



Republic of the Philippines  
CIVIL SERVICE COMMISSION

CHICANO, PABLO C.  
Re: Termination of Services; Acting Mayor  
X-----X

**RESOLUTION No. 990756**

Vice Mayor Pablo C. Chicano of the Municipality of Bislig, Province of Surigao del Sur, requests the Commission to confirm the opinion of Director Lourdes Clavite-Vidal of the Civil Service Regional Office (CSRO)-CARAGA relative to the termination of services of the eight (8) personal staff of the Mayor on December 8, 1997 by Acting Mayor Florencio C. Garay.

The assailed opinion subject of this request is contained in a letter dated February 5, 1998 of Director Vidal to Ms. Agripina S. Peninsula, HRMO I, Office of the Mayor, Bislig, Surigao del Sur, which reads as follows:

*"The records show that incumbent Mayor Paterno A. Guasa of Bislig, Surigao del Sur was suspended pendente lite by the Sandiganbayan effective October 21, 1997 for a period of ninety (90) days in its Resolution dated October 2, 1997 in a Criminal Case No. 19909. Pursuant to Section 46 (a) of the Local Government Code, Vice Mayor Florencio C. Garay assumed the Office of the Mayor in an acting capacity.*

*"On December 8, 1997, Acting Mayor Garay terminated the services of the following, all under the personal staff of the Office of the Mayor and coterminous to the appointing authority:*

- |                       |   |                     |
|-----------------------|---|---------------------|
| 1. Lorenda G. Guasa   | - | Private Secretary   |
| 2. Leo Cuadra         | - | Security Officer II |
| 3. Osias Abarca       | - | Security Guard III  |
| 4. Agapito Niere      | - | Security Guard III  |
| 5. Nicasio Hampac     | - | Security Guard III  |
| 6. Santander Resullar | - | Security Guard II   |
| 7. Primo T. Tare      | - | Security Guard I    |
| 8. Orencio Canedo     | - | Security Guard I    |

*and appointed a new Private Secretary and one Security Officer II on December 16, 1997.*

*"Section 46 of R.A. 7160 provides:*

*"Section 46. Temporary Vacancy in the Office of the Local Chief Executive. When the governor, city or municipal mayor or punong barangay is temporarily incapacitated to perform the duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad and suspension from office, the vice governor, city or municipal vice mayor, or the highest ranking sangguniang barangay member shall automatically exercise the powers and perform the duties*

and functions of the local chief executive, except the power to appoint, suspend or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days."

"Close scrutiny of the said provision shows that if the temporary incapacity of the Local Chief Executive exceeds thirty (30) days, the Vice Mayor's exercise of powers and duties of the Chief Executive already include the power to appoint, suspend or dismiss employees.

"Perusal of the Memorandum of Acting Mayor Garay dated December 08, 1997 to Mr. Leo Cuadra, simply shows that the services are terminated because they are no longer needed.

"Likewise, his reply dated January 7, 1998, reveals that Acting Mayor Garay's act of terminating the services of the aforesaid employees was anchored on his impression of his power "to appoint, suspend or dismiss employees" pursuant to Section 46 of the Local Government Code and on his belief that since Mr. Guasa-Cajigas, et al. hold positions of trust and confidence, their tenure is, by law, at the pleasure of the person holding the office to which they are attached and not necessarily on the appointing authority.

"The authority to suspend or dismiss employees pursuant to Section 46 of the Code is believed to be premised on satisfying first the due process clause under the Constitution.

"As noted, the act of Acting Mayor Garay in terminating the services of the employees was not grounded on reason that their services were no longer needed, and nothing more as shown in the Memorandum dated December 8, 1997.

"To consider the reason that the "tenure" of subject employees is by law, at the pleasure of the acting Mayor as advanced by the latter, is to negate the sanctity of the action of the Commission on the appointments in approving as "COTERMINOUS" which gives rise to employees security of tenure during the term of office of the appointing authority.

"The suspension of Mayor Guasa from office for a period of ninety (90) days has the effect of only temporarily barring him from office. Suspension as defined by Webster is "temporary debarring, as from an office, school, a privilege". It is therefore, clear that his term has not yet expired by reason of his suspension.


"Viewed from the foregoing, it is believed that the dismissal of Guasa, et al. is not in order. Consequently, the appointment of the new Private Secretary and one Security Officer is not valid as there are no vacancies to speak about."  
(Underscoring Supplied)

K

Pursuant to Section 46 (a) of the Local Government Code of 1991, due to the temporary incapacity of Mayor Guasa by reason of his 90-day suspension, Vice Mayor Garay shall automatically perform the duties and exercise the powers of the former for the period, including the power to appoint, suspend or dismiss employees of the Municipality. As such, where it is necessary and upon his discretion, Acting Mayor Garay can lawfully replace the incumbents of confidential positions, among others, on the ground of loss of confidence. The rationale behind this is that *"the Acting Mayor will find it difficult to fully implement with the same vigor his program of actions to the people if he would be working with officials in whom he has no confidence."* (CSC Resolution No. 946892, Day, Amado S.).

However, said rule is not applicable to the personal staff of the Mayor, who were appointed coterminous with him as their *"appointments are co-existent with the tenure of the appointing authority or at his pleasure"* (Section 14 (2), Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292). In the instant case, the term of Mayor Guasa, who is the appointing authority of the aforementioned employees, is definitely not yet terminated nor expired but merely suspended; hence, the terms of his personal staff still exist, which shall only be terminated by reason of the expiration of his (Mayor) term or by loss of confidence of the Mayor himself. The Commission, in the case of Day, Amado S. (CSC Resolution No. 94-6892) further explains as follows:

*"Since We have already ruled that the acting Mayor can exercise the power of appointment and discipline after the lapse of thirty (30) working days from the time the Mayor become temporarily incapacitated to perform his duty, We rule that the Acting Mayor can lawfully replace the incumbents of primarily confidential positions on the ground of loss of confidence. However, this rule does not apply to the personal staff of the elected Mayor who are also classified as confidential employees. As can be gleaned from the aforequoted Section 46 (a) of the Local Government Code of 1991, the evident intention of the law is to give to the acting Mayor all the powers, ministerial and discretionary of the local chief executive provided that the temporary incapacity exceeds thirty (30) days. For all intents and purposes, under the provision of the Local Government Code, the acting Mayor is deemed the Mayor himself. Hence, the acting Mayor is now the new appointing authority. Such being the case, if the acting Mayor would lose his confidence on the incumbents of primarily confidential positions except the personal staff of the elected Mayor, then he could lawfully replace them with the persons of his confidence. As has been stated earlier, loss of confidence is a valid ground for replacing those occupying primarily confidential positions. To rule otherwise will render nugatory the powers given to the acting Mayor and render useless the aforesaid provision." (Underscoring Supplied)*

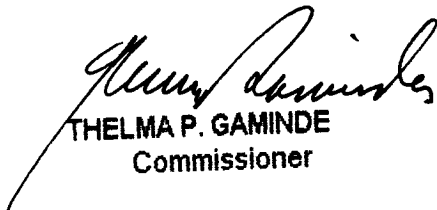


Chicano/p.4  
x-----x

WHEREFORE, the Commission hereby resolves to confirm the Opinion of Director Lourdes Clavite-Vidal that the termination of services of Guasa, Lorenda, et. al., all under the personal staff of the Office of the Mayor by Acting Mayor Florencio C. Garay is not in order. Consequently, Guasa et. al. are reinstated to their respective positions with entitlement to backwages and other benefits due them for the period.

Quezon City, APR 07 1999

  
CORAZON ALMA G. DE LEON  
Chairman

  
THELMA P. GAMINDE  
Commissioner

DID NOT PARTICIPATE  
JOSE F. ERESTAIN, JR.  
Commissioner

Attested by:

  
ARIEL G. RONQUILLO  
Director III

rdo/aba/lac/JHUN  
d.sha.feu  
rdoS-990211-001