



Judiciary exempted from “Midnight Appointment” ban

The Supreme Court ruled that the prohibition under Section 15, Article VII of the Constitution does not apply to appointments to fill a vacancy in the Supreme Court or to other appointments to the Judiciary.

The Supreme Court opined that the records of the deliberations of the Constitutional Commission reveal that the Framers devoted time to meticulously draft, style, and arrange the Constitution. Such precision indicates that the organization and arrangement of the provisions of the Constitution were not arbitrarily or whimsically done by the Framers, but purposely made to reflect their intention and manifest their vision of what the Constitution should contain. Article VII is devoted to the Executive Department, and, among others, it lists the powers vested by the Constitution in the President as set forth in Sections 14, 15 and 16 therein.

The Court went as to state that on the other hand, Article VIII is devoted to the Judicial Department and defines the duties and qualifications of Members of the Supreme Court, among others. Section 4(1) and Section 9 of this Article are the provisions specifically providing for the appointment of Supreme Court Justices. In particular, Section 9 states that the appointment of Supreme Court Justices can only be made by the President upon the submission of a list of at least three nominees by the JBC; Section 4(1) of the Article mandates the President to fill the vacancy *within 90 days* from the occurrence of the vacancy. Had the Framers intended to extend the prohibition contained in Section 15, Article VII to the appointment of Members of the Supreme Court, they could have explicitly done so. They could not have ignored the meticulous ordering of the provisions. They would have *easily and surely* written the prohibition made explicit in Section 15, Article VII as being equally applicable to the appointment of Members of the Supreme Court in Article VIII itself, most likely in Section 4(1), Article VIII. That such specification was not done only reveals that the prohibition against the President or Acting President making appointments within two months before the next presidential elections and up to

Supreme Court fast facts:

- Except for retiring Chief Justice Reynato S. Puno, all the thirteen sitting justices of the Supreme Court are appointees of President Arroyo.
- Prior to appointment, Supreme Court justices are short listed and nominated by the Judicial and Bar Council, whose members include the Secretary of Justice, a representative of Congress, a representative of the Integrated Bar, a professor of law, a retired member of the Supreme Court, a representative from the private sector, and chaired by the Chief Justice.
- Unlike United States Supreme Court appointees, no Senate confirmation hearing is required after appointment by the Philippine President to become a justice of the Philippine Supreme Court.

SEE *Midnight ban...*, page 4

{statutes}

Voyeurs beware!

The recent sex scandals involving high profile personalities brought about the speedy passage of Republic Act No. 9995, or otherwise known as the “Anti-Photo and Video Voyeurism Act of 2009*”.

Under the new law, the prohibited acts include the (a) taking of photo or video coverage of a person or group of persons performing sexual act or any similar activity or capturing an image of the private area of a person/s such as the naked or undergarment clad genitals, buttocks or female breast under circumstances in which the person/s has/have a reasonable expectation of privacy, without the consent of the person/s involved; (b) copying or reproduction, or to cause the copying or reproduction of such photo or video or recording of sexual act or any similar activity with or without consideration; (c) selling or distribution, or to cause the selling or distribution of such photo or video or recording, whether it be the original copy or reproduction thereof; or (d) publication or broadcasting, or to cause the publication or broadcasting, whether in print or broadcast media, or showing or exhibition of the photo or video coverage or recordings through

VCD/DVD, internet, cellular phones and other similar means or device. The prohibited acts falling under items (b), (c) and (d) shall apply despite the given consent on the recording or taking of the photo or video coverage by such person/s.

RA 9995 further provides that any record, photo or video, or copy thereof, obtained or



secured by any person in violation of the new law shall not be admissible in evidence in any judicial, quasi-judicial, legislative or administrative hearing or investigation.

The penalty imposed for violators, which also covers juridical persons, shall be imprisonment of Three (3) to seven (7) years and a fine ranging from ₱100,000.00 to ₱500,000.00, or both. ■

No late SSS penalties for erring employers

Republic Act No. 9903 or the “Social Security Condonation Act of 2009*” was signed into law by President Arroyo on 7 January 2010. This new measure allows erring employers to remit their employees’ delinquent payments without incurring late penalties.

RA 9903 provides that within six (6) months from the effectivity of the law, delinquent employers or those who have not remitted all contributions due and payable to the Social Security System (SSS), including those with pending cases

either before the SSS, courts, or the Prosecutor’s Office involving collection of contribution and/or penalties may remit the contributions or, alternatively, to submit a proposal to remit their payments in installments, subject to the implementing rules and regulations that the SSS may prescribe.

For the installment option, upon submission of the installment proposal, a downpayment of not less than 5% of the delinquent employer’s total contribution delinquency must be made upfront, with the balance paid in equal monthly installments within 48 months from the date of approval of proposal by the SSS. The installment payments bear an annual

interest of 3%.

The condonation law further provides that upon approval and payment in full or in installments of the delinquent employer’s contributions, all pending cases filed against said employer shall be withdrawn. However, this is without prejudice to the refilling of the case in the event the delinquent employer fails to remit in full the required delinquent contributions or defaults in the payment of any installment under the approved proposal. Further, the penalties would be re-imposed from the time the contributions first become due, to accrue until the delinquent account is paid in full. ■

Senior citizens now VAT-free

Senior citizens can now enjoy the full benefit of their 20% discount with the passage of Republic Act No. 9994 or otherwise known as the "Expanded Senior Citizens Act of 2010*." The new law exempts senior citizens, or those resident citizens of the Philippines who are aged 60 years and above from paying the entire 12% value-added tax (VAT) on goods and services they avail of to allow them full enjoyment of the 20% senior citizens discounts embodied in the original Senior Citizens Act of 1992 (Republic Act No. 7432).

Some of the salient features of the new law are as follows: (i) A 20% discount and exemption from the value-added tax on the sale of goods and services (medicines, medical accessories and equipments, medical and dental fees, professional fees of attending physicians, diagnostic and laboratory fees, transport fares, services in hotels and restaurants, admission fees in theaters and other places of culture, leisure and amusement, including funeral and burial services for the death of senior citizens. In case of goods and services which are on promotional discount, the senior citizens can avail of the promotional discount or the 20% discount, whichever is higher; (ii) A 5% discount on their water and electric bills, on a per household basis regardless of the number of resident senior citizens, on the condition that the foregoing utilities are named under the senior citizen residing in the household and that consumption for electricity



and water does not exceed 100 kilowatt-hours and 30 cubic meters per month, respectively; (iii) a death benefit assistance of a minimum amount of Two Thousand Pesos (P2,000.00) in favor of the nearest of kin of a deceased senior citizen, which amount shall be subject to adjustments in case of inflation in accordance with the guidelines to be issued by the Department of Social Welfare and Development (DSWD); (iv) Free medical and dental service, diagnostic and laboratory fees in all government facilities; (v) Free vaccination against influenza virus and pneumococcal disease for indigent senior citizen patients; (vi) Educational assistance for senior citizens who meet school admission requirements; (vii) A monthly stipend of Five Hundred Pesos (P500.00) for indigent seniors, which amount is subject for review by Congress in coordination with

the DSWD every two (2) years; (viii) A mandatory PhilHealth coverage for all indigent senior citizens; and (ix) Establishment of the Office for Senior Citizens Affairs in all cities and municipalities, and a senior citizens ward in every government hospitals

Stiff penalties await violators of the new law. For those who refuse to grant senior citizens benefits, first time violators face imprisonment of two (2) to six (6) years and a fine ranging from P50,000.00 to P100,000.00. For subsequent violations, the fine can go up to P200,000.00, and a maximum prison term of six (6) years. On the other hand, anyone who abuses the privileges shall be punished with imprisonment of not less than six (6) months and a fine ranging from P50,000.00 to P100,000.00. ■

the end of the President's or Acting President's term does not refer to the Members of the Supreme Court.

Further, there is no question that one of the reasons underlying the adoption of Section 15 as part of Article VII was to eliminate *midnight appointments* from being made by an *outgoing* Chief Executive. Section 15, Article VII is directed against two types of appointments: (1) those made for buying votes and (2) those made for partisan considerations. The first refers to those appointments made within the two months preceding a residential election while the second type consists of the so-called "midnight" appointments – those made obviously for partisan reasons as shown by their number and the time of their making – but also appointments presumed made for the purpose of influencing the outcome of the presidential election.

The Supreme Court continued that there is no doubt the Constitutional Commission confined the prohibition to appointments made in the Executive Department. The Framers need not extend the prohibition to appointments in the Judiciary, because

their establishment of the JBC and their subjecting the nomination and screening of candidates for judicial positions to the unhurried and deliberate *prior* process of the JBC ensured that there would no longer be midnight appointments to the Judiciary. If midnight appointments were made in haste and with irregularities, or made by an outgoing Chief Executive in the last days of his

"JBC eliminates the danger that appointments are mad for buying votes or for partisan reasons."

administration out of a desire to subvert the policies of the incoming President or for partisanship, the appointments to the Judiciary made after the establishment of the JBC would not be suffering from uch defects because of the JBC's prior processing of candidates. Indeed, it is axiomatic in statutory construction that the ascertainment of the purpose of the enactment is a step in the process of ascertaining the intent or meaning of the enactment, because the reason for the enactment must necessarily shed considerable light on

"the law of the statute," *i.e.*, the intent; hence, the enactment should be construed with reference to its intended scope and purpose, and the court should seek to carry out this purpose rather than to defeat it. Also, the intervention of the JBC eliminates the danger that appointments to the Judiciary can be made for the purpose of buying votes in a coming presidential election, or of satisfying partisan considerations. The creation of the JBC was *precisely* intended to de-politicize the Judiciary by doing away with the intervention of the Commission on Appointments. (*Arturo M. De Castro vs. Judicial and Bar Council [JBC], et al., G.R. No. 191002; Jaime N. Soriano vs. JBC, G.R. No. 191032; Philippine Constitution Association vs. JBC, G.R. No. 191057; In Re Applicability of Section 15, Article VII of the Constitution to Appointments to the Judiciary, Estelito Mendoza, A.M. No. 10-2-5-SC; John G. Peralta vs. JBC, G.R. No. 191149; Atty. Amador Z. Tolentino, Jr., et al. vs. JBC, G.R. No. 191342; Philippine Bar Association, Inc. vs. JBC, et al., G.R. No. 191420; March 17, 2010*). **■**

Cause-oriented Fun Runs

Rehabilitation of typhoon-stricken schools in the provinces of Rizal and Laguna and the cities of Marikina and Muntinlupa. Programs to benefit the conservation of dolphins in Bohol province. Additional fund-raising for United Nations Children's Fund, World Health Organization and the World Wide Fund for Nature. Contributions to support the Children's Hour and K.I.D.S. (Kabataan Inyong Dapat Suportahan) Foundation. Elimination of poverty housing through the Habitat for Humanity Philippines.

These were some of the causes supported by Team FNSLAW, the running team consisting of legal and support staff of FNS, when they participated in five major running events in the Metro starting with YesPinoy Foundation's (YPF) The Book Run on 31 January, Condura Run on 7 February, Century Tuna Superbods Run last 21 February, the Unilab Run on 7 March and Globe-Ayala Land Run last 21 March. And all of these just for the first quarter. **■**



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