

**ZAMORA, Reinario H.**

Re: Protest; Appeal

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**RESOLUTION NO. 990364**

Marina S. Pomedá, Assistant Provincial Health Officer, Province of Eastern Samar, appeals from the Order dated September 8, 1998 of the Civil Service Regional Office (CSRO) No. VIII, Palo, Leyte, dismissing for lack of merit, her protest against the appointment of Reinerio H. Zamora as Provincial Health Officer, same province.

In her appeal, Dr. Pomedá alleged as follows:

**ARGUMENTS**

*"I- THE REGIONAL DIRECTOR ERRED IN NOT HOLDING THAT THE APPOINTMENT OF DR. ZAMORA WAS A MIDNIGHT APPOINTMENT.*

*"Section 15 of Article VII of the Constitution, provides:*

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*'Sec. 15. Two months immediately before the next presidential elections and up to the end of his term, the President or Acting President shall not make appointment, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.'*

*"This issue was raised in the protest of protestant.*

*"But the Regional Director did not pass upon this issue in her resolution of the protest.*

*"If the President of the Philippines is prohibited from making midnight appointments, we cannot see any reason why said prohibition should not be extended to other executive officials such as a Governor.*

*"It must be noted that the appointment was extended to Dr. Zamora on June 5, 1998 or 25 days before the expiration of the term of office of the Governor which is clearly a midnight appointment.*

*"We respectfully submit, therefore, that the Regional Director erred in not holding that the appointment of Dr. Zamora as provincial health officer was null and void for being midnight appointment which is prohibited by the constitution.*

II- THE REGIONAL DIRECTOR  
ERRED IN NOT HOLDING  
THAT THE SANGGUNIANG  
PANLALAWIGAN DID NOT  
CONFIRM THE APPOINTMENT  
OF DR. ZAMORA.

*"This issue was also raised in the protest but the Regional Director likewise did not pass upon the issue.*

*"The pertinent resolution of the Sangguniang Panlalawigan of the province provides:*

*'WHEREAS, after a thorough deliberation by the members of the August Body present during the Regular Session, each registering their respective comments on aforementioned appointment of Dr. Reinorio H. Zamora, the House was divided as to whether the confirmation must be treated on this*

*particular date or be a deferred to a future date. The result was a deadlock with Hon. Generoso A. Yu, Hon. Adriano M. Castro and Hon. Leonila L. Lopez favoring deferment and Hon. Celestino A. Cabato, Hon. Thelma U. Nicart and Hon. J. Vicente R.M. Opinion voting for the confirmation of the appointment of Dr. Reinerio H. Zamora on this particular date. Since the issue of the confirmation during this particular session provided over the deferment due to the vote of the Presiding officer, Hon. Celestino A. Cabato presented the motion for confirmation for the second time and the House was identical with the preceding division as it resulted in another tie and the Presiding Officer voting to break the tie in favor of confirmation; (Emphasis ours)*

*"It is clear from the foregoing, that the appointment of Dr. Zamora was concurred in by only 4 out of the 10 members of the Sangguniang Panlalawigan which is short of a majority of all the members of the sangguniang as required by the Local Government Code for the confirmation of an appointment.*

*"The signatures on the said resolution of Hon. Generoso A. Yu, Hon. Adriano M. Castro and Hon. Leonila L. Lopez, who voted for deferment, did not mean that they changed their votes but signified their assent to the correctness of said resolution. x x x"*

X X X

Records of the case show that on June 5, 1998, German B. Abelido, Provincial Governor of Eastern Samar, appointed Zamora as Provincial Health Officer. On the same day, the appointment was indorsed to the Sangguniang Panlalawigan (SP) Members Generoso A. Yu, Adriano M. Castro and Leonila L. Lopez voted to defer the consideration of the confirmation while SP Members Celestino A. Cabato, Thelma U. Nicart and J. Vicente R.M. Opinion voted for the confirmation. To break the deadlock, Floro M. Camenforte, Jr. Vice-Governor, Province of Eastern Samar, voted to consider the confirmation of the appointment.

In view of the majority vote to act on the confirmation of the appointment Of Zamora, the motion for confirmation was presented to the members for the second time by SP Member Cabato. Again, the same result ensued. The members were equally divided on the issue of whether to confirm or defer action on the appointment. The Vice-Governor, as the presiding officer, broke the tie by voting for confirmation. Thus, the Office of the Sangguniang Panlalawigan of Eastern Samar adopted **Resolution No. 73, Series of 1998, dated June 5, 1998** confirming the appointment of Zamora. SP Members Yu, Castro, Lopez together with Cabato, Nicart and Opinion and Vice Governor Cameforte signed said resolution and Gov. Alido approved the same.

In a letter dated June 20, 1998, Pomeda protested the appointment of Zamora before the Civil Service Law, Rule and Regulation by the issuance of the said "midnight" appointments (**Res. No. 92-1989 dated December 1, 1992, Ochate et al.**). Likewise, the Local Government Code does not expressly or impliedly prohibit the issuance of appointments or render invalid those issued when the term of a public official is about to expire. In case of doubt or ambiguity, it should be resolved in favor of the validity of said resolution or instrument of concurrence.

The prohibition on the issuance of midnight appointments embodied in Section 15, Article VII of the 1987 Constitution does not find application to appointments of local government officials or employees. The prohibition explicitly covers appointments issued by the President or Acting President within two (2) months immediately prior to the next presidential election subject to certain exception. The ban not extend to appointments under the Local Government Code. In the latter case, as long as the appointee is qualified, the appointment remains valid even if the term of office of the appointing authority who is a local chief executive, is about to end. Otherwise stated, said local official could still exercise the authority to appoint provided the appointees are qualified.

Hence, the fact that the appointment of Zamora was made twenty-five (25) days before the expiration of the term of office of Gov. Alido does not invalidate the appointment. There must be a showing that Zamora does not meet the qualification standards prescribe for the position as provided under the Local Government Code or is legally disqualification to be appointed as such. It is event from the records, however, that the appellant did not question the qualifications of Zamora to the position of Provincial

Health Officer nor the fact that the appointment was issued by Gov. Alido while he is the lawful incumbent of said office. Such being the case, the appointment issued by Gov. Alido is valid.

As to the second issue, the Commission finds the appointment of Zamora duly confirmed by the six (6) members of the Sangguniang Panlalawigan and by the Vice-Governor. Evidently, SP Members Yu, Castro and Lopez voted for deferment of action, however, the three (3) affixed their signatures in the resolution for the confirmation of said appointment.

The Commission finds the contention of that the signature of the Sangguniang Members Yu, Castro and Lopez merely signified their assent to the correctness of the resolution contradictory to the clear import of the second page of the questioned resolution. The second and last page of the resolution contains only one (1) paragraph followed by the signature of six (6) members; the attestation of Floro B. Balato, Provincial Board Secretary; and the approval by the Governor German B. Alido

Nowhere in said page is it shown that these signatures were made for the purpose of attesting to the contents of the resolution. The names and signature of the SP member to attest to the veracity of resolution passed by said body, since this attestation is the responsibility of the Provincial Board Secretary.

Finally, it is significant to note that midnight appointments can be assailed only when the attendant circumstances show the absence of deliberate action and careful consideration of the need appointment and the appointee's qualifications, as in the case of scandalously hurried mass appointments where the desire of the outgoing official to subvert the policies of the incoming administration is evident (**Aytona vs. Castillo, et al. 4 SCRA 1**). The appointment of Zamora was shown to have been issued to respond to an urgent need to fill the vacancy brought about by the untimely demise of Dr. Hilarion Macapanas. Further, there is no showing that Zamora does not possess the qualification for the position of the Provincial Health Officer.

**WHEREFORE**, the appeal of Marina S. Pomedas is hereby dismissed. Accordingly, Civil Service Regional Office No. VIII Order dated September 8, 1998 is affirmed.

Quezon City, FEB 08, 1999

(SGD) **THELMA P. GAMINDE**  
Commissioner

(SGD) **CORAZON ALMA G. DE LEON**  
Chairman

(SGD) **JOSE F. ERESTAIN, JR.**  
Commissioner

Attested by:

(SGD) **ARIEL G. RONQUILLO**  
Director III