

CATALAN, Marcos

Re: Appointment After Reaching the
Compulsory Age of 65 Years;
Conversion of Corporate Secretary
from Career Position to Coterminous/
Primarily Confidential Position

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RESOLUTION NO. 021314

Felicidad A. Gutierrez, Vice President, Human Resources Services, Government Service Insurance System (GSIS) in her letter dated May 16, 2002 and received by the Commission on May 22, 2002, requests the following: First: that the approval of the Commission on the extension of service of Atty. Marcos F. Catalan, GSIS Corporate Secretary, be made applicable to his new position as Senior Vice President (Legal Services Group) and Chief Legal Counsel and; Secondly, that the conversion of the position of Corporate Secretary from career position to coterminous/primarily confidential position by the GSIS Board be approved by the Commission.

The pertinent portions of the said letter read, as follows:

"We thank the Civil Service Commission for its Resolution No. 02-0501 dated April 5, 2002 xxx granting the GSIS request for the extension of services of Atty. Marcos F. Catalan as Corporate Secretary and concurrent Senior Vice President and Chief Legal Counsel, for six (6) months after he should have reached the compulsory retirement age on April 17, 2002.

"However in considering the extension of Atty. Catalan's services, the GSIS Board of Trustees, in its Resolution No. 93 dated April 3, 2002, also approved the shifting of his position from Corporate Secretary to Senior Vice President and Chief Legal Counsel of the Legal Services Group. In a parallel move, the said Board, through Resolution No. 94 of the same date, approved the appointment of Ms. Nita Javier, former Corporate Secretary with a rank of Sr. Vice President and now GSIS Consultant, as Corporate Secretary, a career position in the present GSIS Plantilla which was considered Non-Career again following the sentiment expressed in Board Resolution No. 630 s. 1966 xxx that the nature of the job is confidential and the tenure of office of the holder is at the pleasure of the governing Board.

"But the twin moves above have posed some problems in its implementation since:

"A. The CSC approved the extension of services of Atty. Catalan as Corporate Secretary and concurrent SVP, Legal Services Group (LSG) and not as SVP, LSG.

"B. The position of Corporate Secretary under the existing GSIS plantilla is a career position and therefore, appointment thereto as a non-career official shall be made only after CSC approval of its conversion.

"To enable the GSIS to continue to avail of the extended services of Atty. Catalan as Senior Vice President, Legal Services Group, and to pave the smooth implementation of the permanent appointment of Ms. Javier as Confidential Corporate Secretary, we respectfully request that the CSC consider the following:

"1. That the April 5 CSC approval of the GSIS request for the extension of the services of Atty. Catalan as Corporate Secretary and concurrent SVP and Chief Legal Counsel be made applicable to his new designation as SVP, Legal Services Group.

"2. That the CSC approve the conversion of the position of Corporate Secretary in the GSIS from a Career to a Non Career position, taking into consideration the intent of the GSIS Board of Trustees."

Records show that in CSC Resolution No. 02-0501 dated April 5, 2002, the Commission granted the request of GSIS President Winston F. Garcia for the extension of service of Atty. Marcos F. Catalan, Corporate Secretary and concurrent Senior Vice President and Chief Legal Counsel of GSIS, from April 18, 2002 to October 17, 2002, after the latter's 65th birthday on April 17, 2002.

Records also show that on April 3, 2002, in its Board Meeting No. 6, the GSIS Board issued Resolution No. 93 read, as follows:

"RESOLVED: That the Board APPROVE, as it does hereby, APPROVE, as recommended by the President and General Manager, the shifting of Atty. Marcos F. Catalan from Corporate Secretary to Senior Vice President (Legal Services Group) and Chief Legal Counsel and the extension of his services, subject to existing Rules and Regulations of the Civil Service Commission."

Simultaneously on the same date, the Board also passed Resolution No. 94 stated, as follows:

"RESOLVED: That the Board APPROVE, as it does hereby, APPROVE the appointment of Ms. NITA P. JAVIER as Corporate Secretary, effective upon the shifting of Atty. Marcos F. Catalan to Senior Vice President (Legal Services Group) and Chief Legal Counsel. She shall continue to receive the salary of P100,000.00 a month and shall be entitled to other allowances and benefits for Salary Grade 28. It is understood that the

position shall be considered confidential in nature and the tenure of office is at the pleasure of the Board per Board Resolution No. 630 adopted on May 17, 1966.

"Ms. Nita P. Javier shall perform the duties of Corporate Secretary and such other duties as may be directed by the Board of Trustees."

The issues to be resolved are, as follows:

1. Whether the approval of the Commission relative to the request of GSIS President Winston F. Garcia for the extension of service of Atty. Marcos F. Catalan, who was then Corporate Secretary of GSIS and concurrent Senior Vice President and Chief Legal Counsel be made applicable to his new position as Senior Vice President, Legal Services Group, and Chief Legal Counsel.
2. Whether the Commission will approve the conversion by the GSIS Board on the position of Corporate Secretary of the GSIS from a Career position to Non-Career position.

Anent the first issue the Commission answers in the negative.

When the Commission approved the extension of service of Atty. Catalan, he was then occupying the position of Corporate Secretary of GSIS. His concurrent position then as Senior Vice President and Chief Legal Counsel can only be considered as a designation or merely an imposition of additional duties which is merely temporary. When the GSIS Board made and approved Resolution No. 93, "*shifting*" Catalan from Corporate Secretary to Senior Vice President (Legal Services Group) and Chief Legal Counsel, he was actually "*appointed*" to a new position, thus vacating his former position.

In point is **Memorandum Circular No. 27, Amendments to Section 12, Rule XIII of CSC MC No. 15**, s. 1999 which states, as follows:

"Section 12. a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under subsection (b) hereof.

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"b) A person who has already reached the compulsory retirement age of 65 can still be appointed to a coterminous/primarily confidential position in the government.

"A person appointed to a coterminous/primarily confidential position who reaches the age of 65 years is considered automatically extended in the service until the expiry date of his/her appointment or until his/her services are earlier terminated."

Based on the aforequoted provision, as a general rule, a person who has reached the compulsory retirement age of 65 can no longer be appointed to any position in the government. The only exception is when the person who has reached the compulsory retirement age of 65 is appointed to a position in the government that is coterminous/primarily confidential in nature. This is because the services rendered during the period of extension shall no longer be considered part of government's service.

When the GSIS Board "*shifted*" Catalan's position from Corporate Secretary to Chief Legal Counsel, it in effect appointed him to a new position which incidentally is a career position, therefore, prohibited by law. Records also show that although the subject positions have the same salary grade (SG 28), the plantilla item number is different. Corporate Secretary has a Plantilla Item No. 42, while Chief Legal Counsel has a Plantilla Item No. 101. This means that there is an issuance of new appointment though termed as "*shifting of position*". This is evidenced by the fact that their respective functional duties and job description are different. And since Catalan is only on an extended service, he cannot be appointed to that new position. In fact, when the Commission granted the request for extension of service of Catalan, it is only applicable to his position as Corporate Secretary, in which he is under a permanent status. Thus, said approval cannot be made applicable to his new position as Chief Legal Counsel, which is also a career position.

Consequently, the appointment issued to Nita P. Javier cannot be sustained as the position of Corporate Secretary is not yet vacant.

This brings us now to the second issue.

While it is true the Commission can declare a particular position primarily confidential pursuant to **Section 12 (9), Chapter 3, Title I-A, Book V of the Administrative Code of 1987**, the High Court in the case of **Civil Service Commission and Philippine Amusement and Gaming Corporation versus Rafael Salas, 274 SCRA 414**, discussed the nature of a position which is primarily confidential, as follows:

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"It is thus be safely determined therefrom that the occupant of a particular position can only be considered a confidential employee if the predominant reason why he was chosen by the appointing authority was, to repeat, the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion, without fear of embarrassment or misgivings of possible betrayal of personal trust or confidential matters of state. Withal, where the position occupied is remote from that of the appointing authority, the element of trust between them is no longer predominant."

Thus, the position of Corporate Secretary can only be declared by the Commission "*primarily confidential*" only if there is a showing by the head of agency concerned or by the GSIS Board of a valid, factual and legal justification that from the nature of the functions of the office, there exists "*close intimacy*" between the appointee and the appointing authority which will

ensure freedom of association without embarrassment or freedom from misgivings of betrayal of personal trust and confidential matters of state. In this case, the GSIS Board failed to adduce evidence and legal justification as to properly apprise this Commission of the nature-functions of the position of corporate secretary. Moreover, there is still an incumbent to said position and the same is not yet vacant. Catalan is still the corporate secretary of the GSIS Board. Hence, any appointment as Chief Legal Counsel is in blatant violation of the existing Civil Service Law and Rules. Hence, Nita P. Javier cannot be appointed as Corporate Secretary until the termination of Catalan's extended service. Resultingly, said position cannot be declared primarily confidential unless the same is deemed vacant and there exists a valid, factual and legal justification for such declaration.

WHEREFORE, in view of the foregoing, the Commission rules, as follows:

1. Marcos F. Catalan who is granted an extension of service upon reaching the compulsory age of 65 years can no longer be appointed to any position in the government unless said position is coterminous/primarily confidential in nature.
2. The Commission cannot declare the position of GSIS Corporate Secretary "*primarily confidential*" because there is still an incumbent thereto and said position is not deemed vacant. Accordingly, the appointment issued to Nita P. Javier as Corporate Secretary is null and void. Also, there is no showing by the head of the agency concerned or the GSIS Board of valid, factual and legal justification that by the nature of the functions of the office, there exists a "*close intimacy*" between the appointee and the appointing authority which will ensure freedom of association without embarrassment or freedom from misgivings of betrayal of personal trust and confidential matters of state.

Quezon City, OCT 10 2002

(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

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