

## [ ADMINISTRATIVE ORDER NO. 153, October 07, 1994 ]

### **SUSPENDING WITHOUT PAY GOVERNOR ROMEO SALALIMA AND OTHER ELECTIVE OFFICIALS OF THE PROVINCE OF ALBAY**

On 26 November 1993, Administrative Order No. 94 was issued creating an Ad-Hoc Committee to investigate several administrative cases filed against certain elective officials of the Province of Albay, and thereafter to submit its findings and recommendations.

These cases, which are entitled and docketed as 'Mayor Naomi Corral v. Governor Romeo Salalima, et al.', OP Case No. 5470; Kagawad Francisco Alarte, et al. v. Governor Romeo Salalima, et al., OP Case No. 5469; 'Mayor Naomi Corral v. Governor Romeo Salalima, et al.', OP Case No. 5471; and 'Mayor Antonio Demetriou v. Governor Romeo Salalima,' OP Case No. 5450, were filed in accordance with Administrative Order No. 23 in relation to Section 61 of Republic Act No. 7161, otherwise known as the 'Local Government Code of 1991.'

The Ad-Hoc Committee, composed of Interior and Local Government Undersecretary Victor R. Sumulong, Assistant Executive Secretary Renato C. Corona and Presidential Assistant Angel V. Saldivar, submitted its official report dated 26 August 1994 containing its findings and recommendations in the above-entitled cases.

Quoted below are the pertinent portions of said report:

"The finding of the Ad-Hoc Committee in OP Case Nos. 5470, 5469, 5471 and 5450 are as follows:

#### **"I. OP Case No. 5470**

"This refers to the administrative complaint filed by Tiwi Mayor Naomi Corral against Albay Governor Romeo Salalima, Vice-Governor Danilo Azaña, and Albay Sangguniang Panlalawigan Members Juan Victoria, Lorenzo Reyes, Arturo Osia, Clenio Cabredo, Vicente Go, sr., Jesus Marcellana, Ramon Fernandez, Jr., Masikap Fontilla, and Wilbor Rontas.

"Docketed as OP Case No. 5470, the complaint charges the respondents for malversation and consistent and habitual violation of pars. (c) and (d) of Section 60 of Republic Act (RA) No. 7160, otherwise known as the 'Local Government Code.'

'The antecedent facts are as follows:

"On 4 June 1990, the Supreme Court in the case entitled '*National Power Corporation (NPC) v. The Province of Albay, et al.*', G.R. No. 87479, rendered judgment (Exhs. D to D-14) declaring, inter alia, NPC liable for unpaid real estate taxes on its properties in Albay covering the period 11 June 1984 to 10 March 1987.

"Citing the fact that its tax exemption privileges had been revoked, the Supreme Court held that NPC's real properties, consisting mainly of geothermal plants in Tiwi and substation facilities in Daraga, are subject to real estate tax

in accordance with Presidential Decree (PD) No. 464, as amended, otherwise known as the 'Real Property Tax Decree.'

"Earlier, said properties were sold at an auction sale conducted by the Province of Albay (the 'Province') to satisfy NPC's tax liabilities. Being the sole bidder at the auction, the Province acquired ownership over said properties.

"On 29 July 1992, the NPC through then President Pablo Malixi and the Province represented by respondent Salalima, entered into a Memorandum of Agreement ('MOA') [Exhs. 7 to 7-A] whereby the former agreed to settle its tax liabilities, then estimated at P214,845,104.76.

"Under the MOA, the parties agreed that:

- the actual amount collectible from NPC will have to be recomputed/revalidated;
- NPC shall make an initial payment of P17,763,000.00 upon signing of the agreement;
- the balance of the recomputed/revalidated amount (less the aforesaid initial payment), shall be paid in twenty-four (24) equal monthly installments to commence in September 1992; and
- ownership over the auctioned properties shall revert to NPC upon satisfaction of the tax liabilities.

"On 3 August 1992, Mayor Corral formally requested the Province through respondent Salalima, to remit the rightful tax shares of Tiwi and certain barangays of Tiwi where NPC's properties are located ('concerned barangays') relative to the payments made by NPC (Exh. B).

"On the same day, 3 August 1992, the Tiwi Sangguniang Bayan passed Resolution No. 12-92 (Exhs. G to G-1) requesting the Albay Sangguniang Panlalawigan to hold a joint session with the former together with Mayor Corral and the Sangguniang Pambarangays of the concerned barangays, for the purpose of discussing the distribution or application of the NPC payments.

"On 10 August 1992, respondent Salalima replied that the request cannot be granted as the initial payment amounting to P17,763,000.00 was only an 'earnest money' and that the total amount to be collected from NPC was still being validated (Exh. 1).

"Not satisfied with respondent Salalima's response, Mayor Corral complained to NPC about the Province's failure to remit Tiwi's and the concerned barangays' shares in the payments made by NPC (Exh. 50-C).

"On 14 August 1992, President Malixi informed respondent Salalima that the representatives of both NPC and the Province have reconciled their accounts and determined that the amount due from NPC was down to P207,375,774.52 (Exh. 20).

"Due to the brewing misunderstanding between Tiwi and the concerned barangays on the one hand, and the Province on the other, and so as not to be caught in the middle of the controversy, NPC requested a clarification from the Office of the President as to the scope and extent of the shares of local government units in real estate tax collections (Exhs. 6 to 6-A).

"Meantime, the Albay Sangguniang Panlalawigan passed Resolution No. 178-92 dated 8 October 1992 (Exh. R) and Resolution No. 204-92 dated 5 November 1992 (Exh. S) appropriating P9,778,932.57 and P17,663,431.58 (or a total of P27,442,364.15) from the general fund to satisfy 'prior years' obligations and to implement certain projects of the Province. These resolutions were approved by respondent Salalima on 22 October 1992 and 6 November 1992, respectively.

"On 3 December 1992, the Office of the President through Chief Presidential Legal Counsel Antonio Carpio opined that the MOA entered into by NPC and the Province merely recognized and established NPC's tax liability. He further clarified that the sharing scheme and those entitled to the payments to be made by NPC under the MOA should be that provided under the law, and since Tiwi is entitled to share in said tax liabilities, NPC may remit such share directly to Tiwi. The pertinent portion of Chief Presidential Legal Counsel Carpio's letter dated 3 December 1992 (Exhs. H to H-1) addressed to President Malixi reads:

x x x

'The Memorandum of Agreement entered into by the Province of Albay and NPC merely enunciates the tax liability of NPC. The Memorandum of Agreement does not provide for the manner of payment of NPC's liability. Thus, the manner of payment as provided for by law shall govern. In any event, the Memorandum of Agreement cannot amend the law allowing the payment of said taxes to the Municipality of Tiwi.

'The decision in the case of *NPC v. Province of Albay* (186 SCRA 198), likewise, only establishes the liability of NPC for real property taxes but does not specifically provide that said back taxes be paid exclusively to Albay province.

'Therefore, it is our opinion that the NPC may pay directly to the municipality of Tiwi the real property taxes accruing to the same.

'Please be guided accordingly.

'Very truly yours,

(Sgd.) 'ANTONIO T. CARPIO  
'Chief Presidential Legal Counsel'

"Because of this opinion, President Malixi, through a letter dated 9 December 1992 (Exhs. I to I-1), informed Mayor Corral and respondent Salalima that starting with the January 1993 installment, NPC will directly pay Tiwi its share in the payments under the MOA. He also invited the parties to a clarificatory meeting on 17 December 1992 at his Quezon City office to discuss the matter in detail.

"Only Mayor Corral attended the 17 December 1992 meeting with President Malixi as respondent Salalima was indisposed. President Malixi then provided Mayor Corral with schedules (Exhs. J to J-2) of the payments already made by NPC under the MOA and the computation and the distribution of shares.

"As of 9 December 1992, payments made by NPC to the Province reached P40,724,471.74, broken down as follows:

**Payment Dates**

**Amount**

July 29, 1992	P17,763,000.00
Sept. 3, 1992	4,660,255.80
Oct. 5, 1992	6,820,480.02
Nov. 5, 1992	5,740,367.96
Dec. 9, 1992	<u>5,740,367.96</u>
Total	P40,724,471.74

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"On 19 December 1992, in an apparent reaction to NPC's decision to directly remit to Tiwi its share in the payments made and still to be made pursuant to the MOA, the Albay Sangguniang Panlalawigan passed Ordinance No. 09-92 (Exhs. K to K-1), which, among others:

- authorized the Provincial Treasurer upon the direction of the Provincial Governor to sell the real properties (acquired by the Province at the auction sale) at a public auction, and to cause the immediate transfer thereof to the winning bidder; and
- declared as forfeited in favor of the Province, all the payments already made by NPC under the MOA.

"Realizing from the actuations of the respondents that Tiwi's share in the P40,724,471.74 payments already made by NPC will not be forthcoming, Mayor Corral filed the present complaint with the Office of the President on 25 January 1993.

"In determining whether the respondents are guilty of the charges against them, the threshold issue of whether the payments to be made by NPC under the MOA should accrue solely and exclusively in favor of the Province, must first be resolved.

"Sections 38, 39, 41, 86 and 87 of PD No. 464, as amended, prescribe the authority of local government units to levy real property tax as well as the sharing scheme among local government units including the national government with respect thereto. Said provisions read:

**'SEC. 38. Incidence of Real Property Tax.** – There shall be levied, assessed, and collected in all provinces, cities and municipalities an annual ad valorem tax on real property, such as land, buildings, machinery and other improvements affixed or attached to real property not hereinafter specifically exempted.

**'SEC. 39. Rates of Levy.** – The provincial, city or municipal board or council shall fix a uniform rate of real property tax applicable to their respective localities as follows:

(1) In the case of a province, the tax shall be fixed by ordinance of the provincial board at the rate of not less than one fourth of one percent but not more than one-half of one percent of the assessed value of real property;

(2) In the case of a city, the tax shall be fixed by ordinance of the municipal board or city council at the rate of not less than one-half of one percent but not more than two percent of the assessed value of real property; and

(3) In the case of a municipality, the tax shall be fixed by ordinance of the municipal council subject to the approval of the provincial board at the rate of not less than one fourth of one percent but not more than one-half of one percent of the assessed value of real property.

x x x

**'SEC. 41. An Additional One Per Cent Tax on Real Property for the Special Education Fund.** – There is hereby imposed an annual tax of one per cent on real property, to accrue to the Special Education Fund created under Republic Act No. 5447, which shall be in addition to the basic real property tax which local governments are authorized to levy, assess and collect under this Code; Provided, That real property granted exemption under Section 40 of this pre Code shall also be exempt from the imposition accruing to the Special Education Fund. (as amended by PD No. 1913)

**'SEC. 86. Distribution of proceeds.** – (a) The proceeds of the real property tax, except as otherwise provided in this Code, shall accrue to the province, city or municipality where the property subject to the tax is situated and shall be applied by the respective local government unit for its own use and benefit.

'(b) Barrio shares in real property tax collections. - The annual shares of the barrios in real property tax collections shall be as follows:

'(1) Five per cent of the real property tax collections of the province and another five percent of the collections of the municipality shall accrue to the barrio where the property subject to the tax is situated.

'(2) In the case of the city, ten percent of the collections of the tax shall likewise accrue to the barrio where the property is situated.

x x x

**'SEC. 87. Application of proceeds.** – (a) The proceeds of the real property tax pertaining to the city and to the municipality shall accrue entirely to their respective general funds. In the case of the province, one-fourth thereof shall accrue to its road and bridge fund and remaining three-fourths of its general fund.

'(b) The entire proceeds of the additional one per cent real property tax levied for the Special Education Fund created under R.A. No. 5447 collected in the province or city on real property situated in their respective territorial jurisdictions shall be distributed as follows:

'(1) Collections in the provinces; Fifty-five per cent shall accrue to the municipality where the property subject to the tax is situated; twenty-five per cent shall accrue to the province; and twenty per cent shall be remitted to the Treasurer of the Philippines.' (as amended by PD No. 1969)

x x x

'(c) The proceeds of all delinquent taxes and penalties, as well as the income realized from the use, lease or other disposition of real property acquired by