



MC No. 16, s. 2007

MEMORANDUM CIRCULAR

TO : ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL AND LOCAL GOVERNMENT UNITS, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND STATE UNIVERSITIES AND COLLEGES

SUBJECT : *Amendment to the Rules on Appointments Issued by Outgoing Elective and Appointive Officials (Item No. 2 of CSC Memorandum Circular No. 9, series of 2003)*

Pursuant to CSC Resolution No. 07-1138 dated June 18, 2007, Item No. 2 of CSC Memorandum Circular No. 9, series of 2003 (Rules on Appointments Issued by Outgoing Elective and Appointive Officials) is amended to read as follows:

X X X

"2. Action on Appointments Issued by Elective and Appointive Officials After Elections up to June 30

- "2.1. All appointments issued **after elections up to June 30** by **outgoing elective** appointing officials shall be disapproved.
- "2.2. All appointments issued after a presidential election up to **June 30** by an appointive appointing official whose term of office depends upon the pleasure of the President shall be disapproved.
- "2.3. If, in the exigency of the service, the appointing authority opts to issue temporary, casual and/or contractual appointments after the elections until June 30, prior authority must be obtained from the **concerned Civil Service Commission Regional Office**, otherwise such appointments will be disapproved.

"Such authority will be granted on the basis of validated need to fill up the positions immediately in order not to prejudice public service and/or endanger public safety.

"In case of casual and contractual appointments, preference should be given to qualified eligibles."

This Memorandum Circular shall take effect immediately.


KARINA CONSTANTINO-DAVID
Chairperson

August 15, 2007

ppso/rcl/dbb/k32007/outgoingmc

CSC Resolution No. 07-1138 published in the Manila Times on July 31, 2007



**Amendment to the Rules on Appointments
 Issued by Outgoing Elective and Appointive Officials**

Re: Amendment to Item No. 2 of CSC Memorandum
 Circular No. 9, series of 2003

X ----- X

RESOLUTION NO. 071138

WHEREAS, Section 3, Article IX-B of the 1987 Constitution provides that the Commission, as the central personnel agency of the government, is mandated to establish a career service and adopt measures to promote efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service, among others;

WHEREAS, Section 12 (1), Chapter 10, Subtitle A, Title I, Book V of the Administrative Code of 1987 (Executive Order No. 292) mandates the Commission to administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

WHEREAS, Section 12 (2), of the same Code empowers the Commission to prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;

WHEREAS, pursuant to the aforestated mandates, the Commission issued CSC Memorandum Circular No. 9, series of 2003 which, in part, provides as follows:

X X X

"2. Action on Appointments Issued by Elective and Appointive Officials After the Elections Up to June 30

"2.1. All appointments issued by elective appointing officials after elections up to June 30 shall be disapproved, except if the appointee is fully qualified for the position and had undergone regular screening processes before the Election Ban as shown in the Promotion and Selection Board (PSB) report or minutes of meeting.

"2.2. All appointments issued by appointive officials may be approved subject to any of the following conditions:

- "-It is not presidential election year;
- "-The appointive official has a fixed term of office.

"Otherwise, such appointments shall be disapproved, except if the appointee is fully qualified for the position and had undergone regular screening processes before the

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JUSTINA O. AMPER
 Supervising Personnel Specialist

Commission Secretariat and Liaison Office
 Civil Service Commission

Election Ban as shown the Promotion and Selection Board (PSB) report or minutes of meeting.

"2.3. If, in the exigency of the service, the appointing authority opts to issue temporary, casual and/or contractual appointments after the elections or on or before June 30, prior authority must be obtained from the CSC, otherwise such appointments will be disapproved.

"Such authority will be granted on the basis of validated need to fill up the positions immediately in order not to prejudice public service and/or endanger public safety.

"In case of casual and contractual appointments, preference should be given to qualified eligibles."

WHEREAS, there is need to amend the aforementioned provisions of CSC Memorandum Circular No. 9, series of 2003 to make more stringent the restriction on appointments to be observed by outgoing appointing officials, elective and appointive, and to avoid problems and controversies arising from appointments issued by the said officials;

NOW, THEREFORE, the Commission, by virtue of its constitutional and statutory mandates, **RESOLVES**, to amend Item No. 2 of CSC Memorandum Circular No. 9, series of 2003 to read as follows:

X X X

"2. Action on Appointments Issued by Elective and Appointive Officials After Elections up to June 30

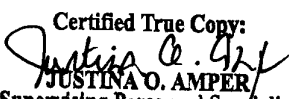
"2.1. All appointments issued by *outgoing elective* appointing officials after elections up to June 30 shall be disapproved.

"2.2. All appointments issued after a presidential election up to June 30 by an appointive appointing official whose term of office depends upon the pleasure of the President shall be disapproved.

"2.3. If, in the exigency of the service, the appointing authority opts to issue temporary, casual and/or contractual appointments after the elections until June 30, prior authority must be obtained from the **concerned Civil Service Commission Regional Office, otherwise such appointments will be disapproved.**

"Such authority will be granted on the basis of validated need to fill up the positions immediately in order not to prejudice public service and/or endanger public safety.

"In case of casual and contractual appointments, preference should be given to qualified eligibles."

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This Resolution takes effect fifteen (15) days after its publication in a newspaper of general circulation.

Quezon City, JUN 18 2007



KARINA CONSTANTINO-DAVID
Chairman



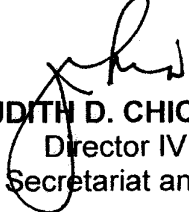
CESAR D. BUENAFLOR
Commissioner



MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner

*Pls. see Dissenting
Position Statement*

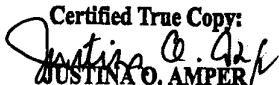
Attested by:



JUDITH D. CHICANO
Director IV
Commission Secretariat and Liaison Office

*pps/rcld/bb/k3
2007/outgoing*

CSC Resolution No. 07-1138 published in the Manila Times on July 31, 2007

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Commission Secretariat and Liaison Office
Civil Service Commission

**Amendment to the Rules on
Appointments Issued by Outgoing
Elective and Appointive Officials**

X-----X

DISSENTING POSITION

With all due respect to my colleagues, I dissent from the majority decision of the Commission to issue the policy, *"Amendment to the Rules on Appointments Issued by Outgoing Elective and Appointive Officials"*, particularly amending Item No. 2 of CSC Memorandum Circular No. 9, s. 2003.

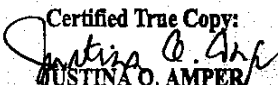
Anchored on pertinent laws and jurisprudence, this dissenting position seeks to raise the following points:

Firstly, it may be emphasized that the Commission may only disapprove appointments on the ground that the appointee does not meet the minimum qualification requirements of a position or, if an appointment was not issued in accordance with Civil Service law and rules, e.g. failure to pass through the agency's Selection/Promotion Board, non-compliance with the publication procedures, non-compliance with the procedures/criteria set by the agency's MPP. Pronouncements on the limits of the power and authority of the Commission on appointments have been repeatedly declared in Supreme Court decisions such as in the case of *Lapinid vs. Civil Service Commission* (G.R. No.96298 dated May 14, 1991). In such case, it was declared that the CSC has no authority to review the appointments made by other offices except only to ascertain if the appointee possesses the required qualifications. The CSC therefore, can not disallow or disapprove an appointment in an absolute manner apart from determining compliance of appointee to required qualifications and compliance to Civil Service law and rules.

Secondly, the CSC does not have the authority to curtail the power of the appointing authority to appoint unless such authority is mandated by law. In the absence of law prohibiting the appointment, the CSC has no power to disapprove appointments other than on the ground that the appointee does not meet the qualifications required of a position and if an appointment does not comply to Civil Service law and rules.

Unlike the prohibition on appointments issued by the President prior to presidential elections and up to the end of his/her term, as stipulated in the 1987 Philippine Constitution, there is no similar prohibition granted to local chief executives. Thus, in *Dela Rama vs. Court of Appeals*, G.R. No. 131136, February 28, 2001, the Court ruled, to wit:

"It should be noted that this provision is a limitation on the President's power of appointment. There is no similar limitation on the power of appointment of local executives."

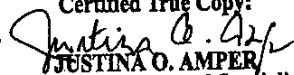
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It can not be overemphasized that the draft one-page bill concurrently prepared by the PPSO is an admission that the Commission has no power or authority over the exercise of the appointing power of local chief executives. Pending enactment of the law, it is my firm position that the issuance of the subject policy is a departure from the powers and functions of the Commission.

While on its face, the Commission is not prohibiting the appointing authority from exercising the power to appoint; however, the disapproval in effect nullifies or negates the power of the appointing authority, contrary to law.



CESAR D. BUENAFLOR
Commissioner

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