher Education Development Fund Secretariat, notwithstanding that the latter is a non-career official. Hence, you now inquire whether such designation is sanctioned by the Civil Service Law and Rules.

"Pointedly, the prohibition stated in CSC Resolution No. 97-3970 is now embodied in Section 15, Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions, which categorically provides, as follows:

> *'Sec. 15. No consultant, contractual or non-career employee shall be designated to positions exercising control or supervision over regular and career personnel.'*

"As will be noted from the abovequoted provision, what is prohibited is the designation of consultants, contractuals and non-career employees to positions exercising control or supervision over regular or career employees. However, in interpreting said provision, rules on statutory construction must be taken into consideration, particularly, the principle of ejusdem generis. Under this principle, when a general word follows an enumeration of particular words of the same class, the general word is to be construed to be restricted to persons or things resembling or of the same kind or class as those specifically mentioned. (Agpalo; Statutory Construction, Third Edition, 1995). Hence, the general term 'non-career' in the quoted provision must be read together with the enumeration preceding the same. The term 'non-career' therein must be construed to mean other non-career employees within the same level of contractuals or consultants.

"Certainly, a Commissioner of CHED does not fall within the same kind or class as those of contractuals or consultants. Thus, it becomes exceedingly clear that the prohibition embodied in CSC Resolution No. 97-3970 and Section 15, Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions, will not apply to Commissioner of CHED. Besides, by the very nature of an appointment as CHED Commissioner, such position carries with it the inherent power to supervise and exercise control over the offices within CHED."

In questioning the above-quoted opinion, Mejia, *et al.* posit the following:

"APPEAL

x x x

"We respectfully submit the following grounds for this APPEAL, consisting of our clarification of Gabriel's confusing clarification, to wit:

*"**1. On the second paragraph of Gabriel's letter, which reads as follows:** 'You represented that Chairman Ester A. Garcia of CHED designated Commissioner Manuel D. Punzal as Officer-in-Charge of the Higher Education Development Fund Secretariat, notwithstanding that the latter is a non-career official. Hence, you now inquire whether such designation is sanctioned by the Civil Service Law and Rules.'*

"Our Clarification of Gabriel's confusing clarification:

"We never inquired 'whether such designation is sanctioned by the Civil Service Law and Rules.' On the contrary, we posited that such designation was contrary to Civil Service regulation prohibiting the designation of non-career employees as OIC or executive director or regular staff/offices with power of control and supervision over career employees.

"We prayed the Honorable Civil Service Commission to render OPINION en banc, pursuant to the Civil Service Law, on the questions we raised in our aforesaid letter, specifically:

> *'1. Can a Commissioner exercise oversight or supervision function over the HEDF Secretariat considering that staff is already under the supervision and control of the Chairman as agency head? And considering that the HEDF Secretariat is not a project or program but a regular staff of the Commission on Higher Education composed of career employees?*

'2. Can a Commissioner who is an official holding a non-career position be designated as Officer-in-Charge of the HEDF Secretariat?

'3. Can an appointment or designation be made to a non-vacant position?'

"We never asked for Gabriel's confusing clarification.

*"**II. On the third paragraph of Gabriel's letter, which reads as follows:** 'Pointedly, the prohibition stated in CSC Resolution No. 97-3970 is now embodied in Section 15, Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions, which categorically provides, as follows:*

x x x

"Our clarification of Gabriel's confusing clarification:

"Apparently, Mr. Gabriel was confused by some commissioner and director's assertion that they are no employee. But the law defines –

> *'Employee'—when used in reference to a person in the public service of the government, includes any person in the service of the government or any of its agencies, divisions, subdivisions or instrumentalities. (Administrative Code of 1987, Introductory Provisions, Sec. 2, par. [15])*

"Thus, under the definition, Commissioner Punzal is employee, an employee in the non-career service or 'non-career employee.'

*"**III. On the fourth paragraph of Gabriel's letter, which reads as follows:** 'As will be noted from the abovequoted provision, what is prohibited is the designation of consultants, contractuals **and** non-career employees to positions exercising control or supervision over regular or career employees. However, in*

interpreting said provision, rules on statutory construction must be taken into consideration, particularly, the principle of ejusdem generis. Under this principle, when a general word follows an enumeration of particular words of the same class, the general word is to be construed to be restricted to persons or things resembling or of the same kind or class as those specifically mentioned (Agpalo; Statutory Construction, Third Edition, 1995). Hence, the general term 'non-career' in the quoted provision must be read together with the enumeration preceding the same. The term 'non-career' therein must be construed to mean other non-career employees within the same level of contractuals or consultants.' (Emphasis supplied)

"Our clarification of Gabriel's confusing clarification:

"In the above-quoted fourth paragraph of Gabriel's letter, the conjunction and is highlighted to emphasize his confused attempt to explain his principle of ejusdem generis.

"The above-quoted Sec. 15 uses the alternative conjunction or, not the conjunction and, which makes a difference in the discussion of that principle:

> *'It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.' Paras v. COMELEC, 264 SCRA 54, cited in Blanquera vs. Alcala, 295 SCRA 366 (1998)*

"The said Sec. 15 has the force of law. It speaks in plain and unambiguous language. x x x

"So also, resort to extrinsic aid is unwarranted, the language of the rule being plain and unambiguous. Then, too, Gabriel's confusing clarification would unnecessary limit the application of that beneficient rule by the simple expedient of invoking the Latin maxim of ejusdem generis. For even the opinions of the Secretary of Justice, as the Supreme Court held in Republic of the Philippines vs. Court of Appeals, 299 SCRA 199 (1998), are unavailing to supplant or rectify any mistake or omission in the law.

'The Commission is bound by and may not waive is own rules formally promulgated

(Ariz.—Taylor v. McSwain, 95 P. 2d 415, 54 Ariz. 295), and must act in accordance with its rules and regulations as they exist at the time the action is taken.' (Ariz.—Taylor v. McSwain, supra.)

"It is indeed intriguing to note that even as Mr. Gabriel went to some extent in citing solely said Section 15 just to inject his ejusdem generis principle, he overlooked, by intent or design, the preceding Section 14, which plainly reads as follows:

'Sec. 14. No person appointed to a position in the non-career service shall perform the duties properly belonging to any person in the career service.'

"Then Mr. Gabriel needed only ask: Who are included in the non-career service? The answer is provided in Sec. 9 of the Civil Service Law, which reads as follows:

'Sec. 9. Non-Career Service. -- x x x

'The Non-Career Service shall include:

x x x

'(3) Chairman and members of commissions and boards with fixed terms of office and their personal and confidential staff.'

x x x

"Clearly, the prohibition stated in CSC Resolution No. 97-3970 is now embodied not just in Section 15 but also in Section 14, Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions. That Mr. Gabriel did not mention this particular fact in his clarification is what makes it confusing; worse, such non-disclosure betrays either his ignorance of the Civil Service rules or his mental dishonesty with the specific purpose to hide that particular provision which is definitely damaging to his position!

x x x

"Both Section 14 and Section 15 are prohibitory rules under Rule XIII which is designated 'PROHIBITIONS'. The said Sections have the force of law.

'ART. 5 Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity. (Civil Code of the Philippines)

"The designation of Commissioner Manuel D. Punzal was executed against the provision of prohibitory laws, hence, void. Commissioner Punzal has demonstrated that he cannot maintain professional competence in HEDF management, organize and supervise HEDF personnel for efficient dispatch of business, and observe unceasingly the high standards of public service.

"Finally, can an appointment of designation be made to a non-vacant position? Lately, the position of our chief as Director III was declared vacant at the instance of Commissioner Ester Garcia and Executive Officer Roger Perez for no valid reason except to place Commissioner Punzal as HEDFS Officer-in-Charge."

x x x

The case stemmed from the order issued by CHED Chairman Ester A. Garcia designating CHED Commissioner Manuel Punzal as Officer-in-Charge (OIC) of the CHED HEDFS. In a letter dated February 9, 2001, Mejia, *et al.* inquired on the validity of the aforesaid order. In particular, they requested for an opinion on whether a Commissioner, who is an official holding a non-career position, can be designated as an OIC of a regular office, in the light of the rule declaring as illegal, the designation of a non-career employee to a position involving control or supervision over regular or career personnel. In reply to their query, the Office for Legal Affairs promulgated the opinion subject of the present appeal.

Before squarely addressing the merit of the appeal, the Commission deems it appropriate to first elaborate on the issue concerning the rendition of legal opinions by its Office for Legal Affairs.

It is true that under **Section 12 (5), Subtitle A, Title I, Book V of the Administrative Code of 1987**, it is therein provided that one of the functions vested to the Commission is to "render opinions and rulings on all personnel and other civil service matters." The investiture or imposition of the said power or function should not, however, be construed as depriving the Commission of its discretion regarding the manner by which it chooses to exercise or perform the same. If and when it sees fit, it may therefore opt to delegate or entrust to a subordinate office, as what it does now, the power to promulgated legal opinions on administrative issues brought before it. In fact, such delegation of authority would be more in keeping with the dictates of sound managerial practice, for to strictly require or obligate the Commission to attend to each and every request for legal opinion would be taxing, if not highly impractical. Considering the immense number of such requests received daily, the Commission would be left with

only a precious little time to perform its other equally important functions. After all, the rendition of opinions is just one of the myriad responsibilities it is called upon to discharge.

That being said, the Commission shall now address itself to the main substance of the case.

The dilemma underlying this case is rooted in the seeming ambiguity of the phrase "non-career employee" in **Section 15, Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions**, which reads:

> *"Sec. 15. No consultant, contractual or non-career employee shall be designated to positions exercising control or supervision over regular and career personnel."*

If the phrase "non-career employee" would encompass all those belonging in the non-career service, irrespective of their level or status, as Mejia, *et al.* would interpret the same to be, then the designation of Commissioner Punzal as OIC of the CHED-HEDFS should be readily and unhesitatingly struck down as being invalid.

Briefly, it is the principal contention of the appellants that it is improper to apply the principle of *ejusdem generis* in

determining or ascertaining the meaning of the phrase "non-career employee" considering that the same is clearly and plainly worded, thus precluding any extended ratiocination or construction. To support their proposition, they correlate the definitions provided by the Administrative Code to the terms "employee" and "non-career service" to come up with their theory that "non-career employee" pertains to all non-career persons in the service of the government, including the Commissioners of the CHED, so that the latter cannot be designated to supervisory positions without violating the prohibitory policy.

After mature deliberation of the arguments in the light of pertinent legal provisions and case law, the Commission reaches the conclusion that the interpretation Mejia, *et al.* would seek to impart on the phrase "non-career employee" and which they urge upon the Commission, is not tenable.

First, their reliance on the definition of "employee" as set forth under **Section 2 (15) of the Introductory Provisions of the Administrative Code of 1987**, is utterly misplaced. Admittedly, the definition of "employee" in that section, taken in isolation, partakes of an all-encompassing or inclusive character. Thus, it provides:

> *"SEC. 2. General Terms Defined. - Unless the specific words of the text, or the context as a whole, or particular statute, shall require a different meaning:*
>
> *x x x*
>
> *"(15) 'Employee', when used with reference to a person in the public service, any person in the service of the government or any of its agencies, divisions, subdivisions or instrumentalities."* (underscoring for emphasis)

Yet, if Section 2 is read in its entirety, it becomes readily apparent that the definitions enumerated therein are not meant to be exclusive. The provision injects or infuses an exception clause, as indicated in the prefatory statement underscored above. Thus, when the usage, circumstance or the context of the words defined calls for a different sense or meaning, then the given definitions may

be altogether dispensed with. Stated elsewise, not in all instances should "employee" be taken to mean as what the Administrative Code defines it to be.

Second, to sanction the appellants' interpretation would obliterate the well-entrenched distinction between "officers" and "employees," which the Administrative Code of 1987 itself recognizes when it differentiates or distinguishes an "officer" from "clerk" or "employee". As it states:

> *"(14) 'Officer' as distinguished from 'clerk' or 'employee', refers to a person whose duties, not being of a clerical or manual nature, involves the exercise of discretion in the performance of the functions of a government. x x x"* **(Section 2 [14], Introductory Provisions, Administrative Code of 1987)**

It would also undermine or do away with the long-standing principle fundamental to the concept of public sector unionism, that is, the non-inclusion of public officials in employees' associations and unions.

Even the Supreme Court acknowledges the distinction between "public official" and "employee" when it declared, in the case of **Gonzales vs. Hechanova, et al. (G.R. No. L-2187, October 22, 1963)**. That *"a public official is an officer of the Government itself, as distinguished from officers or employees of instrumentalities of the Government, which may have a personality of their own, distinct and separate from that of the Government."*

In another case, the High Tribunal said:

> *"These officials are public officers, as distinguished from mere employees, with public duties delegated and entrusted to them, as agents, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which they, as agents, are active."* **(Hebron vs. Reyes, 104 Phil. 175, citing Coulter vs. Pool, 187 Cal. 181, 201 p. 121)**

There is one more consideration that militates against the interpretation of the appellants. To construe the phrase "non-career employee" as contemplating public officers like the chairmen and members of commissions with fixed terms of office, such as CHED Commissioners, so as to subject them to the prohibition on the designation of consultants, contractuals, and other non-career employees to positions entailing supervision over regular and career personnel, would be overly-stretching the import of the policy. It would, in effect, lead to an absurd and ridiculous situation, where the Chairman or Commissioner, say, of this Commission would be powerless to supervise subordinate officials and employees belonging to the career service, even though said control and supervision are inherent in his functions. The Commission is not yet ready to accept such strained interpretation as it would thwart a long and established administrative order, the efficacy of which has been proven time and again.

The better interpretation therefore is to limit the meaning of "non-career employee" to the class or category of employees on the same level or status with that of contractual personnel and consultants. On this score, the Commission sees no plausible reason to depart or deviate from the questioned opinion, and therefore quotes its *ratio* with approval:

> *"As will be noted from the abovequoted provision, what is prohibited is the designation of consultants, contractuals and non-career employees to positions exercising control or supervision over regular or career employees. However, in interpreting said provision, rules on statutory construction must be taken into consideration, particularly, the principle of ejusdem generis. Under this principle, when a general word follows an enumeration of particular words of the same class, the general word is to be construed to be restricted to persons or things resembling or of the same kind or class as those specifically mentioned. (Agpalo; Statutory Construction, Third Edition, 1995). Hence, the general term 'non-career' in the quoted provision must be read together with the enumeration preceding the same. The term 'non-career' therein must be construed to mean other non-career employees within the same level of contractuals or consultants."*

The foregoing disquisition already renders it unnecessary to pass upon the validity of CHED Commissioner Punzal's designation as OIC of the CHED-HEDFS. Ultimately, designation is a managerial prerogative addressed to the sound discretion of the head of an agency. Barring any showing of grave abuse of discretion in the exercise thereof, and having complied with the controlling civil service law and rules, the Commission refrains from interfering therewith.

Trying another tack, Mejia, *et al.* would subvert the designation of Commissioner Punzal on the ground that the position to

which the latter was designated was declared vacant precisely to pave the way for such designation. Other than their mere allegation, however, the records are devoid of any evidence to sufficiently establish their claim.

WHEREFORE, the Commission hereby resolves that the rule prohibiting the designation of contractuals, consultants and non-career employees to positions involving supervision and control over regular and career employees, does not extend to CHED Commissioner Manuel Punzal's designation as Head of the CHED-HEDFS.

Quezon City, August 02, 2001

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

FPG/RTM/X1/Y22/vog/volt36
Mejia
O 01-0066
20010508-003