

**CLEMENTE, Modesto U.**

Re: Decision

X- -----X

## **RESOLUTION NO. 990404**

Vice Mayor Modesto U. Clemente of Piddig, Ilocos Norte, requests the Commission for a ruling/opinion on the following issue:

"Whether or not an acting Vice Mayor who took over from duly elected Vice Mayor who was considered (sic) resigned when he filed his candidacy for Mayor, could at will set aside, overrule or change the decision of the resigned Vice Mayor in an administrative case finding the Sangguniang Bayan Secretary guilty of gross negligence, inefficiency and neglect of duty and sentenced him with dismissal from the service."

The facts, as presented by Vice Mayor Clemente, are as follows:

"1. On May 24, 1996 Mr. Fabian J. Urbi, Jr. (Urbi for brevity) as the SB Secretary of Piddig, Ilocos Norte received from the special messenger of the COA Regional Office, San Fernando, La Union an envelope (sic) marked 'Confidential' to be delivered as it was addressed to the Presiding Officer, Sangguniang Bayan, Piddig Ilocos Norte. It contained the 1995 Audit Report of the Municipality of Piddig with recommendations as it also pointed out suspensions and disallowances.

"2. While this confidential COA Audit Report should have been immediately and promptly (sic) turned over by Urbi to Vice Mayor Onofre Bayag (Bayag for Brevity) as the presiding officer of the Sangguniang Bayan of Piddig at that time, Urbi kept it for himself. Proof that Urbi received this confidential COA report is his signature at the back of the big brown envelope that contained the report 

"3. On September 17, 1996 almost four (4) months from May 24, 1996 in the course of an inventory/listing by the Clerk in the Office of Sangguniang Bayan she (sic) found inside the steel cabinet of Urbi this 'Confidential (sic) COA Audit Report. Upon discovery, members of the Sangguniang Bayan who were present at that time witnessed and saw the said envelope still unopened [REDACTED]

"4. On October 30, 1996 Bayag wrote Urbi requiring him to explain why he failed to turn over to him the COA confidential report and why he should not be administratively charged [REDACTED]

"5. On November 4, 1996 Urbi submitted his explanation [REDACTED] but Bayag found it unsatisfactory [REDACTED]

"6. On November 19, 1996 Urbi was formally charged [REDACTED] and duly furnished with a copy of the same.

"7. A committee composed of five (5) SB Members was created to investigate Urbi. After their investigation and after Urbi was given all the opportunity to present evidence in his behalf (sic) made submitted their report to Bayag [REDACTED]

"8. On January 15, 1998 Bayag rendered his decision dismissing Urbi as SB Secretary of Piddig with forfeiture of all benefits attached to his position [REDACTED]

"9. On February 16, 1998 Urbi filed a motion for the reconsideration [REDACTED]

"10. On March 2, 1998 Bayag issued an order reconsidering his January 15, 1998 decision. He eliminated for humanitarian consideration for forfeiture of benefits but still maintained that Urbi should be dismissed as SB Secretary of Piddig [REDACTED]

"11. On March 27, 1998 Bayag filed his certificate of candidacy of (sic) Mayor of Piddig, Ilocos Norte. He was therefore, considered resigned (sic). Senior Sangguniang Bayan member Efren Tomas (Tomas for brevity) took over as Vice Mayor.

"12. On March 30, 1998 Urbi filed a second motion for reconsideration [2/1] The issues raised in this second motion ate the same as those in the first motion for reconsideration.

"13. On May 21, 1998 the Sangguniang Bayan of Piddig held a special session. A special session is called for a specific purpose. Not in this case. The second motion for reconsideration of Urbi was discussed and it was even placed on "Other (sic) Matters [2/1] and last in the proceedings. Tomas as the presiding officer, perhaps uncertain what to do, solicited the opinion of the members of the Body. The Chairman of the Committee on Laws SB Member Lagasca wanted the said motion for reconsideration to be subject to further study and said twice (sic).

"14. In this May 21, 1998 special SB session, the three (3) elected members namely: Lagasca, Garma and Asis all voted to defer action on this second motion for reconsideration. Three other SB members, one (1) elected and two (2) appointed and had no knowledge of the administrative case against Urbi voted in favor of taking action on the motion. Because of a tie vote, Tomas voted to break the tie and he voted in favor of the motion to be acted upon [2/1]

"15. On the same day, May 21, 1998 inspite of the desire of SB Lagasca, Garma and Asis to subject this second motion for reconsideration to (sic) farther (sic) study, Tomas immediately issued/rendered his decision setting aside the decision of Bayag dated January 15, 1998. The dispositive portion of the decision of Tomas reads: [2/1]

'WHEREFORE, respondent is hereby ordered to report for duty immediately upon receipt of this Order with full pay of all salaries and other benefits due him from the time he was ordered dismissed.'"

The antecedent facts are as follows:

On November 19, 1996, Sangguniang Bayan Secretary Fabian J. Urbi, Jr. was formally charged by then

Vice Mayor Onofre A. Bayag with an alleged offense. In a decision dated January 15, 1998, Vice Mayor Bayag found Urbi, Jr. guilty of said offense and meted out to him the penalty of dismissal from the service. Urbi, Jr. subsequently filed a motion for reconsideration but the same was denied by Vice Mayor Bayag.

On March 27, 1998 Vice Mayor Bayag filed his certificate of candidacy for Mayor of Piddig, Ilocos Norte. On the same day, highest ranking Sangguniang Bayan member Efren P. Tomas assumed the office of Vice Mayor.

On March 30, 1998, Urbi filed a second motion for reconsideration and Vice Mayor Tomas granted the same in a decision dated May 21, 1998 thereby effectively reversing and setting aside the earlier decision dated January 15, 1998 on then Vice Mayor Bayag.

It appears, however that Modesto U. Clemente won as Vice Mayor of Piddig, Ilocos Norte, during May 11, 1998 local elections. Hence, he is now assailing the legality of the May 21, 1998 Decision of then Vice Mayor Efren P. Tomas.

At the outset, it must be pointed out that any national or local elective official who runs for an office (except for President or Vice President) other than the one which he is holding in a permanent capacity shall be deemed *ipso facto* resigned from his position only at the start of the campaign period corresponding to the position for which he is running for and not at the time of the filing certificate of candidacy. This is explicit from Section 11 of Republic Act No. 8436 which amended certain provisions of the Omnibus election Code. Section 11 of RA 8436 reads as follows:

*"Sec. 11. Official Ballot. - x x x (A)ny elective official, whether national or local, running for any office other than the one which he/she is holding in a permanent capacity, except for president and vice president, shall be deemed resigned only upon the start of the campaign period corresponding to the position for which he/she is running x x x."  
(RA8436)*

Pursuant to the foregoing provision, the Department of the Interior and Local Government issued Memorandum Circular No. 98-71 dated April 2, 1998, which reads as follows:

*"SECTION 1. Any local elective official who files and/or has filed a certificate of candidacy for an office other than the one which he/she is holding in a permanent capacity shall be deemed resigned therefrom only upon the start of the campaign period, that is, on March 28, 1998 (Comelec Resolution No. 2946-A)."*

Hence, viewed in the light of the aforequoted provisions, then Vice Mayor Onofre Bayag was deemed resigned from his office on March 28, 1998 which was then declared starting date of the 1998 election campaign period. And it was also on this date that Efren Tomas, the then most senior of the Sangguniang Bayan members, was considered to have assumed the office of the Vice Mayor pursuant to Section 44 of the Local Government Code of 1991 which provides, thus:

***"SEC. 44. Permanent Vacancies in the Office of the Governor, Vice Governor, Mayor, and Vice Mayor. - (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice governor or vice mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice governor, mayor, or vice mayor the highest ranking sanggunian member or, in case of his permanent appointment inability, the second highest ranking sanggunian member, shall become the governor, vice governor, mayor or vice mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein." (Underscoring supplied)***

Pointedly, by operation of law, the highest ranking Sangguniang Bayan member, Efren Tomas, assumed the vice mayorship on March 28, 1998. As such, Vice Mayor Tomas could exercise the powers and perform the functions of the Vice Mayor as invested by law. Hence, the results thereof are legal and binding. Specifically, the Vice Mayor has disciplinary jurisdiction over all appointive officials and employees of the Sangguniang Bayan. And he did exercise this authority when he took cognizance of the motion for reconsideration of the decision of the former Vice Mayor.

Finally, viewed in the light of the foregoing, Vice Mayor Tomas validly exercised said authority. And said authority includes the power to set aside, reverse or modify a decision of a former head of office. Besides, it is not shown that the second motion of Urbi, Jr. was filed beyond the 15<sup>day</sup> reglementary period for filing said pleading to be reckoned from the date of receipt of the March 2, 1998 Order (Decision) of then Vice Mayor Onofre A. Bayag. Presumptively, on the basis of said second motion which could be deemed as a supplemental pleading to the first motion and in view of the records of the case, Vice Mayor Tomas, in his May 21, 1998 decision, revised and set aside the January 15, 1998 decision of then Vice Mayor Bayag. This later decision is legal.

**WHEREFORE**, the Commission hereby rules and so holds that the Decision dated May 21, 1998 of then Piddig, Ilocos Norte, Vice Mayor Efren P. Tomas is legally valid and binding.

Quezon City, **FEB 10 1999**

**THELMA P. GAMINDE**  
Commissioner

**CORAZON ALMA G. DE LEON**  
Chairman

**JOSE F. ERESTAIN, JR.**  
Commissioner

Attested by:

**ARIEL G. RONQUILLO**

Director III

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