

Republika ng Pilipinas
(Republic of the Philippines)
KAGAWARAN NG EDUKASYON, KULTURA AT ISPORTS
(DEPARTMENT OF EDUCATION, CULTURE AND SPORTS)
Manila

October 15, 1990

DECS O R D E R
No. 114, s. 1990

APPOINTMENT PENDING RESOLUTION OF A PROTEST CASE

To: Undersecretaries
Assistant Secretaries
Bureau Directors/Cultural Agency Directors
Directors of Services/Centers and Heads of Units
Regional Directors
Schools Superintendents
Presidents, State Colleges and Universities
Vocational School Superintendents/Administrators

1. Reproduced at the back hereof is Memorandum Circular No. 43, s. 1990, of the Civil Service Commission regarding the issuance of appointments, to contested positions, which is self-explanatory.
2. It is desired that this Order be brought to the attention of all concerned for their information, guidance, and compliance.

(SGD.) ISIDRO D. CARINO
Secretary

Reference:

DECS Order: No. 113, s. 1990

Allotment: 1-2-3--(M.O. 1-87)

To be indicated in the Perpetual Index
under the following subjects:

APPOINTMENT, EMPLOYMENT, REAPPOINTMENT
BUREAUS & OFFICES
RULES & REGULATIONS

Republika ng Pilipinas
KOMISYON NG SERBISYO SIBIL
(Civil Service Commission)
Quezon City

M.C. No. 43, s. 1990

MEMORANDUM CIRCULAR

TO : ALL HEADS OF DEPARTMENTS, BUREAUS, AND AGENCIES OF
THE NATIONAL AND LOCAL GOVERNMENTS INCLUDING
GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS WITH
ORIGINAL CHARTERS

SUBJECT : Appointment Pending Resolution of a Protest Case

It is come to the attention of the Commission that there have been occasions when new appointments to contested positions were issued despite the pendency of protest or appeal on the decision thereof, or the incumbent has not first been legally removed or his appointment not validly terminated.

This practice is contrary to the Rules on Protest, contained in CSC Memorandum Circular No. 46, s. 1989, which provides that "a protest shall not render an appointment ineffective, if the appointee assumes the duties of the position".

Moreover, the Supreme Court has consistently held that no person, no matter how qualified and eligible for a certain position, may be appointed to an office which is not yet vacant. The incumbent must first be legally removed or his appointment validly terminated. Appointment to a position that is not vacant is premature.

Henceforth, the Commission shall "return without action" subsequent appointments issued to contested positions abrogating earlier approved appointments issued to other parties pending final resolution of appeals by this Commission.

THIS MEMORANDUM SHALL TAKE EFFECT IMMEDIATELY.

(SGD.) PATRICIA A. STO. TOMAS
Chairman

September 3, 1990

A true copy