

VILLANUEVA, Normita L.

Re: Appointment; Multiple Positions

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RESOLUTION No. **990880**

Normita L. Villanueva, Bank Attorney (Department Manager) of the Bangko Sentral ng Pilipinas (BSP) and currently detailed to the Career Executive Service Board (CESB) as Deputy Executive Director, requests a ruling on whether she could still qualify as Member of the Board, CESB.

The request of Villanueva reads, in part, as follows:

"I have an existing appointment at the Bangko Sentral ng Pilipinas (BSP) from which I draw all my salaries and benefits as a government official. Effective March 01, 1999, through the representation of the Hon. Chairman Corazon Alma G. De Leon of the Civil Service Commission, the BSP approved my detail to the CESB with specific assignment to function as a Deputy Executive Director. I maintain to receive my salaries and benefits from BSP.

"On March 04, 1999, I was issued an appointment by His Excellency Joseph Ejercito Estrada as Member of the Board, CESB, for a fixed term of 6 years. I have yet to take an oath of office under this appointment, pending this request.

"The Revised Charter of the Board, embodied in PD 367 which further amended PD 1, provides the following composition of the Board:

'Section 1, Section 2 and 3 of Part III, Article IV of the Integrated Reorganization Plan as amended by PD 336, dated Nov. 14, 1973 is hereby further amended to read as follows:

'Section 2. A Career Executive Service Board, hereinafter referred to as the Board, is created to serve as the governing body of the Career Executive Service. The Board shall consist of the President of the Development Academy of the Philippines and six (6) other members from both the government and private sectors who are familiar with the principles and methods of personnel administration.

'Section 3. The [two] appointive members of the Board shall serve part time and may receive per diem and allowances for meetings attended UNLESS OTHERWISE DISQUALIFIED BY LAW. THEY SHALL HAVE A TERM OF SIX (6) YEARS.'

"At present, the Board is composed of the following:

"Chairman Corazon Alma G. De Leon of CSC - ex officio Chairman

"President Eduardo T. Gonzales of DAP - ex officio Member

"Mr. Romeo B. Ocampo (Prof. of UP and a government official)

"Mr. Jaime M. Lantin (a retired Judge and is now in the private sector)

"Mr. Serafin D. Talisayon (a retired officer and is now in private sector)

"Mr. Luis C. Liwanag II (Deputy Exec. Secretary and a government official)

"Mr. Demetrio L. Ignacio (PMS Official and gov't official)

"From the above composition, it would appear that the CSC Chairman and the DAP President are not the 'appointive members of the Board' inferred to in Section 3 of PD 367

since the fixed term of 6 years cannot apply on (sic) them. They are therefore ex-officio members. The 6 appointive members therefore of the Board shall be a combination of those coming from both private and government. For those already in government like Prof. Ocampo, Dep. Exec. Sec. Liwanag and Mr. Ignacio, their appointment as members of the Board appears to have legal basis. From these precedents, will it be safe to conclude that there is no legal impediment to my appointment as member of the Board even if I continue to be an officer of the BSP, and is an exception to the constitutional and legal provisions as follows:"

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As represented by Villanueva herself, she presently holds the position of Bank Attorney (Department Manager) at the BSP and continuous to draw her salaries and other benefits therefrom. On March 1, 1999, she was detailed to the CESB as the Deputy Executive Director. On March 4, Villanueva was issued by His Excellency, President Joseph Ejercito Estrada an appointment as Member of the Board, CESB, but she has yet to take her oath of office.

Hence, this request.

From her own admission, it is obvious that should Villanueva accept her appointment as Member of the Board, CESB, she would in effect, be holding three positions simultaneously. This situation is prescribed under existing law and jurisprudence on the matter. In **CSC Resolution 98-0391 dated February 26, 1998**, the Commission had the occasion to explain this precept as follows:

"In the case of Civil Liberties Union vs. Executive Secretary, GR No. 83896, promulgated on February 22, 1991, the Supreme Court declared E.O. No. 284 null and void, being contrary to the express provisions of the fundamental law, specifically Section 13, Article VII in relation to Section 7, par. (2), Article IX-B. Section 13, Article VII, reads as follows:

'Sec. 13. The President, Vice-President, the Members of the Cabinet, and their

deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure . . .'

"The Supreme Court ruled that while E.O. No. 284 ostensibly prohibits a member of the Cabinet, undersecretary, assistant secretary or other appointive officials from holding more than two (2) positions, it, in effect, allows these officials to hold more than one (1) but not to exceed two (2) positions. This is in direct contravention of Section 13, Article VII of the 1987 Constitution which is categorical in its prohibition. Although said Section authorizes certain exceptions, these exceptions refer only to positions held in an ex officio capacity or as required by the primary functions of the first office.

"The ruling, however, of the Supreme Court in the abovementioned case was clarified by the High Court itself in its En Banc Resolution dated August 1, 1991. Pertinent portions of said Resolution read as follows:

'Another point of clarification raised by Solicitor General refers to the persons affected by the constitutional prohibition. The persons cited in the constitutional provision are the 'Members of the Cabinet, their deputies or assistants.' These terms must be given their common and general acceptance as referring to the heads of the executive departments, their undersecretaries and assistant secretaries. Public officials given the rank equivalent to a Secretary, Undersecretary or Assistant Secretary are not covered by the prohibition, not is the Solicitor General affected thereby. The prohibition, however, applied to chairmanship and membership in the boards of sequestered corporations. (Emphasis supplied)

'The solicitor General submits that 'the sweeping limitations or conditions attached to the 'Cabinet Prohibition' do not obtain in the class of other appointive officials, who by the Decision are members of the civil service in general. He is correct. Other appointive officials below the rank of assistant

secretary are not covered by the constitutional prohibition under consideration. Since E.O. 824 includes in its coverage 'other appointive officials' aside from members of the Cabinet, their undersecretaries and assistant secretaries, it should be upheld insofar as these 'other appointive officials; are concerned.

'Accordingly, the dispositive portion of the decision of February 22, 1991 is hereby amended to read as follows:

'WHEREFORE, subject to the qualification abovestated, the petitions are GRANTED. Executive Order No. 284 is hereby declared null and void insofar as it allows a member of the Cabinet, undersecretary or assistant secretary to hold other positions in the government and government-owned and controlled corporations.'

"Thus, it is clear that E.O. 284 is valid insofar as it authorizes 'other appointive officials', other than the members of the Cabinet, undersecretaries and assistant secretaries, to hold multiple positions in government, but not to exceed two (2) positions.

"The question now is whether Atty. Kawi, et al. can validly invoke E.O. 28 as the law authorizing them and others similarly situated to hold two (2) positions.

"Atty. Kawi as the Chairman of the Cordillera Regional Assembly, claims to be the titular head of the CRA. At the same time, he also holds a permanent appointment to the position of Attorney V at the DAR-CAR. He was detailed to the CRA by then DAR Secretary Leung (February 6, 1991). Subsequent and present DAR Secretary Garilao extended his detail to the CRA through Special Order No. 76 dated February 23, 1993.

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"From all indications, the case of atty. Kawi approximates the personnel action of detail. Moreover, he was authorized by the DAR Secretary to continue performing the functions of

CRA Chairman. Further, it is shown that he does not receive salary or compensation from the CRA, except Per Diem and RATA. In other words, he receives salaries as Attorney V from his mother unit, the DAR.

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"Further, it is noted that Atty. Kawi as DAR Attorney V is neither a Cabinet member, an Undersecretary nor an Assistant Secretary. And the second position he holds is Chairman of the CRA, an item created by virtue of E.O. 220, which Presidential issuance provided for the creation of a Cordillera Administrative Region. The Constitution does not contain any provision prohibiting the Chairman thereof from holding another position within the government.

"With regard to the prohibition on double compensation, it is stated in the audit Report itself that Atty. Kawi does not received salaries from the CRA. The only money benefits he is paid by the CRA are allowances, Per Diem and RATA.

"Based on the foregoing discussion, the Commission finds that Atty. Kawi can validly hold the position of Attorney V and the position of Chairman of the CRA without violating the law. The same is true for the other members of the CRA, provided they are not receiving salaries from CRA and provided further that they are not holding more than two (2) positions at the same time.

"To reiterate, Section 7, Art IX-B of the Constitution prohibits all appointive officials from holding any other office or employment in the government EXCEPT when otherwise allowed BY LAW or by the primary functions of their positions. The prohibition contained in Sec. 13, Art. VII does not apply because it is only limited to the President, Vice-President, the Members of the Cabinet, and their deputies or assistants. The law granting Atty. Kawi, et al. the right to hold another position is E.O. 284. Said E.O. is declared valid and effective by the Supreme Court, insofar as other appointive officials are concerned.

"WHEREFORE, the Commission hereby rules and so holds that Atty. Sergio Kawi, and twenty-six (26) employees mentioned on page 1, could be detailed to and hold second positions in the Cordillera Regional Assembly (CRA). However, the heads of offices to which they belong may recall and replace them at any time when the exigency of the particular services so require."

It is explicit from the foregoing that an official or employee of government who is not the President, Vice-President, a Member of the Cabinet or his deputy or assistant and who is not specifically disqualified by law, may hold only a maximum of two (2) positions at a given time. To hold another position in excess two (2) is prohibited. Hence, Villanueva may hold only two positions at a time. She, therefore, has to choose only two among the three positions to which she can hold on to the second position but not on a full-time basis.

Be it noted, however, that should Villanueva opt to accept the position of Member of the Board, it would seem inappropriate for her to be also occupying the position of Deputy Executive Director of the CESB. This is so as there may be instances where actions of the Deputy Executive Director will be subjected to review by the members of the Board, CESB. In such case, an absurd situation will occur wherein the Board, of which Villanueva is also a member, would be reviewing her own action. Relevant is the case of **Rivera vs. CSC, 240 SCRA 43**, where the Supreme Court, citing the earlier case of **Zambales Chromite Mining Co. vs. CA, 94 SCRA 261**, held as follows:

"In order that the review of the decision of a subordinate officer might not turn out to be a farce, the reviewing officer must perforce be other than the officer whose decision is under review; otherwise, there could be no different view or there would be no real review of the case. The decision of the reviewing officer would be a biased view; inevitably, it would be the same view since being human, he would not admit that he was mistaken in his first view of the case."

WHEREFORE, the Commission hereby rules that the subject to the abovestated qualification, Atty. Normita L. Villanueva can hold a maximum of two (2) positions at a given time.

Quezon City, **MAY 05, 1999**

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

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

DID NOT PARTICIPATE
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

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