

EN BANC

[G.R. No. 211293, June 04, 2019]

ADELAIDO ORIONDO, TEODORO M. HERNANDEZ, RENATO L. BASCO, CARMEN MERINO, AND REYNALDO SALVADOR, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

LEONEN, J.:

A corporation, whether with or without an original charter, is under the audit jurisdiction of the Commission on Audit so long as the government owns or has controlling interest in it.

This resolves the Petition^[1] under Rule 64 of the Rules of Court filed by Adelaido Oriondo, Teodoro M. Hernandez, Renato L. Basco, Carmen, Merino, and Reynaldo Salvador, former officers of the Philippine Tourism Authority who had received honoraria and cash gifts for concurrently rendering services to Corregidor Foundation, Inc. They assail the Commission on Audit's Decision^[2] No. 2010-095 dated October 21, 2010 and Resolution^[3] dated December 6, 2013, disallowing the payment of the honoraria and cash gifts to them for being contrary to Department of Budget and Management Budget Circular No. 2003-5 on the payment of honoraria and Article IX-B, Section 8^[4] of the Constitution prohibiting the payment of additional or double compensation.

The submissions of the parties present the following facts.

Executive Order No. 58, series of 1954,^[5] made certain battlefield areas in Corregidor open to the public and accessible as tourist attractions. Executive Order No. 123, series of 1968, further amended Executive Order No. 58, thereby authorizing the Ministry of National Defense to enter into contracts for the conversion of areas within the Corregidor as tourist spots.^[6]

Pursuant to Executive Order No. 123, the Ministry of National Defense and the Philippine Tourism Authority executed a Memorandum of Agreement^[7] dated July 10, 1986 for the development of Corregidor and its neighboring islands into major tourist attractions. Specifically, the Ministry of National Defense, with prior approval of the President, leased the entire island of Corregidor to the Philippine Tourism Authority for one peso (P1.00). As for the Philippine Tourism Authority, it undertook to maintain and preserve the war relics on the island and to fully develop Corregidor's potential as an international and local tourist destination. The Philippine Tourism Authority was thus authorized to "[p]ackage and source the necessary funds to develop and restore the Corregidor Island group."^[8]

On February 6, 1987, the Philippine Tourism Authority Board of Directors adopted

Resolution No. B-7-87,^[9] approving the creation of a foundation for the development of Corregidor. On October 28, 1987, the Corregidor Foundation, Inc. was incorporated under Securities and Exchange Commission Registration No. 145674.^[10]

On August 3, 1993, the Philippine Tourism Authority executed a Memorandum of Agreement^[11] with Corregidor Foundation, Inc. to centralize the island's planning and development. The Philippine Tourism Authority agreed to release to the Corregidor Foundation, Inc. its operating funds based on a budget for its approval. For its part, the Corregidor Foundation, Inc. agreed to submit a quarterly report on the receipts and disbursements of Philippine Tourism Authority funds. It additionally agreed to deposit all collections of revenues in a distinct and separate account in the name of the island of Corregidor, with the disposition of the funds at the sole discretion of the Philippine Tourism Authority.

Another Memorandum of Agreement^[12] was subsequently entered into by the Philippine Tourism Authority and the Corregidor Foundation, Inc. on September 3, 1996. The subsequent Agreement reiterated the provisions of the August 3, 1993 Agreement but added some stipulations. In particular, the second paragraph of item 4 was included, providing that the disbursements of the Philippine Tourism Authority's funds by Corregidor Foundation, Inc. shall be subject to the audit of the Internal Auditor of the Philippine Tourism Authority and the Commission on Audit.

On February 14, 2005, the Commission on Audit, through Audit Team Leader Divina M. Telan, issued Audit Observation Memorandum No. 2004-002^[13] for comments of then Corregidor Foundation, Inc. Executive Director Artemio G. Matibag. There, the Audit Team noted that the following personnel of the Philippine Tourism Authority who were concurrently rendering services in Corregidor Foundation, Inc. received honoraria and cash gifts in 2003, to wit:

Name	Position	Bonus	Cash Gift	Total
Adelaido Oriondo	Treasurer / Deputy General Manager of the Philippine Tourism Authority	42,000	1,500	43,500
Teodoro Hernandez	Corporate Secretary	42,000	1,500	43,500
Renato L. Basco	Technical Assistant	16,000	1,500	17,500
Carmen Merino	Executive Secretary A	9,600	1,500	11,100
Reynaldo Salvador	Utility Worker A	14,400	1,500	15,900
Total		124,000	7,500	131,500

The Audit Team was of the opinion that the grant of honoraria to Oriondo, Hernandez, Basco, Merino, and Salvador were contrary to Department of Budget and Management Circular No. 2003-5.^[14] This budget circular, applicable to all national government agencies, government-owned and/or controlled corporations,

and government financial institutions, enumerated in item 4 those exclusively entitled to honoraria:

4. General Guidelines

Heads of entities are authorized to use their respective appropriation for the payment of honoraria only to the following:

- 4.1. teaching personnel of the Department of Education, Commission on Higher Education, Technical Education and Skills Development Authority, State Universities and Colleges and other educational institutions engaged in actual classroom teaching whose teaching load is outside of the regular office hours and/or in excess of the regular load;
- 4.2 those who act as lecturers, resource persons, coordinators and facilitators in seminars, training programs and other similar activities in training institutions, including those conducted by entities for their officials and employees; and
- 4.3. chairs and members of Commissions/Board Councils and other similar entities which are hereinafter referred to as a collegial body including the personnel thereof, who are neither paid salaries nor per diems but compensated in the form of honoraria as provided by law, rules and regulations.^[15]

Further, according to the Audit Team, the cash gifts given to Orondo, Hernandez, Basco, Merino, and Salvador, as officers of the Corregidor Foundation, Inc., constituted double compensation prohibited in Article IX-B, Section 8^[16] of the Constitution because they had already received honoraria and cash gifts as employees of the Philippine Tourism Authority.^[17]

The Audit Team thus recommended that Corregidor Foundation, Inc. comply with Budget Circular No. 2003-5; otherwise, it would be constrained to recommend the disallowance of the amounts paid as honoraria and cash gift.^[18]

On June 15, 2006, the Legal and Adjudication Office-Corporate of the Commission on Audit issued Notice of Disallowance No. CFI-2006-001,^[19] disallowing in audit the honoraria and cash gift paid to Orondo, Hernandez, Basco, Merino, and Salvador. Aside from the payees, the persons made liable for the amount were Corregidor Foundation, Inc.'s Chief Accountant Noria Jane Perez, Finance Office Lauro Legazpi, and Executive Director Artemio G. Matibag.^[20]

Orondo, Hernandez, Basco, Merino, and Salvador filed a Motion for Reconsideration of the Notice of Disallowance, arguing that Corregidor Foundation, Inc. is a private corporation created under the Corporation Code and, therefore, cannot be audited by the Commission on Audit.^[21] This was denied by the Legal Adjudication Office-Corporate in its Decision No. 2007-037,^[22] where it held that Corregidor Foundation, Inc. is a government-owned or controlled corporation.

The appeal filed was likewise denied by the Adjudication and Settlement Board of

the Commission on Audit in Decision No. 2009-002.^[23] Citing the definition of a government owned or controlled corporation in the Administrative Code of 1987, the Adjudication and Settlement Board held that Corregidor Foundation, Inc. is a government-owned or controlled corporation under the audit powers of the Commission on Audit. Corregidor Foundation, Inc., according to the Adjudication and Settlement Board, is a non-stock corporation which receives funds from the government, through the Philippine Tourism Authority. The Adjudication and Settlement Board highlighted that Memorandum of Agreement dated September 3, 1996 provided that the funds received and disbursed by the Corregidor Foundation, Inc. is subject to the audit of the Internal Auditor of the Philippine Tourism Authority and the Commission on Audit. Finally, Corregidor Foundation, Inc. was deemed created for a public purpose, which is the maintenance and preservation of Corregidor.

Considering that Corregidor Foundation, Inc. is a government-owned or controlled corporation, the Adjudication and Settlement Board held the foundation is subject to Budget Circular No. 2003-5 and 2003-02, limiting the grant of honoraria to specific government personnel, and Article IX-B, Section 8 of the Constitution prohibiting double compensation.^[24]

The dispositive portion of the Adjudication and Settlement Board's Decision No. 2009-002 read:

WHEREFORE, the foregoing premises considered, this Board hereby **DENIES** the instant appeal for want of merit. Accordingly, LAO-Corporate Decision No. 2007-037 dated June 07, 2007 sustaining ND No. CFI-2006-001 dated June 15, 2006 is **AFFIRMED**.^[25] (Emphasis in the original)

Oriondo, Hernandez, Basco, Merino, and Salvador appealed^[26] Decision No. 2009-002, but the appeal was denied by the Commission on Audit in its October 21, 2010 Decision No. 2010-095.^[27]

The Commission on Audit Commission Proper maintained that the Corregidor Foundation, Inc. is a government-owned or controlled corporation given the following circumstances: (1) the incorporators of the Corregidor Foundation, Inc. are all government officials; (2) the Corregidor Foundation, Inc. is substantially subsidized by the government, with 99.66% of its budget coming from the Department of Tourism, Duty Free Philippines, and the Philippine Tourism Authority; (3) the budget of Corregidor Foundation, Inc. needs prior approval of the Philippine Tourism Authority; (4) Corregidor Foundation, Inc. is required to submit a quarterly report of its receipts and disbursement of Philippine Tourism Authority funds; (5) all collections of revenues are to be deposited and taken up in the books of Corregidor Foundation, Inc. as accountability to the Philippine Tourism Authority, and the disposition of the funds are at the sole discretion of the Philippine Tourism Authority; and (6) Corregidor Foundation, Inc. has no authority to dispose of the properties subject of the Memorandum of Agreement.^[28]

While it is true that Corregidor Foundation, Inc. was organized under the Corporation Code, the Commission Proper, citing *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit*,^[29] held that it is the "totality test"—the totality of the relation of a corporation to the State—that

determines a corporation's status as a government-owned or controlled corporation. Given that Corregidor Foundation, Inc. was created by the State as its own instrumentality to carry out a governmental function, the Commission Proper concluded that Corregidor Foundation, Inc. should be considered a public corporation.

The Commission proper added that coverage under the Social Security System "is but a consequence of [Corregidor Foundation, Inc.'s] insistence that it is a private corporation, not *a priori* reason that it is."^[30]

Given the foregoing premises, the Commission Proper held that Corregidor Foundation, Inc. is a government-owned or controlled corporation subject to Budget Circular No. 2003-5 and Article IX-B, Section 8 of the Constitution. Corregidor Foundation, Inc. had no authority to grant honoraria to its personnel and give cash gifts to its employees who were concurrently holding a position in the Philippine Tourism Authority.

The dispositive portion of the Commission on Audit's Decision No. 2010-095 read:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, ASB Decision No. 2009-002 dated January 26, 2009 is **AFFIRMED**.^[31] (Emphasis in the original)

Oriundo, Hernandez, Basco, Merino, and Salvador filed a Motion for Reconsideration, which the Commission on Audit *En Banc* denied in a its December 5, 2013 Resolution^[32] thus:

The [Commission on Audit Proper] denied the Motion for Reconsideration for lack of merit and affirmed with finality COA Decision No. 2010-095 dated October 21, 2010 affirming the disallowance on the grant of honoraria and cash gift to the Philippine Tourism Authority employees who are rendering services to Corregidor Foundation[,] Inc. in the amount of P131,500.00. The movant failed to present new and material evidence that would warrant a reversal or modification of the assailed decision.^[33]

On March 14, 2014, Oriundo, Hernandez, Basco, Merino, and Salvador filed before this Court a Petition^[34] designated as a "Petition for Review on Certiorari"^[35] under Rule 64 of the Rules of Court. The Commission on Audit, through the Office of the Solicitor General, filed its Comment^[36] on June 25, 2014, to which Oriundo, Hernandez, Basco, Merino, and Salvador replied^[37] on October 7, 2014. Upon the directive of this Court,^[38] the parties filed their respective Memoranda.^[39]

According to petitioners, a cursory reading of Article IX-D, Section 2^[40] of the Constitution reveals that the Commission on Audit has no power to determine whether an entity is a government-owned or controlled corporation. Petitioners maintain that the Commission on Audit had no jurisdiction to conduct a post-audit of Corregidor Foundation, Inc.'s disbursements on the basis of its own determination of Corregidor Foundation's status as a government-owned or controlled corporation. Consequently, the Commission's rulings on the grant of honoraria and cash gifts are allegedly null and void.^[41]