

GARCIA, Samuel Julius B.

Re: Career Position; Career Service Executive Eligibility

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Resolution No. 990484

Samuel Julius B. Garcia, Board Member, Land Transportation Franchising and Regulatory Board (LTFRB), requests clarification from the Commission.

The said request reads, as follows:

"I am a Board Member of the Land Transportation Franchising Board of the DOTC, with the rank and privileges of an assistant secretary as stated in Sec. 15 of Title XV of the Administrative Code of 1987. I took the Career Service Executive Examinations administered by the CSC last 21 June 1998. I passed the said examinations and the subsequent interview. I was conferred a Career Service Executive Eligibility last 14 October 1998 by virtue of CSC Resolution No. 982706.

"Last Tuesday, 26 January 1999, Engr. Remedios G. Belleza took her oath of office as Board Member of the LTFRB as my replacement by virtue of an appointment signed by the President Joseph Estrada last 21 October 1998.

"In this regard, I would like to be clarified as to whether the position of LTFRB Board Member is a Career position or not. Perusal of the provisions of the Revised Administrative Code of 1987 has not helped me in resolving this question.

"A second point I would like to bring up is on the extent of the protection that is afforded CSE Eligible like myself. I would like to seek advise from your good office regarding the

proper steps that I may undertake in order to protect the integrity of the CSC eligibilities issued."

Records show that on May 6, 1997, Garcia was appointed by then President Fidel V. Ramos as member of the LTFRB Board of Directors. On October 21, 1998, President Joseph E. Estrada appointed Remedios G. Belleza as Board Member of LTFRB as replacement of Garcia. Hence, this request.

Relevant to the first issue is Section 2 of Executive Order No. 202 (Creating the Land Transportation Franchising and Regulatory Board) which provides as follows:

"SECTION 2. Composition of the Board. The Board shall be composed of a Chairman and two (2) members with the same rank, salary and privileges of an Assistant Secretary, all of whom shall be appointed by the President of the Philippines upon recommendation of the Secretary of Transportation and Communications. One (1) member of the Board shall be a member of the Bar and shall have engaged in the practice of law in the Philippines for at least five (5) years, another a holder of a degree in civil engineering, and the other a holder of a degree in economics, finance or management, both with the same number of years of experience and practice."

Based on the foregoing, it is clear that members of the Board are to be appointed by the President of the Philippines upon the recommendation of the Secretary of Transportation and Communications. The said provision also does not provide for any fixed term of office, hence, it follows that members of the Board serve at the pleasure of the appointing authority. Since Remedios G. Belleza took her oath of office as Board Member of LTFRB last January 26, 1999 as replacement of Garcia by virtue of an appointment issued by President Joseph E. Estrada last October 21, 1998, it therefore leads to the conclusion that the term of office of Garcia as LTFRB Board Member has expired.

Expiration of term is understood in law of public officers as without any fixity and enduring at the pleasure of the appointing authority. When required to relinquish his office, the appointee cannot complain that he

is being removed in violation of his security of tenure because removal imports the separation of the incumbent before the expiration of his term. This is allowed by the Constitution only when it is for cause as provided by law. The acting appointee is separated precisely because his term has expired. Expiration of term is not covered by the constitutional provision on security of tenure (**Achacoso vs. Macaraig, 195 SCRA 235**).

Further, Executive Director Elmor D. Juridico, Career Executive Service Board issued a Certification dated 11 February 1999 which reads as follows:

"This is to certify that the position of Board Member, Land Transportation Franchising and Regulatory Board (LTFRB), Department of Transportation and Communication, is not a Career Executive Service position because it is performing purely quasi-judicial functions and not executive or managerial functions."

Based on the aforequoted provision of Section 2 of EO 202 and the certification of the CESB, the position of Board Member of LTFRB is considered a non-career, executive service position. Additionally, another indication that appointments to said position is only temporary is the request of Chairman Dante M. Lantin, LTFRB, dated July 15, 1998 to DOTC Secretary Vicente C. Rivera "for the retention and reappointment" of Garcia as LTFRB Board Member.

With regard to the second issue, under existing Civil Service law and rules, eligible career service officials may continue to serve until they reach the compulsory retirement age or are removed for cause. On the other hand, when one occupies a non-career position he can be removed anytime by the appointing authority even if he possess a Career Service Executive Eligibility (CSEE)/Career Service Executive (CES) Eligibility. When said officials are removed from office, the general rule is they can appeal to the Civil Service Commission if they believe that their removal is not valid.

WHEREFORE, the Commission hereby rules that the position of Board Member of Land Transportation Franchising and Regulatory Board (LTFRB) is considered non-career and therefore the holder of such position does not enjoy the security of tenure.

Quezon City, February 17, 1999

CORAZON ALMA G. DE LEON
Chairman

THELMA P. GAMINDE
Commissioner

JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

ARIEL G. RONQUILLO
Director III

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