



SEP 03 2010

DepEd MEMORANDUM
No. **379**, s. 2010

**DISSEMINATION OF EXECUTIVE ORDER NO. 2
(Recalling, Withdrawing, and Revoking Appointments Issued by the Previous
Administration in Violation of the Constitutional Ban on Midnight
Appointments, and For Other Purposes)**

To: Undersecretaries
Assistant Secretaries
Bureau Directors
Directors of Services, Centers and Heads of Units
Regional Directors
Schools Division/City Superintendents
Heads, Public Elementary and Secondary Schools
Chiefs of Divisions
All Others Concerned

1. For the information and guidance of all concerned, enclosed is a certified copy of Executive Order No. 2 dated July 30, 2010 entitled "**Recalling, Withdrawing, and Revoking Appointments Issued by the Previous Administration in Violation of the Constitutional Ban on Midnight Appointments, and for Other Purposes**", which is self-explanatory.
2. Immediate and wide dissemination of this Memorandum is desired.


BR. ARMIN A. LUISTRO FSC
Secretary

Encl.: As stated
Reference: None
To be indicated in the Perpetual Index
under the following subjects:

EMPLOYEES
APPOINTMENT, EMPLOYMENT, REAPPOINTMENTS
OFFICIALS
LEGISLATIONS
POLICY

D: sgc/revoking on midnight appointments
August 26, 2010



MALACAÑAN PALACE
MANILA

EXECUTIVE ORDER NO. 2

RECALLING, WITHDRAWING, AND REVOKING APPOINTMENTS
ISSUED BY THE PREVIOUS ADMINISTRATION IN VIOLATION OF
THE CONSTITUTIONAL BAN ON MIDNIGHT APPOINTMENTS,
AND FOR OTHER PURPOSES.

WHEREAS, Sec. 15, Article VII of the 1987 Constitution provides that *“Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.”*;

WHEREAS, in the case of *“In re: Appointments dated March 30, 1998 of Hon. Mateo Valenzuela and Hon. Vallarta as Judges of the Regional Trial Court of Branch 62 of Bago city and Branch 24 of Cabanatuan City, respectively”* (AM no. 98-5-01-SC Nov. 9, 1998), the Supreme Court interpreted this provision to mean that the President is neither required to make appointments nor allowed to do so during the two months immediately before the next presidential elections and up to the end of her term. The only known exceptions to this prohibition are (1) temporary appointments in the executive positions when continued vacancies will prejudice public service or endanger public safety and, in the light of the recent Supreme Court decision in the case of, *De Castro, et. al. vs. JBC and PGMA G.R No. 191002, 17 March 2010*, (2) appointments to the Judiciary;

WHEREAS, Section 261 of the Omnibus Election Code provides that:

“Section 261. Prohibited Acts. - The following shall be guilty of an election offense:

- (g) **Appointment of new employees, creation of new position, promotion, or giving salary increases.** - During the period of forty-five days before a regular election and thirty days before a special election.
- (1) Any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and

fills any new position, except upon prior authority of the Commission.
The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need:

Provided, however, that notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.

- (2) Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.”;

WHEREAS, it appears on record that a number of appointments were made on or about 10 March 2010 in complete disregard of the intent and spirit of the constitutional ban on midnight appointment and which deprives the new administration of the power to make its own appointment;

WHEREAS, based on established jurisprudence, an appointment is deemed complete only upon acceptance by the appointee;

WHEREAS, in order to strengthen the civil service system, it is a necessity to uphold the principle that appointments to the civil service must be made on the basis of merit and fitness, it is imperative to recall, withdraw, and revoke all appointments made in violation of the letter and spirit of the law;

NOW, THEREFORE, I, BENIGNO S. AQUINO III, by virtue of the powers vested in me by the Constitution as President of the Philippines, do hereby order and direct that:

SECTION 1. Midnight Appointments Defined. - The following appointments made by the former President and other appointing authorities in departments, agencies, offices, and instrumentalities, including government-owned or controlled corporations, shall be considered as midnight appointments:

- (a) Those made on or after March 11, 2010, including all appointments bearing dates prior to March 11, 2010 where the appointee has accepted, or taken his oath, or assumed public office on or after March 11, 2010, except temporary appointments in the executive positions when continued vacancies will prejudice public service or endanger public safety as may be determined by the appointing authority.

- (b) Those made prior to March 11, 2010, but to take effect after said date or appointments to office that would be vacant only after March 11, 2010;
- (c) Appointments and promotions made during the period of 45 days prior to the May 10, 2010 elections in violation of Section 261 of the Omnibus Election Code.

SECTION 2. Recall, Withdraw, and Revocation of Midnight Appointments. Midnight appointments, as defined under Section 1, are hereby recalled, withdrawn, and revoked. The positions covered or otherwise affected are hereby declared vacant.

SECTION 3. Temporary designations. – When necessary to maintain efficiency in public service and ensure the continuity of government operations, the Executive Secretary may designate an officer-in-charge (OIC) to perform the duties and discharge the responsibilities of any of those whose appointment has been recalled, until the replacement of the OIC has been appointed and qualified.

SECTION 4. Repealing Clause. – All executive issuances, orders, rules and regulations or parts thereof inconsistent with the provisions of this Executive Order are hereby repealed or modified accordingly.

SECTION 5. Separability Clause. – If any section or provision of this executive order shall be declared unconstitutional or invalid, the other sections or provisions not affected thereby shall remain in full force and effect.

SECTION 6. Effectivity. - This Executive Order shall take effect immediately.


DONE in the City of Manila, this 30th day of July, in the year Two Thousand and Ten.



By the President:

PAQUITO N. OCHOA, JR.
Executive Secretary

CERTIFIED COPY



MARIANITO M. DIMAANDAL
DIRECTOR IV
MALACANANG RECORDS OFFICE

