

[EXECUTIVE ORDER NO. 277, September 24, 1995]

DIRECTING THE MODE OF TREATMENT UTILIZATION, ADMINISTRATION AND MANAGEMENT OF THE COCONUT LEVY FUNDS

WHEREAS, the coconut levy funds, which comprise four general classes, viz.: (a) the Coconut Investment Fund created under R.A. 6260 (effective June 19, 1971); (b) the Coconut Consumers Stabilization Fund under P.D. 276 (effective August 29, 1973); (c) the Coconut Industry Development Fund under P.D. 582 (effective November 14, 1974); and (d) the Coconut Industry Stabilization Fund under P.D. 1841 (effective October 2, 1981), were created to support and advance the development of the coconut industry for the ultimate benefit of the coconut farmers;

WHEREAS, the Supreme Court, in upholding the sequestration of various industrial and commercial enterprises organized and financed with proceeds from the coconut levy, declared in the *Philippines Coconut Producers Federation, Inc. (COCOFED), et al. vs. Presidential Commission on Good Government (PCGG), et al.* (178 SCRA 236 [21 October 1989]) case that:

"The utilization and proper management of the coconut levy funds, raised as they were by the State's police and taxing powers, are certainly the concern of the Government. It cannot be denied that it was the welfare of the entire nation that provided the prime moving factor for the imposition of the levy. It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population but also of export earnings the sustained growth of which is one of the imperatives of economic stability. The coconut levy funds are clearly affected with public interest. Until it is demonstrated satisfactorily that they have legitimately become private funds, they must prima facie and by reason of the circumstances in which they were raised and accumulated be accounted subject to the measures prescribed in E.O. Nos. 1, 2, and 14 to prevent their concealment, dissipation, etc. which measures include the sequestration and other orders of the PCGG complained of."

WHEREAS, the Supreme Court, in ruling that the PCGG is entitled to vote the sequestered shares of stock of the United Coconut Planters Bank (Republic vs. Sandiganbayan, G.R. No. 96073, 16 February 1993), reiterated the above declaration and clarified that:

"The coconut levy funds being 'clearly affected with public interest,' it follows that the corporations formed and organized from those funds, and all assets acquired therefrom, should also be regarded as 'clearly affected with public interest.' "

WHEREAS, the Constitution mandates that:

"Sec. 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: ... (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity.

x x x

Sec. 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit."

WHEREAS, the Commission on Audit, consistent with its mandate and relying upon the above declaration of the Supreme Court, has opined on 15 January 1993 that the coconut levy:

"x x x would seem to fall within the purview of the provisions of Section 63 of Presidential Decree No. 1445, to wit:

'Except as may otherwise be specifically provided by law or competent authority all moneys and property officially received by a public officer in any capacity or upon any occasion must be accounted for as government funds and government property.'

It would seem, therefore, that all moneys realized from the said levy should accordingly be accounted for as governments funds the provisions of Section 5, Article III, of PD No. 961 notwithstanding, in the light of the following provisions of the 1987 Constitution:

'All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general fund of the Government. (Sec. 23[3], Article VI).

'All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.' (Section 3, Article XVIII)

which all the more strongly indicate that the coconut levy constitutes government funds.

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In the light of the foregoing, this Commission is strongly of the view that the coconut levy is a public fund, and therefore subject to government audit."

WHEREAS, the Bureau of Internal Revenue, in replying to the query raised by the Philippine Coconut Authority Administrator as to the character of the coconut levy funds, relied upon the same Supreme Court ruling and, thus, ruled on 15 December 1992, as follows: