

ANTONINO, Adelbert

Re: Nullification of Appointment; Appeal

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RESOLUTION NO. 992729

Mayor Adelbert W. Antonino, General Santos City, appeals the Order dated December 10, 1998 of Regional Director Elmer R. Bartolata, Civil Service Commission, Regional Office No. XI, Davao City, denying his request to nullify the appointment of Gabriel Francis Glennville Gonzales as City Government Assistant Department Head II, Office of the City Administrator, General Santos City. Said appointment was approved by the Civil Service Field Office, Sarangani Province on March 23, 1998.

In his appeal, Mayor Antonino alleged, as follows:

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"1. That the appointee has two sets of oath of office as City Government Assistant Department Head II, that is one executed on February 16, 1998 and the other on March 26, 1998:

"The order of Director Bartolata states that, Ms. Sarah T. Sanchez, Department Head Human Resource and Management Development Office, issued a certification that what was finalized and entered as the Panunumpa sa Katungkulan was the one dated March 26, 1998. This seemingly answered the ambiguity on this concern. However, please be informed that subject certification is now being questioned since recently a document reached our office showing that Mr. Gonzales has signed a project design as Assistant City Government Department Head or Assistant City Administrator for Administration on a date

no later than March 6, 1998. Ironically, subject project design was signed as prepared by Mr. Gonzales himself as City Councilor and was later approved by him representing the City Mayor, him as Assistant City Administrator for Administration. To reiterate, this project design was received by the Office of the City Accountant on March 6, 1998 at 10:45 AM. Please find certified true copy of subject project design and the related documents. IS MR. GONZALES THE ASSISTANT CITY ADMINISTRATOR FOR ADMINISTRATION LAST MARCH 6, 1998 OR EARLIER?

"2. That the subject appointment was submitted to the Commission on March 16, 1998 and approved on March 23, 1998, however the PDF was dated / submitted only on March 26, 1998.

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"I believe that the Commission relied on the certification accompanying the appointment that all other requirements are duly complied with when submitted for approval. However, with the presentation of evidences by the undersigned, it is but imperative for the Commission to take notice that its requirements directives were not followed thereby placing in bad faith the referred to appointment of Gonzales submitted and approved by the Commission. SPECIFICALLY, THE PDF WAS PREPARED AND APPROVED 10 DAYS AFTER THE APPOINTMENT WAS SUBMITTED TO CSC CONTRARY TO WHAT IS REQUIRED BY EO 292.

"3. That per certification of the City Administrator, the appointee had assumed office on March 26, 1998. However, on March 26, 1998 he was still attending the session acted as Floor Leader at the 10th regular session of the Sangguniang Panlungsod. (It was the 13th Regular Session and not the 10th.)

X X X

"To refresh, Mr. Gonzales applied to the position of Assistant Government Department Head of the City Administrator's Office on a date earlier than January 30, 1998 as it was only on a date (January 30, 1998) that his application was deliberated by the PSB. Thus, therefore, is very clear that he was still an active member of the City Council when he applied for such position. And, Director Bartolata confirmed that only last March 26, 1998 did Mr. Gonzales resigned as City Councilor. My questions are; IS HE QUALIFIED TO APPLY WHEN HE WAS STILL AN ACTIVE MEMBER OF THE CITY COUNCIL? IS HIS APPLICATION VALID FOR DELIBERATION AND RECOMMENDATION OF THE PSB? IS HE QUALIFIED FOR APPOINTMENT LAST FEBRUARY 16, 1998 AND SUBMITTED TO CSC LAST MARCH 16, 1998 AND APPROVED LAST MARCH 23, 1998 VALID WHEN AT THAT TIME MR. GONZALES WAS STILL A CITY COUNCILOR?

"4. That the appointee is not qualified to the position for lack of experience and knowledge on administrative and supervisory functions which are basic requirements for the said positions."

X X X

When asked to comment, Regional Director Bartolata affirmed the validity of the appointment Gonzales to the said position for the latter has satisfactorily met the requirements for the position of City Government Assistan Head II, General Santos City.

We find the appeal devoid of merit.

On the issue of the *Panunumpa sa Katungkulan* of Mr. Glennville Gonzales to prove his assumption of office, the certification dated November 9, 1998 of Ms. Sarah T. Sanchez, Department Head II, Human Resource Management and Development Office of General Santos City, explains that the said oath of office wa prepared on February 16, 1998, the date of the preparation of said appointment. However, since he actually assumed said position on March 26, 1998, then the same was changed to March 26, 1998. The complainant attached to *Panunumpa(s) sa Katungkulan*, one dated February 16, 1998 and the other March 26, 1998. We consider the March 26, 1998 *Panunumpa sa Katungkulan* as the official

oath of office as certified by the HRMO.

From the said certification, it is admitted by the HRMO that the appointment was prepared on February 16, 1998 but the effectivity would be upon assumption to duty which was on March 26, 1998 only, as indicated also in his oath of office. This contention is credible since Respondent Gonzales submitted in evidence the entry in the Sangguniang Panlungsod proceedings on March 26, 1998 wherein he gave the privilege speech his resignation as certified by the Stenographic Reporter III Inocencia J. Tumbaga on July 31, 1998.

Further, to support this contention, Respondent Gonzales submitted his entry in the logbook of his attendance at the City Administrator's Office on March 26, 1998, indicating his "time in" at 4:00 p.m. and "time out" at 6:10 p.m. To countenance the same, Respondent even submitted Official Receipt No. 1773227 issued on May 7, 1998 for the refund of the excess of the salary of Mr. Gonzales as a member of the Sangguniang Panlungsod for the month of March 1998 payroll.

It is true that the excerpts on the 13th regular session of the Sangguniang Panlungsod of General Santos City on March 26, 1998 reflected that Mr. Gonzales actively participated in the said session. However, it was also at that session wherein he gave his privilege speech on his resignation during the privilege hour which more or less started at 9:30 a.m. and considered an irrevocable, pertinent portion of which are hereunder quoted:

"I would like to inform you honorable colleagues that the other day I went to the Civil Service Regional Office in Alabel and thank God my appointment was approved and attested permanent and I am assuming office tomorrow. It's really painful to leave the place he have been for 12 years and I am afraid to transfer to the other side of the building because I don't have and I didn't yet develop relationship. (sic) I've developed with our staff in the Sanggunian. I do not know if I could be feeling at home in the next office that I would be transferring. Much more, I do not know if I could still have space in any of the office in the other side. (sic) I don't even know if I have a table, a chair but thank God the Vice-Mayor assured me that I would be bringing my chair and my table without cost x x x."

This provision is not to be interpreted together with the provision in par. B as contested by the Complainant wherein it states that *"copies of the resignation letters of elective officials together with the action taken by the aforesaid authorities shall be furnished by the Department of Interior and Local Government"*.

We must take note that Section 83 is titled Resignation of elective Local Officials.

Resignations by the elective local officials shall be deemed effective only upon acceptance by the following authorities:

b)

1) x x x

2) x x x

3) x x x

4) x x x

5)

a) Copies of the resignation letters of elective local officials, together with the action taken by the aforesaid authorities shall be furnished the Department of the Interior and Local Government;

a) The resignation shall be deemed accepted if not acted upon by the authority concerned within fifteen (15) working days from receipt thereof;

a) Irrevocable resignations by the sanggunian members shall be deemed accepted upon presentation before an open session of the sanggunian concerned and duly entered in its records. x x x (underscoring ours)

b)

This clearly shows that a resignation of an elective local official, if it is definitely an irrevocable one, can be done orally or in open session provided it is duly recorded in the entry of the Sanggunian's proceedings. The law will not issue a mode of resignation through an open session or in a manner of a privilege speech if it strictly intends a resignation to be made in writing. It is then imperative upon the Sanggunian concerned to give a notice to DILG of the resignation of said elective local officials with a copy of its entry of records of the privilege speech to inform the DILG of said event since the resignation was done pursuant to par. (d) of Sec. 82.

On the contention of the complainant that the lawful authority to accept the resignation is the Sanggunian concerned is very well provided in par. D of Sec. 82 stating that by operation of law it is already deemed accepted if done in open session.

The complainant merely reiterated the Supreme Court ruling pronounced in **Gonzales vs. Hernandez, 172 Phil. 161**, as cited in our order of December 10, 1998 which emphasize that "*a complete and operative resignation, there must be an intention to relinquish the office, and accompanied by the act of relinquishment²⁹ and a resignation implies an expression by the incumbent in some form, express or implied of the intention to surrender, resource, or relinquish the office, and acceptance by the competent and lawful authority*".

This simply means that, since there was a real intention to relinquish or surrender his elective position, the resignation made by Respondent Gonzales during the said session was an irrevocable resignation. Moreover, the fact that there was another appointment issued by the City Mayor, signifies that the intention to relinquish was really accepted, as cited in the Supreme Court ruling.

The issuance of the City Mayor of the said appointment strengthened the stand of the acceptance of the resignation of Respondent Gonzales considering that there was no resignation letter actually given but done orally.

However, as to the provision in par. D of Sec.2 of the Local Government Code, the need of an express acceptance is not given a requirement because the law already provides that it shall be deemed accepted upon presentation before an open session of the Sanggunian if entered in the records and in the case of an irrevocable resignation.

The records of the case clearly show that the irrevocable resignation was entered in the records of the Sanggunian on March 26, 1998 at 9:10 a.m.

On the letter of complainant Antonino that PDF was not duly accomplished and filed upon submission for approval of the said appointent, the said compliance of all the requirements under MC 38, s. 1993 were certified by the HRMO as indicated in the appoinment, was the basis of the approval of the CSFO, Alabel, Sarangani Province. Hence, it becomes ministerial on the part of the CSFO to act on the said appointment sinc the PDF is one of the documents to be restrained in the 201 files of the agency which is already a responsibility of the HRMO and not by the CSFO.

On the issue that there was a violation of Sec. 94 of RA 7160, the same cannot be applied to espondent Gonzales since he did not lose in an election. He was an incumbent Kagawad of the Sangguniang Panlungsod and did not file a certificate of candidacy to any elective position since he opted to get an appointive position as the Assistant Department Head II of General Santos City, the contested position herein.

Further, the contention of the complainant that Sec. 54 of Book V of E.O. 292 was violated, is untenable. On March 26, 1998 at 4:00 p.m., respondent Gonzales was no longer considered an elective official since he already made his irrevocable resignation through a privilege speech in the morning of March 26, 1998 as found in the records.

WHEREFORE, the Appeal of Mayor Adelbert W. Antonino is hereby dismissed for lack of merit. Accordingly, the Order of the CSCRO XI Regional Director subject of the appeal stands.

Quezon City, **DEC 15 1999**

(signed)
CORAZON ALMA G. DE LEON
Chairman

(signed)
THELMA P. GAMINDE
Commissioner

DID NOT PARTICIPATE
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(signed)
ARIEL RONQUILLO

Director III