REPUBLIC OF THE PHILIPPINES

Department of Budget and Management

Malacañang, Manila

LEGAL OPINION NO. N-C-2002- 01

SUBJECT : National Government Compensation

ISSUE : Basis for the computation of terminal leave benefits due to a public officer invalidly appointed to a higher position.

FACTS : Pursuant to R.A. No. 8551, former President Ramos appointed Romeo L. Cairme as Commissioner of the National Police Commission (NAPOLCOM) for a full six year term. Together with another appointed commissioner, he took his oath of office in April 6, 1998.

The appointments were made because the Commission was declared vacant pursuant to Section 8 of R.A. No. 8551. This notwithstanding, the fact that the positions were fully filled up and none of the terms of the Commissioners had expired at the time R.A. No. 8551, an amendatory law, was passed.

Aggrieved, the displaced Commissioners filed a petition before the Supreme Court to declare R.A. No. 8551 unconstitutional. On January 25, 2000, the Supreme Court granted the petition, but only to the extent of declaring Section 8 of R.A. No. 8551 (which provides for the expiration of the terms of office of Commissioners appointed pursuant to R.A. No. 6975) unconstitutional for being in violation of petitioners' right to security of tenure. Consequently, the removal from office of petitioners as a result of the application of such unconstitutional provision of law and the appointment of new Commissioners (Mr. Cairme, among others) were declared null and void.

In view of this decision, Mr. Cairme went back to his former position as Director.

Mr. Cairme's retirement from government service took effect on March 1, 2001. It is contended that his terminal leave benefit be based on his basic salary as Director considering that his appointment as a NAPOLCOM Commissioner was considered null and void by the Supreme Court.

OPINION : The computation of the terminal leave benefits of Mr. Cairme should be based on the salary he received as Commissioner of NAPOLCOM.

Section 39, Rule XVI of the Omnibus Civil Service Rules and Regulations (CSC Resolution No. 91-1631) quoted below is explicit on the matter.

> "Basis of computation of terminal leave. – Payment of terminal leave for purposes of retirement or voluntary resignation shall be based on the **highest monthly salary received at any time during his period of employment** in the government service and not on his latest salary, unless the latter is the highest received by the retiree." *(Emphasis supplied)*

This rule is reiterated in the Omnibus Rules on Leave per CSC Resolution No. 98-3142.

At the very least, Mr. Cairme was a *de facto* Commissioner because the duties of the office were exercised under color of an election or appointment by or pursuant to a public unconstitutional law, before the same is adjudged to be such *(Sibal, Jose Agaton R., The Law on Public Officers, 1993 Ed., p. 18).*

Under the principle of public policy, on which the de facto doctrine is based, and basic considerations of justice, it would be highly iniquitous to now deny the salary due him for services he actually rendered (Menzon vs. Petilla, 197 SCRA 251). Thus, if the salary as Commissioner was given to Mr. Cairme for services he actually rendered as such, the same may be used as basis for the computation of his terminal leave benefits as mandated under the aforequoted CSC Resolution.

REFERENCE: Letter dated September 10, 2002 of the Secretary to Hon. Jose D. Lina, Jr., Secretary, DILG.

Recommended:

RUBY U. ALVAREZ
Director, LLS

Approved:

EMILIA T. BONCODIN
Secretary