



MORADOS, Gina Josephine T.
Re: Nepotism
(Request for Opinion)
X-----X

Number: 1000170

Promulgated: 06 OCT 2010

This is a
**MUST-READ
RESOLUTION**
CSC Resolution No. 10-00170 dtd. Oct. 6, 2010
CSLO

RESOLUTION

Flosie F. Fanlo-Tayag, Deputy Executive Director, Bureau of Local Government Finance, Department of Finance, Roxas Boulevard, Manila, in a letter dated November 24, 2009, seeks the opinion of this Commission concerning the appropriate law on nepotism that applies to the appointment of Treasurers in Local Government Units.

The pertinent portions of Fanlo-Tayag's letter read, as follows:

x x x

*"The case arose when this Bureau did not act favorably on the recommendation made by Municipal Mayor Lenin P. Alviola, of Bacong, Negros Oriental for the appointment of Ms. Gina Josephine T. Morados, as Municipal Treasurer of the same municipality, primarily because of nepotism as provided under Section 79 of the Local Government Code
x x x.*

"It appears that the recommendee, Ms. Morados, is the wife of Mayor Alviola's first cousin. It is the Bureau's stand that the Mayor cannot recommend the wife of his cousin, the latter being his relative by affinity within the fourth (4th) civil degree x x x. This is in line with the pronouncement of the Civil Service Commission in the case of Augusto W. Bugnosen, CSC Resolution No. 002396, October 18, 2000 citing the case of Pacifico Abaya, CSC Resolution No. 99-2063 dated September 16, 1999. Extending the pronouncement in said cases, that the husband and wife share no degree relationship, thus, treated as one, this Bureau considered the recommendee, being the wife of the first cousin of the mayor, as the latter's relative by affinity also within the fourth civil degree. Ergo she cannot be appointed to the position of municipal treasurer, she being covered by the rule on nepotism.

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“On the other hand, the mayor is not contesting that he and his recommendee is within the fourth (4th) civil degree of consanguinity. What he is contesting is the law that will apply to the appointment of a municipal treasurer. He is claiming that it is Executive Order No. 292 instead of the Local Government Code that will apply. x x x.”

Fanlo-Tayag opines that the rule on nepotic appointment under the Local Government Code (LGC) of 1991 applies to appointments of local treasurers since it is the LGC which provides for the qualifications, powers, functions and duties of local treasurers. Besides, the rule on nepotic appointments under the Administrative Code of 1987 applies to all appointments in the bureaucracy, while that provided under the LGC applies only to positions in local government units. However, Mayor Lenin P. Alviola of Bacong Negros Occidental, who recommended the wife of his first cousin, Gina Josephine T. Morados, to be appointed treasurer in their municipality, believes otherwise.

Thus, the herein query on whether it is the Local Government Code's rule on nepotic appointment that applies to the appointment of local treasurers or that provided under the Administrative Code of 1987.

Of pertinent application to the herein query is **Section 79, Title 3 of the 1991 Local Government Code**, which provides:

“Section 79. Limitation on Appointments – No person shall be appointed in the career service of the local government if he is related within the fourth civil degree of consanguinity or affinity of the appointing or recommending authority.” [Underscoring supplied]

Aforequoted provision of the Code is clear and does not need extrinsic aid to interpret. It provides that “no person shall be appointed in the career service of the local government” if the appointee is within the prohibitive degree of relationship provided therein. Simply stated, the rule on nepotic appointment under the above provision of the LGC applies only to positions in the career service within a Local Government Unit (LGU). In other words, positions outside of the career service of an LGU are excluded from the operation of the said law. Consequently, what determines, whether above rules on nepotic appointment apply to local officials depends on whether the position to be occupied by the appointee belongs to the career service in the LGU.

Relevant thereto, **Title Five (Appointive Local Officials Common to All Municipalities, Cities and Provinces), Chapter 2 (Provincial Officials in General), Section 470 of the Local Government Code of 1991**, provides:

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"Sec. 470. Appointment, Qualifications, Powers and Duties. "(a) The treasurer shall be appointed by the Secretary of Finance from a list of at least three (3) ranking eligible recommendees of the governor or mayor, as the case maybe, subject to civil service law, rules and regulations.

"(b) The Treasurer shall be under the administrative supervision of the governor or mayor, as the case maybe, to whom he shall report regularly on tax collection efforts in the local government units.

"(c) No person shall be appointed treasurer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, holder of a college degree preferably in commerce, public administration or law from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in treasury or accounting service for at least five (5) years in the case of provincial or city assistant treasurer, and three (3) years in the case of the municipal assistant treasurer."

Its title alone, **Title Five, Chapter 2 of the Local Government Code** is demonstrative of legislative intent. Said portion of the LGC speaks of "*Appointive Local Officials Common to all Municipalities, Cities and Provinces,*" where the position of local treasurer can be found. Clearly, it can be adduced therefrom that local treasurers are among the mandatory officials enumerated under the foregoing provision of the Local Government Code (LGC), which also provides the qualifications required of the position. Thus, local treasurers are officials of the Local Government Units, where they draw their salary,¹ and not of any other department, bureau or office in the government.

Moreover, **Section 5, Title One, Chapter 1 (The Code: Policy and Application) of the Local Government Code** provides:

"Section 5. Rules of Interpretation. – In the interpretation of the provisions of this Code, the following rules shall apply:

"(a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the

¹ Paragraph c, Section 3, Title One, of the Local Government Code provides: Subject to civil service law, rules and regulations, local officials or employees paid wholly or mainly from local funds shall be appointed or removed, according to merit and fitness by the appropriate appointing authority.

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existence of the power shall be interpreted in favor of the local government unit concerned;"

x x x

Foregoing guidelines in interpreting the provisions of the LGC provides that any provision of the Code involving grant of powers to local government units must be liberally construed in its favor. Since the Treasurer is one of the appointive local officials common to LGUs as provided, in the LGC, it may be construed that a treasurer is an official of the LGU where he/she draws his/her salary. Consequently, this Commission hereby rules and so holds that local treasurers are officials of LGUs where they draw their salaries. Hence, the rule on nepotism appointment under **Section 79, Title III of the Local Government Code of 1991** applies to Treasurers in LGUs.

Consequently, the term "*provincial, city and municipal government*" under Section 59, Chapter VIII, Book V of Executive Order No. 292, shall be construed to mean as referring to appointments issued to officials and employees whose positions belong to a department, bureau or office in the national government and whose salaries are derived from the funds of their respective offices. This does not include the officials and employees of Local Government Units as above described.

Section 59 Chapter VIII, Book V, of Executive Order No. 292, which provides:

"Sec. 59. Nepotism. - (1) All appointments in the national, provincial, city and municipal government or in any branch or instrumentality thereof, including government owned or controlled corporations, made in favour of a relative of the appointing authority, or of the chief of bureau, or of the person exercising immediate supervision over him, are hereby prohibited.

"As used in this Section, the word 'relative' and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

"(2) The following are exempted from the operation of the rules on nepotism: (a) person employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance fill report of such appointment shall be made to the Commission." [underscoring supplied]



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In other words, the operation of rule on nepotic appointment under E.O. 292, limiting its scope within the third degree of relationship either of consanguinity or affinity, does not apply to officials and employees of Local Government Units.

WHEREFORE, this Commission hereby **RULES** and so **HOLDS** that the rule on nepotic appointment under **Section 79, Title III of the Local Government Code of 1991** applies to Treasurers in Local Government Units and not that under **Section 59, Chapter VIII, Book V of the Administrative Code of 1987**.

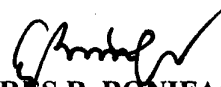
Quezon City.


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner



FRANCISCO T. DUQUE III
Chairman


CESAR D. BUENAFLOR
Commissioner

Attested by:


DOLORES B. BONIFACIO
Director IV
Commission Secretariat and Liaison Office

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