

BADILLA, Francisco B.

Re: Opinion, Term of Office;
Coterminous-Confidential
Appointment

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RESOLUTION NO. 001266

Francisco B. Badilla, General Manager, Baao Water District, Baao, Camarines Sur, requests clarification on the issue of his term of office. Badilla was appointed by the Board of Directors of the Baao Water District under coterminous status on August 16, 2996. The letter-request dated January 21, 2000 of Badilla reads, as follows:

"I was among the participants of a Civil Service Commission Counselor's Course at La Trinidad Hotel, Legaspi City on October 27-29, 1999. I was among those that participated in the open forum that day you were still in Legaspi City. Wherein I questioned the Co-Terminus Appointment of the Regional CSC but according to LWUA it should not be co-terminus but at the pleasure of the Board. In my Manila trip I went to different offices seeking clarification of the co-terminus (sic) appointment to LWUA, Central CSC but you were out of your office then and the OGCC opinion hereto attached when the GOCC (sic) opinion was made and mailed to me. I furnished the Regional (sic) CSC Region 5 but I got the answer only lately xerox also attached,. At this point in time I am confused at to who is right CSC or OGCC Manila. My purpose in writing you is also to seek your opinion on CSC (sic) 5 letter. I hope the light you mentioned in Legaspi will finally shine upon me for the correct decision on my case which was started by CSC Legaspi for their co-terminus (sic) appointment. I understand some GM's in Bicol has a permanent appointment.

"I think their appointments are selective while some GM's are permanent some like me are co-terminus. Some entities like COA or CSC interprets PD 198 this way if a provision is in their favor they'll refer to it if the provisions are not in their favor or they will invoke their own rules and regulations.

"The OGCC opinion mentioned 4 conditions which state a water district GM does not fall under the conditions enumerated in their opinion yet in the last paragraph of their letter CSC Region 5 still maintain that my appointment is still co-terminus.

"Indeed these opinion of OGCC and CSC Region 5 differs. I would therefore refer my case to you which could rule finally whether CSC R 5 (sic) or OGCC is correct or has two different contrasting opinion.

"Finally I hope your office can give the correct and final rule surrounding (sic) my co-terminus appointment. The light you mentioned in Legaspi will come to me to guide us (sic) in my search for the correct interpretation of my course."

In a letter dated February 15, 1999, the Office for Legal Affairs, this Commission had rendered an Opinion regarding the issue of the term of office of Badilla, to wit:

"This refers to your letter dated January 7, 1999, requesting clarification relative to your appointment as General Manger under co-terminous status, in the Baao Water District (BWD).

"Your request is in the light of the letter by the Baao Water District former Chairman, Juan B. Barbara to the Board of Directors and the Memorandum of the Acting Chairman to all BWD personnel reminding that your term of office ended on December 31, 1998 as the term of office of the members of the board that appointed you had already ended. According to you, Barbara is interpreting the issue to his own advantage and personal gain.

"The documents submitted in support of your query show that your appointment as General Manager F issued on August 16, 1996 was signed by the former Chairman Juan B. Barbara under Coterminous" status. In the absence of any other information or collatilla on the face of your appointment, it appears thus, that the status of your appointment is coterminous with the appointing authority, specifically, the Board which appointed you.

"Under Section 14 (2), Rule V of the Omnibus Civil Service Rules Implementing Book V of the Administrative Code of 1987, an appointment coterminous with the appointing authority is co-existent with the tenure of the appointing authority or at his pleasure. Hence, your appointment being co-terminous with the Board of Directors which appointed you, was subject to the pleasure or co-existent with the tenure of said board members. Since the tenure of the members of the Board which appointed you had already ended, it means that your own term of office as General Manger has also ended. Be that as it may, we are of the view that in the absence of a provision of law to the contrary, you may be reappointed to the same position at the discretion, however, of the new Board of Directors."

In order to finally resolve the issue on the extent of the term of office of Badilla, the following provision of Rule III of CSC Memorandum Circular No. 40, series of 1998 must be examined, to wit:

"Section 2. Employment Status in General.

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"d. Cotermious - issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or of the head of the organizational unit where assigned, or co-existent with the incumbent, or limited by the duration of the project, or co-existent with the period for which an agency or office was created. Specifically, the categories of co-terminus appointments are :

'a. co-terminous with the appointing authority;

'b. co-terminous with the head of organizational unit where assigned ;

'c. co-terminous with the incumbent;

'd. co-terminous with the project;

and

'e. co-terminous with the life span of the agency."

From the foregoing, it can be deduced that as a general rule, all officers and employees of the Civil Service whose appointments are under cotermious status shall serve for the full term of the appointing authority, head of the organizational unit, incumbent, or the duration of the project and life span of the agency.

However, the security of tenure and the effectivity of appointments of those belonging to item (a) and (b) are based on the trust and confidence of the appointing authority or the head of organizational unit where they are assigned. This means that they may be separated from the service, earlier than the term of office of the appointing authority once this trust and confidence is lost or upon the separation of the appointing authority or head of organizational unit, as the case may be.

On the other hand, the security of tenure and the effectivity of the appointment of the second group of cotermious appointments (c, d, and e) are dependent on the duration of the service of the incumbent of the position or the duration of the project or the period for which an agency or office was created. Therefore, these co-terminus employees may not be removed from the service during the said periods except for cause.

A perusal of the appointment issued to Badilla reveals that it is under cotermious status. However, what needs clarification is the "term" of the appointee. To resolve the issue, we have interpreted **Section 23 of P.D. 198, as amended by P.D. Nos 768 and 1479 (Charter of the Local Water Utilities Administration [LWUA])**, which provides that:

"Section 23. The General Manager - At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. Said officer shall serve at the pleasure of the Board (Underscoring supplied)"

It is claimed that the phrase, "at the pleasure of the Board" was interpreted, in a letter dated October 7, 1999, by the Office of the Government Corporate Counsel (OGCC) to mean that the term of office of the General Manager has no fixed term and Badilla can serve as General Manager as long as the Board of Directors does not remove him from office.

On the other hand, the Civil Service Commission Regional Office No. V also rendered an opinion dated January 10, 2000, stating that the status of Badilla's appointment remain as co-terminous with the Board of Directors.

At this point, it is worth mentioning that the Civil Service Commission, has the sole authority to determine all questions relating to personnel and other Civil Service matters. **(Section 12 (5), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code of 1987 or Executive Order No. 292)**

The Commission finds that the term of office of General Manager Badilla has already expired on December 31, 1998. Since the appointment issued to Badilla was under "Coterminous" status, then his term of office is dependent on the term of office of the appointing authority which, in this case, is the Board of Directors of the Baao Water District.

As culled from the records, the effectivity and expiration of the appointments of the Board of Directors of the said Water District which appointed Badilla are, as follows:

	<i>Effectivity of Appointment</i>	<i>Expiration of Appointment</i>
<i>"Engr. Juan B. Montenegro, Jr.</i>	<i>January 1, 1989</i>	<i>December 31, 1994</i>
<i>"Mrs. Aurora B. Fajardo</i>	<i>January 1, 1991</i>	<i>December 31, 1996</i>
<i>"Mrs. Patrocina Orqueta</i>	<i>July 1, 1992</i>	<i>December 31 1994</i>
<i>"Mr. Francisco Brinas</i>	<i>July 1, 1992</i>	<i>December 31, 1996</i>
<i>"Mr. Juan B. Barbara</i>	<i>January 1, 1993</i>	<i>December 31, 1998</i>

Since, Juan B. Barbara is the last Member of the Board, whose term expired on December 31, 1998, then the term of office of Badilla has already expired on the same date. Hence, Badilla has no appointment to speak of after the said date.

WHEREFORE, the Commission hereby rules that the Coterminous appointment issued to General Manager Francisco B. Badilla of the Baao Water District already expired on December 31, 1998.

Quezon City, MAY 24 2000

(SGD.)
CORAZON ALMA G. DE LEON
Chairman

(SGD.)
JOSE F. ERESTAIN, JR.
Commissioner

(SGD.)
ELMOR D. JURIDICO
Commissioner

Attested by:

(SGD.)
ARIEL G. RONQUILLO
Director III

FPG/MVM/A3/S16/mdr149
O-99-0015/badilla[2000]
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