

**MACALINCAG, Victor C.**

**Re: Clarification/Reconsideration; Term  
of Office; Compulsory Retirement**

**X ----- X**

**RESOLUTION No. 01-1645**

Ma. Rosario M. Demigillo, Senior Vice President of the Legal and Corporate Services Group, Trade and Investment Development Corporation of the Philippines (TIDCORP), Makati City, requests clarification/reconsideration of the opinion dated April 26, 2001 of this Commission declaring that the service of Victor C. Macalincag, President of the Trade and Investment Development Corporation of the Philippines (TIDCORP), beyond the compulsory age of sixty-five (65) years shall be considered as service extension, and therefore, not to be credited as government service for purposes of retirement.

Pertinent portions of the said opinion read, as follows:

*“Republic Act No. 8494 (TIDCORP Charter) specifically provides for a fixed term of office of six (6) years for its President. Thus, Macalincag shall serve as President of TIDCORP for a period of six (6) years even if it would mean rendering service beyond the compulsory retirement age of sixty-five (65) years. He may be removed therefrom only for cause or by reason of incapacity, or voluntary retirement or resignation. Said law, which is a special law, shall prevail over other laws of general application should inconsistency arise. xxx*

*xxx*

*“As a rule, extended service is no longer considered part of government service. Thus, it necessarily follows that such service is not to be included in the computation of retirement benefits. In this regard, the service which Macalincag will render beyond the compulsory retirement age of sixty-five (65) years but*

*within the fixed term of six (6) years shall not be credited as part of government service and, therefore, it will not be included in the computation of his retirement benefits. xxx ”*

The request for clarification/reconsideration partly reads, as follows:

*“With due respect, it is, our view that service pursuant to a fixed term of office is not the ‘extended service’ as contemplated by law. The ‘extended service’ being referred to in the case of Maleficio xxx is that service rendered by a government official or employee beyond the compulsory retirement age of 65 years and who is without a fixed term of office. Such service in government is severed on the officer’s or employee’s 65th birthday. Thus, even if an official or employee is qualified for retirement but his service is still needed under exceptional circumstances, his appointing authority may request authority from the CSC for the extension of said official’s or employee’s services for a definite period. This is the kind of ‘extended service’ which Assistant Commissioner Caberoy could have contemplated as not creditable government service that would not entitle the official or employee concerned to earn leave credits for the period of extended service.*

*“On the other hand, the service of an official and employee beyond the compulsory retirement age of 65 years pursuant to a fixed term of office, such as in the case of Mr. Macalincag, cannot be considered ‘extended service.’ Mr. Macalincag continues in office because of a fix term of office and not because of an extension service. xxx Assistant Commissioner Caberoy correctly opined that Mr. Macalincag may therefore serve as President of TIDCORP for a period of six (6) years even if it would mean rendering service beyond the compulsory retirement age of sixty-five (65) years unless he is removed for cause or by reason of incapacity, or voluntary retirement or resignation. This is primarily so, he continued, since the TIDCORP Charter is a special law which shall prevail over other laws of general application should conflict arise.*

*“Clearly, therefore, a term of office fixed by law bestows on the officer the right to enjoy the office’s privileges and emoluments, including leave credits. The term ‘extend’ is ordinarily understood to mean ‘to prolong or lengthen in time.’ Indeed, the service of Mr. Macalincag has never been extended since his term*

*of office has not even expired. Being a political appointee with a fixed term of office, the mandatory compulsory retirement age of 65 years does not apply to him.*

*“This being the case, the service of Mr. Macalincag beyond 65 years but within his fixed term of six (6) years cannot be considered as ‘extended service.’ The same should therefore be credited as government service for purposes of retirement and for which service he shall be accorded with all the privilege and emoluments, including leave benefits.”*

Records show that on January 11, 1998, then President Joseph E. Estrada issued an appointment in favor of Macalincag as President of the TIDCORP for a fixed term of office of six (6) years pursuant to Section 14 of Presidential Decree No. 1080. Hence, his

six-year term of office ends on January 10, 2004. On July 11, 2001, however, Macalincag reached the compulsory retirement age of sixty-five (65) with more than thirty-seven (37) years of service to his credit. He opted not to finish his six (6)-year term but instead, filed his resignation which was accepted by the Office of the President effective September 1, 2001.

Considering that the TIDCORP Charter, which is a special law, categorically fixes the term of office of its President for a period of six (6) years, the same must prevail over all general laws. In this regard, Macalincag is entitled to serve the entire term of six (6) years as President of TIDCORP together with all the functions, responsibilities as well as benefits attached to the position. *“A ‘term’ of office fixed by law allows the appointee to hold office, perform its functions, and enjoy its privileges and emoluments until the expiration of said period. It is the definite period of time prescribed by law by which an officer may hold office.” (Ambas vs. Buenaseda, 201 SCRA 308)*

It necessarily follows, therefore, that service rendered during the fixed term of office, regardless of whether one has already reached the compulsory retirement age of sixty-five (65) years shall be credited as part of government service for purposes of retirement. As such, Macalincag’s service as TIDCORP President, which includes that service rendered beyond his sixty-fifth birthday, until his resignation effective September 1, 2001, shall be credited as government service. He is likewise entitled to all the benefits attached to his position including leave benefits during his tenure.

**WHEREFORE**, this Commission hereby rules that in view of the fixed term of office of six (6) years as TIDCORP

President, the service rendered by Victor C. Macalincag, including that rendered after reaching the compulsory retirement age, shall be credited as government service for purposes of retirement. During the said period, he is likewise declared entitled to all the benefits attached to the position.

Quezon City, **October 12, 2001**

**(SIGNED)**

**KARINA CONSTANTINO-DAVID**

Chairman

**(SIGNED)**

**JOSE F. ERESTAIN, JR.**

Commissioner

**(SIGNED)**

**J. WALDEMAR V. VALMORES**

Commissioner

Attested by:

**(SIGNED)**

**ARIEL G. RONQUILLO**

Director III

*ola/jjc/fpg/kpz/x2/x11*

*mclncag4(22)/vog/O 01-0135*