



Republic of the Philippines
Civil Service Commission
 Constitution Hills, Batasang Pambansa Complex, Diliman 1126 Quezon City

109 Years of Service;
 Civil Service at Its Best
Mamamayan Muna

NAVARRO, Jose

Re: Nepotism; Appointment by
 City Mayor of Husband as
 Member of the Board of
 Directors of a City Water
 District

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This is a
**MUST - READ
 RESOLUTION**
 CSC Res. No. 10-1250 dated June 15, 2010
 CSLO

RESOLUTION NO. 101250

Anselmo S. Echanez, Turod Norte, Cordon, Province of Isabela, requests the Commission to render a legal opinion on whether the appointment issued by his client, Santiago City Mayor Amelita S. Navarro, in favor of her husband, Jose Navarro, as a member of the Board of Directors of the Santiago City Water District (SCWD) can be considered as nepotistic.

Echanez represents that the position of a member of Board of Directors of SCWD representing the professional sector became vacant. Nominations were solicited by the Secretary of the SCWD Board of Directors from the professional groups and associations in Santiago City. Jose Navarro, a member of the Santiago Medical Society, was the sole nominee. Acting on the lone nomination, Mayor Navarro appointed her husband.

Hence, this query.

The issue at hand is a novel one requiring a review of existing laws under the Local Government Code of 1991 and the Administrative Code of 1987 and jurisprudence on nepotism.

An appointment in a local government unit is nepotistic if the appointee is related within the fourth civil degree of consanguinity or affinity to the appointing or recommending authority. In point is **Section 79, Title III, Book I of Republic Act No. 7160 (The Local Government Code of 1991)** which provides that:

"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 to the appointing or recommending authority."

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Justin O. Amper
JUSTIN O. AMPER
 Supervising Personnel Specialist
 Commission Secretariat and Liaison Office
 1000 Quezon Avenue, Diliman, Quezon City

Under the above-quoted law, the prohibition against nepotism covers the appointee who must be related within the fourth civil degree of consanguinity or affinity to the appointing or recommending authority. In addition, it expressly applies only to appointments in the career service.

This is different from the rule proscribing the issuance of nepotistic appointment under **Section 59, Chapter 8, Title I-A, Book V of the Administrative Code of 1987 (Executive Order No. 292)** which is limited to the third civil degree of consanguinity or affinity and covered by four situations: between the (1) appointing authority, (2) recommending authority, (3) chief of the bureau or office or (4) the person exercising immediate supervision over the appointee. In the last two mentioned situations, it is immaterial who the appointing or recommending authority is. To constitute a violation of the law, it suffices that an appointment is extended or issued in favor of a relative within the third civil degree of consanguinity or affinity of the chief of the bureau/office, or to the person exercising immediate supervision over the appointee. (**Civil Service Commission vs. Pedro O. Dacoycoy, G.R. No. 135805 dated April 29, 1999; CSC Resolution No. 08-1394 dated July 23, 2008**) The said rule is quoted, hereunder, thus:

"Section 59. Nepotism - (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons 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."

The question now is what law is applicable to the issue raised by Echanez?

Considering that the personnel of a local water district are not part of the plantilla of a city or municipality or province, and the Supreme Court's ruling¹ that a water district is a GOCC, it can be safely concluded that a water district is an entity separate and distinct from a local government unit. In effect, the provision of the Administrative Code of 1987 on nepotism is applicable in resolving the issue at hand.

Under EO 292, the rule against the issuance of nepotistic appointment covers both the career and non-career service and enumerates only the following exceptions: (1) persons employed in a confidential capacity; (b) teachers; (c) physicians; and (d) members of the Armed Forces of the Philippines.

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¹ Davao City Water District, *et al.* vs. CSC & COA, G.R. Nos. 95237-38 dated September 13, 1991

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Justina O. Amper
JUSTINA O. AMPER
Supervising Personnel Specialist
Commission Secretariat and Liaison Office
Civil Service Commission

A reading of **Section 11² of PD 198**, as amended, indicates that members of the board have fixed term of office of six (6) years. And under **Section 9, Chapter 2, Book V, Title I-A of EO 292**, members of boards with fixed terms of office are part of the non-career service. In addition, the Supreme Court³ has pointedly stated that members of the board of water districts are government employees subject to civil service laws and anti-graft laws.

It appears, therefore, that members of the board of directors of water districts are covered by the operation of the rules on nepotism as they are not among the exceptions to the rule. Definitely, they cannot be considered appointed in a confidential capacity as appointments of this nature are subject to the pleasure of, or are coterminous with, the appointing authority, a clear contradiction of an appointment with fixed term.

In explaining the nature of exceptions to the rule, the Supreme Court in the case of **Balagtas Multi-Purpose Cooperative, Inc., et al. vs. Court of Appeals, et al. (G.R. No. 159268 dated October 27, 2006)**, declared, thus:

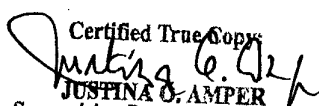
"An express exception, exemption, or saving clause excludes other exceptions. Express exceptions constitute the only limitations on the operation of a statute and no other exception will be implied. The rule proceeds from the premise that the legislative body would not have made specific enumerations in a statute, if it had the intention not to restrict its meaning and confine its terms to those expressly mentioned.

"Consequently, where a general rule is established by a statute with exceptions, the Court will not curtail the former nor add to the latter by implication. Courts may not, in the guise of interpretation, enlarge the scope of a statute and include therein situations not provided nor intended by the lawmakers. Statutes which are plain and specific should be applied without attempted construction and interpretation. Thus, where a provision of law expressly limits its application to certain transactions, it cannot be extended to other transactions by interpretation."

Considering that the exceptions under the Administrative Code of 1987 are expressed, clear and limited only to four situations and that ". . . exceptions to the rule are to be strictly construed" (**Roberto S. Benedicto, et al. vs. Court of Appeals, et al., G.R. No. 125359 dated September 4, 2001**), it is logical to argue that, by applying EO

² It states: "Section 11. *Term of Office.* - Of the five initial directors of each newly-formed district, two shall be appointed for a maximum term of two years, two for a maximum term of four years, and one for a maximum term of six years. Terms of office of all directors in a given district shall be such that the term of at least one director, but not more than two directors, shall expire on December 31 of each even-numbered year. Regular terms of office after the initial terms shall be for six years commencing on January 1 of odd-numbered years. Directors may be removed for cause only."

³ *Ranulfo C. Feliciano vs. COA, et al. (G.R. No. 147402 dated January 14, 2004).*

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JUSTINA O. AMPER
Supervising Personnel Specialist
Commission Secretariat and Liaison Office
Civil Service Commission

292, the appointment by Mayor Navarro of her husband as a member of the SCWD Board of Directors violates the rules on nepotism.

Finally, the Commission also believes that the appointment issued by Mayor Navarro in favor of her husband is not in accord with **Section 4 of the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act 6713)** which mandates, thus:

*"SEC. 4. Norms of Conduct of Public Officials and Employees. –
(A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties.*

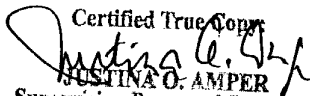
“(a) x x x.


“(b) Professionalism. – Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and their dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

“(c) Justness and sincerity. – Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives⁴ whether by consanguinity or affinity except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.”(Underlining supplied)

The appointment of her husband clearly gives a wrong impression of filial patronage and extending undue favors to relatives considering that Mayor Navarro appointed her husband. Although **Sections 9 and 10 of PD 198, as amended**, require the appointing authority to appoint board members from the list of nominees submitted to him/her, there is nothing in the same law which prohibits him/her from requesting another list of nominees. Although RA 6713 was enacted much earlier than the Local

⁴ Relatives as defined in RA 6713 refers to any and all persons related to a public official or employee within the fourth civil degree of consanguinity or affinity, including bilas, inso and balae.

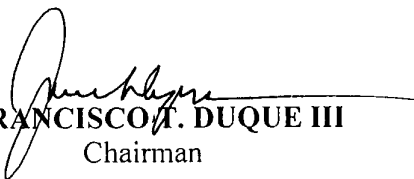
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JUSTINA O. AMPER
Supervising Personnel Specialist
Commission Secretariat and Liaison Office
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Government Code of 1991, the former is a general law that imposes a set of standards to all government officials in the discharge and execution of their official duties. Mayor Navarro should have requested, for ethical reasons and in compliance with the standards imposed by law, another list of nominees as the only person nominated was her husband. Surely, Santiago City is not wanting in educated and capable individuals who can represent the professional sector.

WHEREFORE, the Commission rules that the appointment issued by Mayor Amelita S. Navarro, Santiago City, to her husband as member of the Board of Directors of Santiago City Water District is nepotistic and the same violates the Norms of Conduct of Public Officials and Employees as mandated under Section 4 of the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act 6713).


Quezon City, 15 JUN 2010

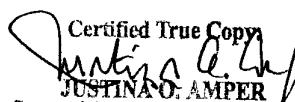

FRANCISCO T. DUQUE III
Chairman


CESAR D. BUENAFLOR
Commissioner


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner

Attested by:


DOLORES B. BONIFACIO
Director IV
Commission Secretariat and Liaison Office


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JUSTINA O. AMPER
Supervising Personnel Specialist
Commission Secretariat and Liaison Office
Civil Service Commission