



Republic of the Philippines
Department of the Interior and Local Government
Region 13 (Caraga)

DILG 13 Legal Opinion No. 2016-032
September 29, 2016

HON. RAUL T. CUBIL
Municipal Mayor
Municipality of Marihatag
Surigao del Sur

Dear Mayor Cubil:

This refers to your request (dated September 27, 2016 and received by this Office on September 28, 2016) for legal opinion on the legitimacy of hiring non-winning candidates of the May 9, 2016 election as Job Order of your Local Government Unit.

We understand that the controversy brought about by the hiring of non-winning candidates in the recent elections was because of the following provisions of law:

1987 Philippine Constitution, Article IX-B:

"SECTION 6. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries."

Local Government Code of 1991 (RA 7160)

SECTION 94. Appointment of Elective and Appointive Local Officials; Candidates Who Lost in an Election. – (a) xxx

(b) Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the government or any government-owned or -controlled corporations or in any of their subsidiaries.

and consequent Civil Service Commission Memorandum Circular No. 40, series of 1998, as amended, or the Omnibus Rules on Appointment and other Personnel Actions:

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Rule XIII, Section 4. "A person who lost in an election (except Barangay election) shall not be eligible for appointment or reemployment to any office in the government or any government owned or controlled corporation within one year following such election."

From the above provisions, we gleaned the well-established rule that the losing candidates shall not be appointed to any government position within one year from such election (except barangay election) in which they lost.

Therefore, the question left is whether or not Job Order is an appointment or employment in the government.

Under CSC Memorandum Circular No. 38, s. 1993 (now reproduced under Rule XI, Omnibus Rules on Appointment and Other Personnel Actions/CSC Memorandum Circular No. 40, s. 1998), services rendered under contracts of services and job orders are not considered government services; and contracts do not have to be submitted to the CSC for approval; the employees involved in the contract or job orders do not enjoy the benefits enjoyed by government employees such as PERA, COLA and RATA; no employer-employee relationship exists; and they are not covered by civil service law.

Based on the foregoing, we can logically infer that those employed on job order basis do not hold a public appointive office within the contemplation of Civil Service law and rules. Thus, hiring on job order basis of non-winning candidates in an election may be allowed. This has also been pronounced in CSC RESOLUTION NO. 02-0012 dated January 3, 2002.

We hope to have satisfactorily addressed your concerns.

This opinion is rendered without prejudice to any contrary opinion of competent higher authorities and the courts.

Very truly yours,

(SGD) LILIBETH A. FAMACION, CESO III
Regional Director

cc: Pedrito P. Alacaba
Provincial Director
DILG-Surigao del Sur

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