

**LASCO, Paulo M.**

Re: Invalidated Appointment;  
Appeal

x----- x

### **RESOLUTION NO. 030128**

Mayor Paulo M. Lasco, Municipality of Tubigon, Province of Bohol appeals from the action taken by Director Carlos A. Evangelista, CSC Bohol Provincial Field Office, Tagbilaran City invalidating the appointment of Marlon R. Amila as Municipal Administrator for alleged Violation of Section 480, Article X, Republic Act No. 7160 (otherwise known as The Local Government Code of 1991).

In his appeal dated April 9, 2002, Mayor Lasco cited the following assignment of errors:

*"1. In Resolution No. 001156 of the CSC of May 5, 2000 x x x the Commission rendered its Decision declaring that the position (which includes Provincial, City or Municipal Administrator) is not only non-career and co-terminous but it is primarily confidential to the appointing authority x x x.*

*"2. In fact, Memorandum Circular No. 40, s. 1998 of the Civil Service Commission effective on July 1, 1999 x x x provides as follows:*

*x x x*

*"e. Appointees to confidential/personal staff must meet only the educational requirements prescribed under CSC Memorandum Circular No. 1, s. 1997. The Civil Service eligibility, experience, training and other requirements are dispensed with.*

*"It is to be noted in this connection that R.A. 7160, otherwise known as the Local Government Code of the Philippines of 1991, which prescribed the qualifications of Administrator under Sec. 480 thereof, was approved into law on February 20, 1995, while the aforestated Memorandum Circular No. 40 of the Civil Service Commission took effect long later on July 1, 1999. Thus, the Civil Service Commission in issuing the said Memorandum was fully aware of the existence of Sec. 480 of RA7160. The act of the Civil Service Commission in issuing that memorandum explicitly show that it had relaxed the qualification requirements of appointees to the position in favor of the superior prerogative of the appointing authority to choose with whom*

*to repose his trust and confidence in view of the strict confidentiality of the position, as held in the case of Marinduque Governor Carmencita O. Reyes.*

*"3. Lastly, I would like to inform that Office that the position of Municipal Administrator is a vital and necessary functionary as it is charged with the task of implementing the policies and programs of the local government unit concerned. It is political in nature x x x. In the case of Mr. Marlon Amila, the undersigned finds him to be deserving of the position after considering his uprightness, moral values, his educational qualification being a law graduate and the close intimacy of the appointing authority by reason of party affiliation so that it is difficult to find for another one to substitute him."*

When requested to comment, Director IV Tomas L. Ramos, Civil Service Commission Regional Office No. VII (CSCRO VII), Cebu City, in his Memorandum dated September 2, 2002, stated, as follows:

*"Upon review of the submitted Report on Personnel Action (ROPA) of the Municipality of Tubigon, Bohol, the appointment of Mr. Marlon R. Amila as Municipal Administrator was invalidated by the CSC Bohol Field Office for being in violation of Sec. 480 of the 1991 Local Government Code, specifically states that:*

*"a) appointee failed to meet the required 3 year experience in management and administrative work;*

*"b) appointment is not a first grade eligible;*

*"c) appointment is made without the concurrence of the Sanggunian.*

X X X

*"Mr. Amila has no relevant experience and eligibility as shown in his Personal Data Sheet on file. This finding has not been controverted by the appellant Mayor.*

*"Instead, the appellant Mayor Paulo M. Lasco, in his appeal to the CSC proper, cited the pronouncement of the Commission in CSC Res. 001156 (Re: Reyes, Carmencita) wherein the position of administrator has been declared coterminous and primarily confidential.*

X X X

*"Hence, the determinative issue to consider is whether or not the provisions of 1991 Local Government Code would apply or whether it should be in the cited provisions of CSC MC 40, s. 1998.*

*"It is our submission that the Local Government Code should apply and that the qualification requirements under Section 480 therein must be complied with for purposes of appointment to the Municipal*

*Administrator position.*

Records show that the Municipality of Tubigon, Bohol submitted to the CSC Bohol Provincial Field Office its ROPA for the month of February 2002. In said ROPA, it was stated that Marlon R. Amila was issued an original appointment under co-terminous status as Municipal Administrator of the said municipality. Upon review of the said appointment, the CSC Tagbilaran City Provincial Field Office, thru Director II Carlos A. Evangelista, invalidated the same for violation of Section 480, Article X of RA 7160.

Hence, this appeal.

The issue to be resolved in this case is whether the invalidation by Director II Carlos A. Evangelista, CSC Tagbilaran City Provincial Field Office of the appointment of Marlon R. Amila as Municipal Administrator on the ground that it violates Section 480, Article X of RA 7160 is proper.

After a thorough review of the records submitted in support of the appeal of Mayor Lasco, the Commission finds the same devoid of merit.

**Section 480, Article X of the Local Government Code of 1991**, provides, as follows:

*"Sec. 480. Qualifications, Terms, Powers and Duties. – (a) No person shall be appointed administrator unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and **a first grade civil service eligible or its equivalent. He must have acquired experience in management and administration work for at least five (5) years in the case of the provincial or city administrator, and three (3) years in the case of the municipal administrator.***

*"The term of administrator is coterminous with that of his appointing authority.*

*"The appointment of an administrator shall be mandatory for the provincial and city governments, and optional for the municipal government."*

It appears from the Personal Data Sheet (PDS) of Amila that he meets only the educational requirement for the position of Municipal Administrator. Said PDS shows that he finished Bachelor of Arts major in Philosophy (AB Philosophy) from 1989 to 1995 at the Immaculate Heart of Mary and Bachelor of Laws (LLB) from 1995-1999 at the Divine Word College of Tubigon. Item No 19 thereof reveals that Amila has no Career Service Eligibility while Item Nos. 20 (Record of In-Service Trainings) and 21 (Service Record) of his PDS show that he has no training and experience.

It is noted from the afore-quoted Section 480 of said Local Government Code states that the eligibility and three (3) years experience (in management and administration work) are mandatory requirements for appointment as Municipal

Administrator.

Mayor Lasco argued that when this Commission issued CSC Memorandum Circular No. 40, s. 1998, it intended to relax the requirements set by Section 480, Art. X of the Local Government Code of 1991.

This is bereft of merit. Section 1 (e), Rule X of said circular provides, that: *"Appointees to confidential/personal staff must meet only the educational requirements prescribed under CSC Memorandum Circular No. 1, s. 1997. The Civil Service eligibility, experience, training and other requirements are dispensed with."*

In the case of **Carmencita O. Reyes, CSC Resolution No. 001156 dated May 12, 2000**, the Commission held that:

*"Earlier, the Commission, in several cases (Resolution No. 92-1954 dated November 27, 1992 re Rosalia Umali; Resolution No. 93-432 dated February 11, 1993 re: Ortega, Manuel C; Resolution No. 96-2081 dated March 21, 1996, re: Romulo Quimbo), ruled that **while the term of office of an Administrator (Provincial, City or Municipal) is co-terminous with that of the appointing authority, it does not follow that the same is primarily confidential.** The position still belongs to the career service because of the eligibility requirement under the Local Government Code.*

*"To settle once and for all the issue of the nature of the position of Administrator, it is imperative that the duties and functions of the position be reviewed as the Supreme Court declared in the case of Civil Service Commission v. Rafael Salas 274 SCRA 414, that 'it is the nature of the position which finally determines whether a position is primarily confidential, policy-determining or highly technical.*

*"In addition, in **De los Santos v. Mallari (87 Phil 289, 1950)**, the Supreme Court had the occasion to define when a position is considered primarily confidential, as follows:*

*"Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which ensures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. x x x'*

X X X

*"A close scrutiny of the nature of the functions attached to the position of Administrator vis-<sup>29</sup><sub>11</sub>-vis the pronouncement of the Supreme Court in De los Santos (supra) clearly reflect the highly confidential nature of the position. Indeed, the position of Administrator requires a 'close intimacy' with the office of the governor, its appointing authority, in order to be able to effectively develop, implement and administer the different*

*programs of the local government unit concerned. As the Administrator shall recommend to the sanggunian and advise the governor and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit, the occupant thereof must enjoy the full trust and confidence of the appointing authority. And the appointing authority should be given enough flexibility and discretion to choose the person for appointment.*

X X X

*"x x x Considering that the Commission is given the authority under paragraph (9), Section 12, book V of the Administrative Code of 1987 to declare certain positions as primarily confidential in nature, we declare its position of Administrator (Provincial, City or Municipal) as primarily confidential in nature, and the term of office of appointees to said positions, consistent with the LGC, to be coterminous with the officials they serve.*

X X X

*"WHEREFORE, the Appeal of Governor Carmencita O. Reyes is hereby granted. Accordingly, the position of Provincial Administrator is declared to be **coterminous and highly confidential in nature.**"*

From the above, it is clear that the position of Administrator is co-terminous with the term of the appointing authority and highly confidential in character. However, it is a unique position because while it is highly confidential in character, it is required that the appointee must meet the qualifications enumerated under Sec. 480 of the Local Government Code. Hence, the position of Administrator does not fall within the confidential/personal staff contemplated under Section 1(e) of CSC Memorandum Circular No. 40, s. 1998 which dispenses with the eligibility and experience requirements.

It must be noted that the Local Government Code of 1991, being a special law, cannot be amended or superseded by a mere administrative issuance like CSC Memorandum Circular No. 40, s. 1998. The qualification requirements specifically enumerated under Section 480 of the Local Government Code of 1991 prevails over the provisions of Section 1 (e) of CSC Memorandum Circular No. 40, s. 1998 which merely requires that the appointee should meet the education requirement.

Considering that Amila does not possess the specific and mandatory eligibility and experience requirements provided for under Section 480 of the Local Government Code of 1991, he is not qualified to the position of Municipal Administrator. Thus, the invalidation of his appointment is warranted.

**WHEREFORE**, the appeal of Mayor Paulo M. Lasco of Tubigon, Bohol is hereby **DISMISSED** for lack of merit. Accordingly, the invalidation of the appointment of Marlon R. Amila as Municipal Administrator of Tubigon, Bohol, by the CSC Bohol Provincial Field Office is affirmed.

Quezon City, JAN 28 2003

(Original Signed)  
**KARINA CONSTANTINO-DAVID**  
Chairman

(Original Signed)  
**JOSE F. ERESTAIN, JR.**  
Commissioner

(Original Signed)  
**J. WALDEMAR V. VALMORES**  
Commissioner

Attested by:

(Original Signed)  
**ARIEL G. RONQUILLO**  
Director III

**FPG/KPZ/ X2/Y23/jrldocs**  
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*lascorevised*