

**PETILLA, Remedios L.**

Re: Primarily Confidential

Positions; Consultants ;

Designation

X-----X

### RESOLUTION No. 990941

Governor Remedios L. Petilla of Leyte, requests that the positions in the Provincial Government of Leyte, namely, Executive Assistant III, Security Officer III and above be considered coterminous or their tenure be deemed at the pleasure of the appointing authority, while Executive Assistants I and II and Security Officers I and II be considered coterminous with the tenure of the appointing authority. She also requests authority to hire lawyers and other professionals as consultants on a contractual basis with compensation as an exemption to the one (1) year ban on appointments of defeated candidate in an election.

At the same time, Governor Petilla posed the query as to who is the appointing authority of the staff and personnel of the Vice-Governor as the presiding officer of the Sangguniang Panlalawigan. She also asks whether she has the authority to designate the Vice-Mayor of Barugo, Leyte, as Monitoring Officer in the campaign against illegal sand and gravel extraction in said municipality, considering that the Governor has the power to issue permits under the Mining Law, and that such designation is not to a position but only an "additional designation or duty".

As regards Governor Petilla's first concern, the records submitted to support the request are bereft of any information whether these positions as mentioned above belong to the personal and confidential staff as reflected in the approved plantilla of personnel of the province and hence, non-career pursuant to Section 9, Chapter 2, Title I-A of Book V of the Administrative Code of 1987. On the assumption, however, that these positions are in the personal and confidential staff of the local executive, there is no need to declare said positions as primarily confidential (coterminous) since by operation of law, these are already declared as such. Hence, their appointments shall be coterminous with the appointing authority pursuant to Section 14 (2), rule V of the Omnibus Civil Service Rules Implementing Book V of

the Administrative Code of 1987.

In case, however, that such positions are not part of the personal and confidential staff, they are career positions and appointees thereto under permanent status are entitled to security of tenure. For these positions to be considered as non-career, said positions must first be declared by the Civil Service Commission as primarily confidential positions pursuant to Section 12 (9), Chapter 3, Title I-A, Book V of the Administrative Code of 1987 upon showing by the head of the agency concerned, of valid factual and legal justifications. On this point, we find that aside from the bare request, no legal or factual bases are presented to warrant such declaration.

Further, under CSC Memorandum Circular No. 13, s.1990, the position of Head Executive Assistant has already been declared as primarily confidential, hence, coterminous with the appointing authority. Under the same circular, in cases where the executive being assisted is not the appointing authority, the term of office of the Head Executive Assistant shall be dependent upon the former's recommendation.

Likewise, CSC Resolution No. 91-494 dated April 17, 1994 provides that the Commission shall favorably consider for recommendation as primarily confidential the two (2) highest Security Officer positions in the Security Units/Divisions in the different agencies of the government.

Anent Governor Petilla's request for authority to hire lawyers and other professional as consultant within the one (1) year ban on appointments of defeated candidates, the pertinent constitutional and statutory provision are as follows:

*"No candidate who has lost in any election shall, within, one year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries." (Section 6, Article IX-B of the 1987 Philippine Constitution)*

*and*

*"Except for losing candidates in barangay elections, no candidate who lost in any election*

*shall, within one (1) year after such election, be appointed to any office in the government or any government-owned or controlled corporation or their subsidiaries." (Section 9, par.(b) of the Local Government Code of 1991).*

By definition, a consultant is one who provides professional advice on matters within the field of his special knowledge or training. There is no employer-employee relationship in the engagement of a consultant but that of client-professional relationship. Thus, consultancy services are not considered government service and a consultant is not considered a government employee. Consequently, a contract for consultancy services is not submitted to the Commission for approval. **(CSC Resolution No. 95-6939 dated November 2, 1995 Pagaduan, Ma. Dolores, et al. vs. Malonzo, Reynaldo, et al.)**.

Since a consultant is not considered a government employee, the engagement of a consultant is not covered by the abovesited constitutional and statutory provisions.

Regarding Governor Petilla's query as to who is the appointing authority of the staff of the Vice-Governor, in the **CSC Resolution No. 95-3413 (Andrade, Johnson R. Re: Appointment; Requirements)**, this Commission ruled that the City Mayor pursuant to Section 455 of the Local Government Code of 1991, is the appointing authority of the staff of the Vice-Mayor. Considering that the abovesited provision is worded exactly as the provision of Section 465 of the same Code, except the position, said ruling applies in the instant case.

On this point, in the **CSC Resolution No. 98-2506 dated September 23, 1998**, the Commission held, thus:

*"xxx the Commission hereby rules that the City Mayor is granted a certain degree of discretion in the determination of who should be appointed to primarily confidential positions in the Office of the City Vice Mayor as determined by existing laws, policies and regulations. Accordingly, once an appointee to the personal and confidential position in the Office of the City Vice Mayor is determined by the City Vice Mayor, the*

***issuance of the appointment pertaining thereto is a ministerial duty on the part of the City Mayor." (Emphasis supplied)***

As noted, the appointing power of the Vice-Governor covers the officials and employees of the Sangguniang Panlalawigan as provided for under Section 466 of the same Code. However, with respect to appointees to items in the **personal and confidential staff of the Vice-Governor**, the latter official is given the initial and final choice and once it is made, it is ministerial on the Governor to issue corresponding appointments.

And with respect to authority being sought to designate the Vice-Mayor as monitoring officer in the campaign against illegal sand and gravel extraction, this Commission is of the view that such designation is in consonance with Article 465, par. b.3.(v), (vi) of the Local Government Code of 1991, to wit:

*"(v) Adopt adequate measures to safeguard and conserve land, mineral, marine, forest and other resources of the province, in coordination with the mayors of component cities and municipalities;*

*"(vi) provide efficient and effective property and supply management in the province; and protect the funds, credits, rights and other properties of the province"*

As aptly represented, said designation is not to another office or position but an imposition of an additional duty or responsibility which, the Commission believes, in the first place, is connected or incidental to the position of the Vice-Mayor.

**WHEREFORE**, this Commission resolves to deny the request of Governor Remedios L. Petilla of Leyte to declare as primarily confidential the Executive Assistant positions and Security Officers, except the Head Executive Assistant and the two (2) highest Security Officers, in the Provincial Government of Leyte, for lack of factual and legal bases. Accordingly, the Commission clarifies that the Head of Executive Assistant and the two (2) highest Security Officers in the Provincial Government of Leyte, are

primarily confidential positions.

Also, this Commission interposes no objection to the hiring of consultants during the one (1) year ban on appointments of defeated candidates in an election, as consultants are not government employees, and to the designation of the Vice-Mayor of Barugo, Leyte as Monitoring Officer in the campaign against illegal sand and gravel extraction in said municipality.

Quezon City, **MAY 05, 1999**

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

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

DID NOT PARTICIPATE  
**JOSE F. ERESTAIN, JR.**  
Commissioner

Attested by:

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

