



On Civilians in Police Agencies

FACTS: Miss X was appointed APLECS Operator in the Libertad Police Department, Libertad, Antique. Issue was raised as to which agency, the CSC or the Integrated National Police should act on the appointment in question.

RULING: Pursuant to Paragraph 5 (d), Article II, Chapter I, Part XX of the Integrated Reorganization Plan, the function to attest appointments heretofore vested in this Commission is transferred to the National Police Commission insofar as appointments and members of the local police forces are concerned. This function of the National Police Commission has been expanded to include appointments of firemen and jailguards pursuant to Presidential Decree No. 765 and Civil Service Commission Memorandum Circular No. 11, issued on September 5, 1975. It should be noted that the law is explicit that the authority of the NAPOLCOM to act on appointments refers only to those extended to officers and members of the local police forces, firemen and jailguards but it does not include appointments of civilian and other administrative employees in the local police and fire departments.

It appears that the position of APLECS Operator in the Libertad Police Department to which Miss X is being appointed, does not involve police func-

tions such as the preservation of peace and order, the prevention of the commission of crimes, or the protection of life, liberty or property, among others. Hence, her appointment as such may not be acted upon by that Office subject to the requirements of the Civil Service Law and Rules.

Basis: CSC 2nd Indorsement dated August 20, 1976

On Holding CS and SB Positions

OFFICIALS AND EMPLOYEES IN THE CIVIL SERVICE WHO ACCEPTED MEMBERSHIP IN THE SANGUNIANG BAYAN MAY LOSE CIVIL SERVICE POSITIONS IF THEY FAIL TO EXERCISE OPTION TO CHOOSE WHICH POSITION THEY DESIRE TO RETAIN

The Manager, Local Government Audit, Commission on Audit, has raised the issue on whether Mr. Pablo M. Amansac, Barangay Affairs Coordinator, Office of the Mayor, Baguio City, whose permanent appointment was approved on July 1, 1975, under Section 24 (b) of Republic Act No. 2260, as amended, may simultaneously hold the position of member, Sanguniang Bayan, and collect the emoluments attached to both positions. Otherwise stated, the issue is whether the payment of emoluments to Mr. Amansac as member of the Sanguniang Bayan is a violation of the constitutional prohibition (Section 5, Article XIV, the Constitution) and Section 46 of Presidential Decree No. 807 against double compensation.

In a decision of the Civil Service Commission promulgated on September 16, 1976, the Commission considers

positions in the Sanguniang Bayan as political in nature in the sense that when one is elected or becomes a member of the Sanguniang Bayan, he assumes a membership in a political organization and thus involves himself in political organization and political activities. Mere membership therein or candidacy for an elective office constitutes political activity within the contemplation of Section 14 (b), Civil Service Rule XVIII, and is also prohibited under Section 29 of Republic Act No. 2260, as amended, which reads:

"Officers and employees in the Civil Service whether in the competitive or classified service (now career or non-career service) shall not engage directly or indirectly in partisan political activity or take part in any election except to vote, xxx."

The same provision, needless to say, is found in the New Constitution (Sec-

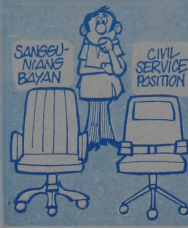
tion 5, Article XII-B), which states that:

"No officer or employee in the Civil Service including members of the armed forces shall engage directly or indirectly in partisan political activity or take part in elections except to vote.

Thus, in Resolution No. 146, series of 1976, it ruled that officials and employees appointed in the Civil Service cannot concurrently hold positions in the Sanguniang Bayan, whether such positions be in the Sanguniang Panlawigan, Panglungsod or Pamayanan. Consequently, any government officer or employee shall be considered resigned from his appointive position as of the moment he accepts membership in the Sanguniang Bayan.

Thus, Mr. Pablo Amansac may not simultaneously hold a civil service position, that of Barangay Affairs Coordinator, Office of the Mayor, and the political position of member, Sanguniang Bayan, collecting emoluments attached to both positions. For reasons of equity, however, and because of the understandable legal complexity of the problem, it is but proper and just for civil service employees in the career ranks who have accepted membership in the Sanguniang Bayan to be afforded the opportunity to choose which position they desire to retain. Thus, Mr. Amansac is given the option to decide within thirty days from receipt thereof, which of the two positions he would prefer to retain. Other officials' membership in the Sanguniang Bayan, if any, should be similarly stated as given the period of thirty days from the circularization of this decision.

Basis: CSC Decision dated September 16, 1976, AMANSEC, Pablo



On the Interpretation of "Conflict of Interest"

QUERY: National Economic and Development Authority Director General Gerardo P. Sicat requests opinion on whether his acceptance of a directorship in certain private corporations indebted to government financial institutions would constitute "a conflict of interest," considering that he is a member of the Monetary Board and the National Economic and Development Authority (NEDA).

OPINION: The Secretary has, in several occasions, already ruled that the "interests" adverted to in the prohibitions contained in the Anti-Graft and Corrupt Practices Act (Sec. 3 (b) and (i), R.A. No. 3019) refers to interest of a personal or private character; and that the legal injunction, though apparently comprehensive and unqualified, should be confined to cases which exhibit conflict between public and private interests. The rationale behind these statutory restrictions is that no public officer ought to be permitted, in respect to a matter confined to his official care, to

entertain two conflicting loyalties—one, public and official; the other, private and personal—since experience has shown that where private interests clash with the requirement of public duty, man is disposed to succumb to the impulses of self-interest.

In the present case, Mr. Sicat sits as a director in the private corporation in order to represent the interests of the government financial institutions which are creditors of said corporations, not his own private holdings. Hence, there is no conflict of interests to speak of.

Source: Sec. of Justice Op. No. 127, Series of 1976, Letter dated July 5, 1976.

On Withholding Payment of Workmen's Compensation Award to Satisfy Debt of Claimant

QUERY: The Director of National Library requests opinion on whether his Office may withhold payment of the money value of the Workmen's Compensation Commission's award to Mrs. Milagros Mercado, former employee, until she settles her debt to claimant.

FACTS: Mrs. Mercado, due to prolonged absence on account of illness, was separated from the service on December 18, 1974. Consequently, she was granted disability benefits under Section 11(c) of Commonwealth Act No. 186, as amended (GISIS Charter), and also awarded compensation benefits by the Workmen's Compensation Commission. While she was still employed in the National Library, an administrative case was filed against her by one Josefine C. Gomez for non-payment of debt. This case remained unresolved on the date of Mrs. Mercado's separation for which reason said Office had opined it "has lost jurisdiction over the person of the respondent." Complainant Gomez requested said Office to withhold payment of Mrs. Mercado's WCC award until the said debt is settled.

OPINION: If only on this ground that said Office has lost jurisdiction over Mrs. Mercado on account of her separation from the service (since the dispute has become a private matter), the Secretary doubts whether the National Library may entertain to withhold payment of the WCC benefits due her. Let alone that a government office should

not allow itself to be used as a collecting agency of a private creditor.

Besides, the WCC benefits due her cannot be withheld to satisfy the same in view of the provisions of Section 35 of the Workmen's Compensation Act No. 3428, as amended, that "no claim for compensations under this Act is transferable, and all compensations or rights to compensation shall be exempt from creditor's claims."

Source: Sec. of Justice Op. No. 126, Series of 1976, Letter dated July 2, 1976.

On Status, Rights and Benefits of Gratuity Employees

QUERY: Opinion is requested regarding "the status, rights and benefits" of "gratuity employees" of the Central Luzon Sanitarium, particularly on the following questions:

- "1. What is the status of the Sanitarium gratuity employees as employees of the Philippine government?"
- "2. Are they entitled to the rights, benefits and privileges of government employees who are affiliated with the Government Service Insurance System?"
- "3. If they are not entitled, what are the rights and benefits to which they are entitled under existing laws and regulations?"

FACTS: The Law authorizing the employment of "gratuity employees" is found in Item 22, Special Provisions of the Appropriations Decree for the current fiscal year (P.D. No. 733) for the Office of the Secretary of Health which reads:

"22. Use of savings.—Any savings in the appropriation authorized for the Department of Health may, subject to the approval of the President, be used for: xxx xxx xxx part of their rehabilitation and therapy at the rate of P1 per patient per day in an amount not exceeding P100,000."

OPINION: The Secretary observes that the employment from time to time of such employees is being authorized pursuant to the above provision as part of their rehabilitation and therapy, and therefore essential to their treatment as patients of the Central Luzon Sanitarium. If follows that they remain hospital patients not yet fully recovered from the illness warranting their confinement, for which reason they may not be con-

sidered as regular employees in the Civil Service, whether in the career or non-career service as defined in the new Civil Service Decree and in the Integrated Reorganization Plan. This renders the other questions moot to pass upon.

Regarding membership in the Government Service Insurance System, the System may nonetheless refuse to insure any government employee who does not pass the medical examination conducted by it, the Secretary adds.

Source: Sec. of Justice Op. No. 120, Series of 1976, 2nd Indorsement, dated June 20, 1976.

On the Authority To Appoint Personnel of the City Health Office of Davao City

QUERY: "Whether it is the City Mayor of Davao or the Director of Regional Health Office No. 11 in Davao City, who has the power to appoint personnel of the City Health Office of Davao City."

OPINION: That the Secretary of Health is, under existing law, empowered to appoint health personnel is already a settled matter, and it has in fact been the subject of a circular dated November 19, 1973 of the Civil Service Commission, based on an opinion of the Department of Justice dated November 17, 1970.

In answer to various queries, it (the Department of Justice) has consistently ruled that "officials and employees of the provincial and city health offices under service are officials and employees of the Bureau of Health and they are for that reason not local but national employees." The only city health office so far found by this Office to be a deviation from this rule is that of Cebu City by reason of "a combination of special circumstances present in the case".

Under R.A. No. 4405, the positions of the personnel of the provincial and city health offices (assistant health officers, sanitary inspectors, nurses and midwives) have been "nationalized", thereby leaving no doubt as to their being employees of the national government and therefore appointees of the Secretary of Health, pursuant to Section 79 (D) of the Revised Administrative Code.

Source: Sec. of Justice Op. No. 140, S. 1976 7th Indorsement, dated July 14, 1976.