

**VITRIOLO, Julito D**

**Re: Query; Position Title; Nomenclature**

**Distinction between Acting and OIC**

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## **RESOLUTION NO. 000778**

Gaudencio A. Mendoza, Jr., Assistant Executive Secretary for Legal Affairs, Office of the President, indorsed to the Commission the letter of Julito D. Vitriolo, Deputy Executive Director of the Commission on Higher Education (CHED), relative to the implementation of Section 32, Chapter 6, Book IV of the 1987 Administrative Code (Executive Order No. 292).

In his letter, Vitriolo states as follows:

"Pursuant to the retirement of Dr. Catalino P. Rivera, CHED Executive Director IV, effective 01 July 1999, the latter's duties and responsibilities have been turned over to the undersigned being the Deputy Executive Director, pursuant to Sec. 32 Chapter 6 of the Administrative Code of 1987.

"The particular cited Section of the Administrative Code provides that in the absence or disability of the head of a bureau or office, the assistant head shall assume the function and responsibilities as acting head.

"In this connection, can the nomenclature 'Acting Executive Director' or Officer-In-Charge, office of the Executive Director IV' be used to reflect the intent of the particular Section without need of further written delegation attached to that effect.

"What is the appropriate title under the circumstances?"

Attached to said letter is CHED Special Order No. 38, Series of 1999, which reads, as follows:

"Pursuant to (sic) pertinent provisions of Republic Act (RA) No. 7722, otherwise known as the 'The Higher Education Act of 1994' and in view of the completion of the term of the Hon. Angel C. Alcala, Chairman, this Commission, on 03 July 1999 and the retirement of Dr. Catalino P. Rivera, Executive Order, effective 30 June 1999, CHED Special Order No. 32, Series of 1999 is hereby revised accordingly as follows:

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"CHED Office Order (COO) No. 16 Series of 1997 shall continue to take effect and in view of the retirement of the Executive Director IV, the Deputy Executive Director IV shall have signing authority as provided in COO No. 16, Series of 1997, consistent with Section 32 of Executive Order No. 292 (Administrative Code of 1987)" [Emphasis supplied]

Section 32, Chapter 6, Book IV of the 1987 Administrative Code (Executive Order No. 292), reads, as follows:

"SEC. 32. Acting Head of Bureau or Office. - In case of the absence or disability of the head of a bureau or office, his duties shall be performed by the assistant head. When there are two or more assistant heads, the Secretary shall make the designation. In the absence of an assistant head, the Secretary may designate any officer or employee of the bureau or office as acting head without additional compensation."

Clearly, the designation contemplated under the foregoing section pertains both to the designation in an acting capacity and designation as Officer-in-Charge (OIC). The kind of designation actually conferred on the incumbent is determined by the language used in the document effecting such designation.

It must be noted that a designation under acting capacity may be differentiated from a designation as Officer-in-Charge (OIC) in such a manner that an OIC enjoys limited powers which are confined to functions of administration and ensuring that the office continues its usual activities. The OIC may not be deemed to possess the power to appoint employees as the same involves the exercise of discretion which is beyond the power of an OIC. On the other hand, as aptly ruled by the Commission in the case of Amado S. Day, a designation in an acting capacity entails not only the exercise of the ministerial functions attached to the position but also the exercise of discretion. This is so considering that the person designated is deemed to be the incumbent of the position.

Further, in the case of Patricio Realce the Commission has explained the distinction between a designation in an acting capacity and as an OIC as follows:

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"◆ The power to appoint resides exclusively in the appointing authority and is not deemed delegated to one who is merely an Officer-in-Charge. The designation of an OIC is nothing more than a temporary and convenient arrangement intended to avert paralyzation of the day to day operations of an office in the meantime that the chief or head of office is temporarily absent. The OIC has no power to appoint unless the designation issued by the proper appointing authority includes expressly the power to issue appointment. (Underscoring ours) "Moreover, in the case of Aytona vs. Castillo, et al., (GR No. L-19313, January 19, 1962) it was ruled that a designated Officer-in-Charge is considered merely as a caretaker of the office while the regular incumbent is on leave of absence. An OIC does not possess the power to appoint, and if he does, such act is null and void ab initio. An Officer-in-Charge does not exercise powers involving discretion of the regular incumbent. The rights and privileges of the latter do not normally descend upon the former unless specifically indicated or stated in the designation."

Although Vitriolo's designation is couched in general terms, it is still apparent that the same is limited only to "signing authority" (CHED Special Order No. 38, series of 1999) or to functions of administration and ensuring that there be no paralyzation in the day-to-day operations of the office. As there is no express delegation as to the other functions attached

to the position of the Executive Director IV, it is deemed that the said designation is only as an Officer-In-Charge and not in an acting capacity.

However, if the other functions attached to the position of Executive Director IV, particularly the power to appoint, have been expressly written in CHED Office Order No. 16, there is no longer a need to expressly delegate the same in another document/office order.

WHEREFORE, the designation extended to Julito D. Virtiolo is deemed a designation as an Officer-In-Charge.

Quezon City, March 24, 2000

**(Sgd.) CORAZON ALMA G. DE LEON**

Chairman

**(Sgd.) JOSE F. ERESTAIN, JR.**

Commissioner

Attested by:

**(Sgd.) ARIEL G. RONQUILLO**

Director III