

OPINION NO. 153, s. 1974

1st Indorsement  
September 27, 1974

Respectfully returned to the Secretary of Public  
Highways, Manila.

Opinion is requested on the "legality and/or propriety" of the claim of seven Auditing Examiners II, who were serving with the defunct Internal Audit Service, Bureau (now Department) of Public Highways, for salary differentials under Section 1(g) of Republic Act No. 4153 (An Act to Standardize the Salaries of Officials in the Bureau of Public Highways), as last amended by Republic Act No. 5830 (effective June 21, 1969), from P7,800.00 to P9,000.00 for having been designated as "Assistant Section Chiefs".

The cited provision reads:

"SECTION 1. Any existing law to the contrary notwithstanding, salaries of the following positions in the Bureau of Public Highways are hereby fixed as follows:

x x x x

"(g) Sub-section chiefs under the specialized technical divisions in the central office and field division offices, at ten thousand two hundred pesos per annum - Range 54; assistant section chiefs of the non-technical divisions, assistant section chiefs of the non-technical sections of specialized technical divisions, the administrative officers of the three major equipment depots, namely: North Harbor, Cebu and Mindanao Equipment Depots, at nine thousand pesos per annum - Range 52; the Auditing Examiners II of the Internal Audit Service, the subsection chiefs of the non-technical divisions and of the non-technical sections of specialized technical divisions, including all district and city administrative officers, at seven thousand eight hundred pesos per annum - Range 50". (Underlining supplied.)

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I gather that pursuant to this provision the salaries of Auditing Examiners II in the Bureau of Public Highways were uniformly adjusted to P7,800.00 per annum effective July 1, 1969; and that Department of Public Works and Communications Order No. 109 dated July 7, 1970 provided for the reorganization of the Bureau of Public Highways Internal Audit Service with the following staffing pattern and position chart: one Chief Internal Auditor (who shall be Assistant Chief of the same Service), seven Internal Auditors III (who shall be the Chiefs of the seven sections of the said Service), Seven Senior Auditing Examiners (who shall be the assistant chiefs of the seven sections of the Service), and twenty-four Auditing Examiners II.

I gather, further, that on August 3, 1970, the Acting Chief of the Internal Audit Service "designated" the seven claimants - Auditing Examiners II as Acting Assistant Chiefs of Sections of the Internal Audit Service "pursuant to the provisions of Department Order No. 109"; and that on July 1, 1971, the said Acting Chief of the Internal Audit Service again designated, with the approval of the Commissioner of Public Highways, the claimants as Assistant Section Chiefs "effective immediately without additional compensation", which designations were held by claimants until the Internal Audit Service was abolished by the Integrated Reorganization Plan under Presidential Decree No. 1.

It is now claimed by the seven Auditing Examiners II that they are entitled to another salary adjustment from P7,800.00 to P9,000.00 corresponding to the period they "were automatically promoted to the position of Assistant Section Chiefs without the need of extending another appointment."

I fail to find any legal justification for the payment of such salary differentials based solely on the aforementioned "designations". For one, it bears emphasis, that both Department Order No. 109 and its implementing Position Chart specify that Seven Senior Auditing Examiners shall be assigned as the Assistant Chiefs of the seven sections of the Internal Auditing Service. For another, the said positions of Senior Auditing Examiners were only proposed items for the creation of which the preparation of a special budget was necessary. (See Staffing Pattern and Position Chart, id.) Indeed, Department Order No. 109 provided that "The Commissioner of the Bureau of Public Highways is authorized to prepare a Special Budget for the creation of the corresponding items for these proposed internal auditing positions, until

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such time that these items can be incorporated in the General Appropriation Act;" and I understand that this special budget had never been prepared and approved by the proper authorities. There being no legally existing positions of Senior Auditing Examiners, the seven claimants - Auditing Examiners II could not have been promoted to fill said inexistent positions.

True, Section 16(h) of the Revised Civil Service Law (R.A. No. 2260 as amended by R.A. No. 6040) provides that an "increase in salary for the same position shall not require a new appointment, except that copies of the salary adjustment notice [shall] be submitted to the Civil Service Commission for record purposes." But what were involved here were not mere increases in salary for the same positions but movements to another position, i.e., to those of Senior Auditing Examiners and/or Assistant Chiefs of Section. And such movement was not legally feasible as the positions of Assistant Section Chiefs could, as already stated, be filled only by Senior Auditing Examiners, which positions had, as likewise already stated, never been created.

Besides, as no funds had been appropriated by special budget to pay for the salaries of the Assistant Section Chiefs, payment of the claimed salary differentials would run counter to the constitutional inhibition that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." (Sec. 18(1), Art. VIII, New Constitution; Sec. 23(2), Art. VI, 1935 Constitution.)

Accordingly, I believe that there is no legal basis for the payment of the instant claim.

(SGD.) VICENTE ABAD SANTOS  
Secretary of Justice

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