

**LAZARO, Apolinario S.**

Re: Clarification of CSC Resolution No. 00-1276

vis-29-vis the Opinion of CSCRO No. XI

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## RESOLUTION NO. 002411

Atty. Roque N. Agton, Jr., Regional Director, National Commission on Indigenous Peoples, Region XI, Davao City, seeks clarification of CSC Resolution No. 00-1276 dated May 26, 2000.

His letter reads, as follows:

*"Engr. Lazaro was issued a temporary appointment attested by the CSC as DMO V. His appointment expired last April 16, 1999 and no new appointment was issued and attested by the CSC.*

*"However, Engr. Apolinario Lazaro received a designation order from Chairman David Daoas of the NCIP, designating said Engr. Lazaro to act as DMO V without the benefit of an appointment attested by the CSC.*

*"Our resident Auditor seek an opinion from CSC RXI on the validity of his designation in the absence of a renewed appointment. CSC RXI Regional Director declared that such designation is not valid (xerox copy of CSC RXI opinion attached).*

**"ISSUES:**

*'1. Is the designation of Engr. Lazaro as DMO V equivalent to an appointment even if it did not pass the office of CSC;*

*'2. What is the effect of CSC Resolution No. 001276 vis-29-viswith CSC RXI opinion on the case of Engr. Lazaro."*

In the Resolution sought to be clarified, the Commission ruled as follows:

*"Records show that in March 1997, Lazaro was appointed under a temporary status as Development Management Officer V, NCIP, Region XI. His appointment was renewed on April 16, 1998 to expire on April 16, 1999. Before, the expiration of Lazaro's temporary appointment, Atty. David A. Daoas, Chairman, NCIP, issued Office Order No. 021-99 designating Lazaro as DMO V at the Socio-Economic Division, NCIP Region XI effective April 16, 1999."*

The aforementioned Resolution pertains solely to the claim of Lazaro to his Representation and Transportation Allowance (RATA) by virtue of his designation as Acting Chief of the Socio-Economic Division of NCIP, Region XI. The designation of Lazaro could have been valid if his temporary appointment was renewed. Let it be understood that when the Commission ruled that Lazaro is entitled to receive Representation and Transportation Allowance (RATA) by virtue of his designation as Acting Chief of the Socio-Economic Division of NCIP, Region XI, it was on the presumption that Lazaro had a valid appointment.

The law is very clear that a temporary appointment shall not exceed twelve months reckoned from the date it was issued. Lazaro, being a temporary appointee, waives his right to security of tenure. Renewal of temporary appointment cannot be done through a Memorandum Order, as in the instant case. The expiration of non-renewal of Lazaro's temporary appointment means the termination of his services. Although Chairman Daoas intends to retain the services of Lazaro, the designation extended to him by the former cannot be made to defeat or circumvent the law. Designation is not equivalent to appointment. It connotes merely the imposition by law of additional duties on an incumbent official (**Binamira vs. Garrucho, Jr., 188 SCRA 154**). Moreover, a designation presupposes a valid and existing appointment. Absent an appointment, any designation made is null and void. Thus, the Office Order issued by Chairman Daoas designating Lazaro as DMO V which was supposed to take effect upon the expiration of his temporary appointment, produces no legal effect. Lazaro, then, cannot be considered as an incumbent official. As a matter of fact, he was an outsider.

Considering that Lazaro was allowed to render service as Acting Chief of the Socio-Economic Division, NCIP, Region XI, from the time his temporary appointment as DMO V expired on April 16, 1999, he is entitled to receive salary and RATA but the burden of paying the same should be the personal liability of the appointing authority who allowed him to work without an appointment. Explicit on this issue is **Section 65, Chapter 10, Book V of the 1987 Administrative Code (Executive Order No. 292)**, which provides as follows:

*"Sec. 65. Liability of Appointing Authority. – No person employed in the Civil Service in violation of the Civil Service law and rules shall be entitled to receive pay from the government, but the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the employment been lawful, and the disbursing officials shall make payment to the employee of such amount from the salary of the officers so liable."*

**WHEREFORE**, the Commission hereby rules that Lazaro is entitled to salaries and RATA for services rendered from

April 16, 1999. This is, however, without prejudice to the recovery by the NCIP of the amount from the persons responsible for the appointment or designation of Lazaro.

Quezon City, **OCT 18 2000**

O.B.  
**JOSE F. ERESTAIN, JR.**  
Commissioner

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

(SGD.)  
**J. WALDEMAR V. VALMORES**  
Commissioner

Attested by:

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

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