

**VILORIA, Cheribin Mena K.**  
**BALINO, Catherine M.**  
**CALZADO, Daylinda R.**  
**CORDERO, Rowena F.**  
**DE GUZMAN, Merlinda E.**  
**DIANAL, Nora M.**  
**EMBERGA, Rolando G.**  
**GAJO, Eduardo P.**  
**GAVIOLA, Luz B.**  
**GEPTE, Francisco S.**  
**GLEMAO, Lourdes S.**  
**GLEMADA, JR., Primitivo O.**  
**LIM, Romeo B.**  
**MORTERA, Jovita A.**  
**PONGOL, Noel S.**  
**TATO, JR., Pedro D.**  
**TAN, Rebecca D.**  
**EBALIG, Sylvia A.**  
**BUENVENIDA, Nenita M.**  
**COSTALES, Cynthia B.**  
**BESINIO, Gemma B.**  
**ESTOPA, Jesusa Anastacia M.**  
**SANTOS, Filipinas T.**  
**UY, Melchor M.**  
**TALIMIO, Ramon G.**  
**GARCIA, Ramil B.**  
**UMAG, Nenita Cesaria M.**  
**Re: Disapproved Appointments; Appeal**  
**X-----X**

**RESOLUTION No. 01-1476**

Former Mayor Rodel M. Manara of Cotabato City appeals the decision of the Civil Service Commission-Cotabato Field Office, same city, disapproving the appointments of the following persons as herein below indicated:

Name of Appointees	Date of Appointment	Position	Office
TAN, Rebecca D.	June 18, 2001	Revenue Collection Clerk I	Treasurer
EBALIG, Sylvia A.	June 18, 2001	Utility Worker II	-same-
SANTOS, Filipinas T.	June 18, 2001	Revenue Collection Clerk II	-same-
GLIMADA, JR., Primitivo O.	June 13, 2001	City Gov't. Dept. Head I	City Accounting and Internal Audit Services
LIM, Romeo B.	June 15, 2001	City Gov't. Asst. Dept. Head I	-same-
GEPTE, Francisco S.	June 15, 2001	Management and Audit Analyst IV	-same-
MORTERA, Jovita A.	June 15, 2001	Management and Audit Analyst III	-same-
PONGOL, Noel S.	May 28, 2001	Management and Audit Analyst II	-same-
BALINO, Catherine M.	June 15, 2001	Management and Audit Analyst II	-same-
GAVIOLA, Luz B.	June 15, 2001	Management and Audit Analyst I	-same-
BESINIO, Gemma B.	June 18, 2001	Accounting Clerk II	-same-
CORDERO, Rowena F.	June 15, 2001	Fiscal Examiner I	-same-
COSTALES, Cynthia B.	June 13, 2001	City Gov't. Asst. Dept. Head I	Legal Services
VILORIA, Cheribin Mena K.	May 16, 2001	Administrative Officer IV	Social Welfare Development Services
DIANAL, Nora M.	June 5, 2001	Social Welfare Officer III	-same-
EMBERGA, Rolando G.	June 5, 2001	Social Welfare Officer I	-same-
CALZADO, Daylinda R.	June 5, 2001	Day Care Worker II	-same-
BUENVENIDA, Nenita M.	June 18, 2001	Day Care Worker I	-same-
ESTOPA, Jesusa Anastacia M	June 18, 2001	Nursing Attendant I	Health Services
DE GUZMAN, Merlinda E.	June 1, 2001	Records Officer IV	General Services
GAJO, Eduardo P.	May 25, 2001	Supply Officer IV	-same-

TATO, JR., Pedro D.	June 13, 2001	Supply Officer III	-same-
UMAG, Nenita Cesaria M.	June 27, 2001	Record Officer III	-same-
GLEMAO, Lourdes S.	June 13, 2001	Supply Officer I	-same-
TALIMIO, Ramon G.	June 27, 2001	Clerk II	-same-
UY, Melchor M.	June 22, 2001	Welder I	City Engineering
GARCIA, Ramil B.	June 26, 2001	Painter I	-same-

Pertinent portions of the appeal read, as follows:

*“This is to appeal the action of the Commission on the appointments of several employees in the different offices of the City Government of Cotabato which were disapproved in violation of Item 3 par. a, c & d of CSC Resolution No. 01-0988 dated June 4, 2001.*

*“We do not question the Civil Service Commission in exercising its power to prescribe, amend and enforce Civil Service Laws and rules as long as it does (sic) go beyond the provisions of the law that it implements nor curtail or diminish the power and right given by law and/or the constitution to elected officials. The law granted duly elected local officials the power to appoint and CSC by resolution could not remove or restrict this power.*

x      x      x

*“CSC Resolution No. 01-0988 cannot prevail over a Congressional enactment particularly the Local Government Code of 1991 (Republic Act No. 7160)...*

*“No provision in the constitution that states that outgoing local chief executives are prohibited from making appointments or exercise their rights to appoint after election. In issuing CSC Resolution No. 010988, CSC with due respect, went beyond what the Constitution (Sec. 15, Art. VII) mandates, CSC erroneously premised that the prohibition (rationale) that applies to the President regarding making appointments two (2) months immediately before the next presidential election is likewise applicable to outgoing local chief executives. It is*

*very clear that only the President is prohibited from making appointments for a given period of time. To interpret the meaning of the provisions of the constitution and law and to whom it is also applicable other*

*than those mentioned by it is not within the power of the CSC. If the framers of the 1987 Constitution intended such prohibition to apply as well to local chief executive, then such intent should have been expressly indicated in the Constitution; such intent cannot be arbitrarily inferred. When the law is clear there is no room for its interpretation but only application.*

*“The third paragraph of CSC Resolution 010988, posits that it was issued to prevent ‘animosities between the outgoing and incoming officials’. Clearly a scenario is theoretical and speculative and the CSC cannot arbitrarily presume the existence of such animosities.*

*“The terms of local chief executives are fixed by law. For the entire duration of that term, unless expressly restrained by law, a chief executive enjoys the full powers of his office. These powers cannot be cut short or diminished without lawful basis.”*

x x x

Viloria *et al.*, were appointed by Former Mayor Rodel M. Manara between May 16, 2001 or two months before the expiration of his term and June 26, 2001. The nature of appointment of Viloria, Balino, Calzado, Cordero, De Guzman, Dianal, Emberga, Gajo, Gaviola, Gepte, Glemao, Glimada, Jr., Lim, Mortera, Pongol, Tato, Jr., Tan and Umag is promotional. In the case of Ebalig, Besinio, Estopa, Santos, Uy, Talimio and Garcia, the nature of their appointment is original. Buenvenida’s nature of appointment on the other hand is re-employment and Costales’ is transfer. Except for Costales who was issued a temporary appointment, all the appointees abovestated were issued appointments under permanent status. When these appointments were submitted to the Cotabato City Field Office for attestation, they were disapproved on the following grounds: (a) the appointment has not gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting; (b) there is no need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety; and (c) that the appointments are among those mass appointments issued after the elections.

There are two issues involved in this case:

1. Was the appeal on the disapproval of the subject appointments properly lodged with the Commission Proper; and
2. Whether the issuance by the CSC of Resolution No. 01-0988 conflicts with the provision of the Local Government Code of 1991.

As to the first issue, while the decision of the Civil Service Commission-Cotabato Field Office disapproving the appointments of Vilorio *et al.*, must first be brought on appeal to the Civil Service Commission Regional Office No. XII, Cotabato City, which has jurisdiction over the said Field Office pursuant to **Section 6 (B), Rule I of the Uniform Rules on Administrative Cases in the Civil Service (CSC Resolution No. 99-1936)** which states:

*“Section 6. Jurisdiction of Civil Service Regional Offices. – The Civil Service Regional Offices shall have jurisdiction over the following cases:*

x x x

*“B. Non-disciplinary*

*1. Disapproval of appointments brought before it on appeal;”*

and in accordance with the principle of exhaustion of administrative remedies, since the CSC Cotabato Field Office did not object to the appellant’s direct recourse to the Commission Proper and in fact manifested in a letter dated June 28, 2001 that the issue can be resolved only by the Commission Proper, the Commission is constrained to resolve the same promptly. The Supreme Court, in the case of **Eastern Shipping Lines, Inc. vs. POEA (166 SCRA 533)** made a pronouncement that:

*“Ordinarily, the decisions of the POEA should first be appealed to the National Labor Relations Commission, on the theory inter alia that the agency should be given an opportunity to correct the errors, if any, of its subordinates. This case comes under one of the exceptions, however, as the questions the petitioner is raising are essentially questions of law. Moreover, the private respondent herself has not objected to the petitioner’s direct resort to this Court, observing that the usual procedure would delay the disposition of the case to her prejudice.”*

As to the second issue, **CSC Resolution No. 01-0988 dated June 4, 2001** reads in part, as follows:

*“1. The validity of an appointment issued immediately before or after the elections by outgoing local chief executives is to be determined on the basis of the nature, character and merit of the individual appointment and the particular circumstances surrounding the same.*

“3. All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, except in cases of renewal and reinstatement, regardless of status, which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission, including its Regional or Field Offices, of said appointments or the Report of Personnel Actions (ROPA), as the case may be, shall be disapproved unless the following requisites concur relative to their issuance:

- `a) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report of minutes of its meeting;
- `b) That the appointee is qualified;
- `c) There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety;
- `d) That the appointment is not one of those mass appointments issued after the elections.’

“4. The term ‘mass appointments’ refers to those issued in bulk or in large number after the elections by an outgoing local chief executive and there is no apparent need for their immediate issuance.”

Although there is no provision in the Local Government Code of 1991 (R. A. No. 7160) or in the Administrative Code of 1987 (E. O. No. 292) relative to midnight appointments, the Commission, in issuing CSC Resolution No. 01-0988, ratiocinated that the rationale on the prohibition of the issuance of ‘midnight appointments’ by the President of the Philippines as found in the 1987 Constitution is applicable to appointments extended by outgoing local chief executives immediately after the election.

The allegation of Manara that the CSC cannot amend, through a resolution the Local Government Code of 1991 which is a

statute is valid. However, Sections 2, 5 and 455 of said law do not give the local chief executive (Manara in this case) the absolute authority to appoint any person who lacks the qualifications for the position or is absolutely or relatively disqualified to assume office. It must likewise be pointed out that Manara's power of appointment is still subject to Civil Service laws, rules and regulations. Moreover, the power of the CSC to review the appointments of the appointing authority is sanctioned by the Administrative Code of 1987 which is also a statute.

With respect to the case of Costales whose nature of appointment was transfer, such appointment is covered by the **Prohibition Against Transfer or Detail and Issuance of Appointments in connection with the May 14, 2001 National Elections, CSC Resolution No. 01-0487 dated February 21, 2001 (CSC Memorandum Circular No. 7, s. 2001)**, which states:

*"1. The following personnel movement are prohibited within the period from January 2, 2001 (Tuesday) to June 13, 2001 (Wednesday):*

*'The 'transfer or detail' of officers and employees in the civil service.*

*'The phrase 'transfer or detail' shall be construed in general terms. Thus, any movement of an officer or an employee in the civil service from one agency to another or from one station or place of assignment to another within the same agency shall be prohibited. In this regard, the following personnel movement are also prohibited:*

- '1. Reassignment*
- '2. Secondment*
- '3. Recall of detailed or reassigned employee"*

The abovementioned CSC Resolution was promulgated in consonance with **COMELEC Resolution No. 3401 dated December 15, 2000**, pertinent portion of which states:

*"Section. 1. Prohibited Acts. – (a) During the election period from January 2, 2001 until June 13, 2001, no public official shall make or cause any transfer/detail whatsoever of any officer or employee in the civil service, including public school teachers, or suspend elective provincial, city, municipal or barangay official, except upon prior written approval of the Commission (COMELEC)."*

Moreover, the Commission takes notice of the fact that incumbent Mayor Datu Muslimin G. Sema, in his letter dated July 16, 2001 which was received by the Commission on July 19, 2001, manifested the withdrawal of the appeal of his predecessor, former Mayor Manara, and further represented that the subject appointees were convinced of the reasonability of CSC Resolution No. 01-0988 dated June 4, 2001. The Supreme Court in the case of **Amberti vs. Court of Appeals, G. R. No. 79981, April 2, 1991**, declared that:

*“...upon the withdrawal of a petition in a special civil action before the answer or comment thereto has been filed, the case shall stand as though no appeal has been taken, so that the judgment or order of the lower court being questioned becomes immediately final and executory. Thus, a resolution granting the withdrawal of such petition is with prejudice and petitioner is precluded from bringing a second action based on the same subject matter.”*

**WHEREFORE**, the appeal of former Mayor Rodel M. Manara of Cotabato City is hereby **DISMISSED**. The decision of Civil Service Commission Cotabato Field Office is **AFFIRMED**.

Quezon City, **September 5, 2001**

**(SIGNED)**

**KARINA CONSTANTINO-DAVID**

Chairman

**(O.B.)**

**JOSE F. ERESTAIN, JR.**

Commissioner

**(SIGNED)**

**J. WALDEMAR V. VALMORES**



Commissioner

Attested by:

**(SIGNED)**

**ARIEL G. RONQUILLO**

Director III

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