

EN BANC

[G.R. No. 211999, August 20, 2019]

RICARDO E. ROTORAS, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

LEONEN, J.:

The special trust fund of a state university or college shall only be used for instruction, research, extension, or similar programs or projects. The members of governing boards and officials who approved an allowance or benefit that has been disallowed are obliged to return what they have received. The defense of good faith is no longer available to them. Neither is the defense available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations.

This Court resolves a Petition for Certiorari^[1] under Rule 64 of the Rules of Court, assailing the Decision^[2] and Resolution^[3] of the Commission on Audit, which affirmed the disallowances of grants of additional honoraria to members of governing boards of state universities and colleges.

Through various resolutions, the governing boards of 21 state universities and colleges^[4] granted honoraria to board members in amounts ranging from P3,000.00 to P5,000.00 for attendance in board meetings. These honoraria were in addition to the P2,000.00 mandated by Department of Budget and Management Circular Nos. 2003-5 and 2003-6, and were sourced from these state universities and colleges' income from tuition fees, otherwise called the special trust fund.^[5]

Subsequently, various audit team leaders of the Commission on Audit's Regional Legal and Adjudication Offices issued audit observation memoranda. These resulted in Notices of Disallowance for the payments of the honoraria on the ground of lack of legal basis.^[6]

Aggrieved, presidents of 11 of the affected state universities and colleges wrote the Philippine Association of State Universities and Colleges. On January 10, 2006, the association, through then President Eldigario D. Gonzales (Gonzales), wrote the Commission on Audit Chair on behalf of the 21 state universities and colleges, assailing the Notices of Disallowance.^[7]

The matter was referred to the Commission's Legal and Adjudication Office-National, which then issued an October 8, 2007 Decision^[8] denying the appeal. The dispositive portion of the Decision read:

WHEREFORE, premises considered, the instant appeal is hereby DENIED for lack of merit. The NDs issued by the concerned RLAS Cluster Directors on the grant of additional honoraria to the members of SUC Governing Boards in their areas of jurisdiction, insofar as they pertain to the above-discussed issues, are hereby AFFIRMED.^[9]

The Legal and Adjudication Office-National first noted that, instead of the Philippine Association of State Universities and Colleges writing the Commission Chair, the state universities and colleges should have requested their respective Regional Legal and Adjudication Sector Cluster Directors to reconsider the disallowances or appeal directly before the Legal and Adjudication Office. Nonetheless, it treated the association's letter as the state universities and colleges' appeal.^[10]

The Legal and Adjudication Office-National observed that at the core of the state universities and colleges' arguments was an October 25, 2005 letter-opinion issued by Assistant Solicitor General Ma. Edita C. Dizon (Assistant Solicitor General Dizon) to the Special Counsel of Eastern Samar State University.^[11] In this letter, Assistant Solicitor General Dizon said that there was no legal impediment to state universities and colleges giving governing board members additional honoraria, as the source of the funds was their income, not appropriations. Under Section 4(b)^[12] of Republic Act No. 8292, a governing board may disburse any portion of the state university or college's income as it deems necessary.^[13]

However, according to the Legal and Adjudication Office-National, the power of a state university or college's governing board under Section 4(b) must be read in relation with Section 4(d), which states:

d) to fix the tuition fees and other necessary school charges, such as but not limited to matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.

Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: Provided, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.

Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.

If, for reasons beyond its control, the university or college, shall not be able to pursue any project for which funds have been appropriated and,

allocated under its approved program of expenditures, the Board of Regents/Trustees may be authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college[.]

The Legal and Adjudication Office-National noted that a governing board's authority to disburse money from the special trust fund was qualified; that is, any income that the state university or college generates from tuition fees and other charges must only be used for instruction, research, extension, or other programs or projects. This does not include the payment of additional compensation in the form of honoraria, per diem, or others.^[14]

According to the Legal and Adjudication Office-National, this was consistent with Commission on Audit Circular No. 2002-022 dated April 4, 2000, which states, among others, that "[i]n no case shall . . . the [special trust fund] be used for the payment of salaries and creation of new position" and that "[t]he [special trust fund] shall be used to augment the maintenance and other operating expenses and capital outlays of the university and to pay authorized allowances and fringe benefits to teachers and students who render services to the school."^[15]

Further, the Legal and Adjudication Office-National held that members of the governing boards were entitled to compensation in the form of per diem, not honorarium, under Department of Budget and Management Circular No. 2003-6. Based on this circular, board chairpersons were entitled to an amount equivalent to 25% of the monthly representation and transportation allowance of the state university or college president, for every meeting actually attended, but not to exceed four (4) paid meetings per month. Meanwhile, members of governing boards were entitled to an amount equivalent to 25% of the monthly representation and transportation allowance of the state university or college vice president, for every meeting actually attended, but not to exceed four (4) paid meetings per month.^[16]

In its September 15, 2008 Resolution,^[17] the Legal and Adjudication Office denied the subsequent motions for reconsideration filed by the Philippine Association of State Universities and Colleges and nine (9) state universities and colleges. Thus, the case was elevated to the Commission on Audit *En Banc*.

In its November 3, 2011 Decision,^[18] the Commission on Audit *En Banc* affirmed the rulings of the Legal and Adjudication Office. The dispositive portion of its Decision No. 2011-079 read:

WHEREFORE, in view of all the foregoing, the instant petition for review/appeal has to be, as it is hereby, DENIED. Accordingly, LAO-National Decision No. 2008-102-B dated September 15, 2008 and the NDs issued by the then concerned COA RCDs-RLAOs are hereby AFFIRMED.^[19]

The Commission on Audit *En Banc* noted that Section 3(c) of Republic Act No. 8292, in relation of Rule 4, Section 17 of its Implementing Rules and Regulations, prohibited members of the governing boards from receiving compensation, only

allowing them to be reimbursed for necessary expenses in limited circumstances.^[20]
It cited Section 3(c), which provides:

SECTION 3. The Governing Boards; Manner of Appointment. —

. . . .

c) Meetings; Quorum. — The Board of Regents/Trustees shall regularly convene at least once every quarter. The Chairman of the Board of Regents/Trustees may call a special meeting whenever necessary: Provided, That members are notified in writing at least three (3) days prior to said meeting.

A majority of all members holding office shall constitute a quorum for board meetings: Provided, that the Chairman of the CHED who is the chairman of the Board or the president of the university or college is among those present in the meeting. In the absence of the Chairman of the CHED, a commissioner of the CHED, duly designated by him, shall represent him in the meeting all the rights and responsibilities of a regular member: Provided, however, That in the said meeting, the president of the university or college as vice chairman shall be the presiding officer: Provided, further, That this proviso notwithstanding, the Chairman of the CHED is hereby authorized to designate a CHED Commissioner the regular Chair to the Board of a particular university or college, in which case said CHED Commissioner shall act as the presiding officer.

The members shall serve without compensation, but they shall be reimbursed for necessary expenses incurred in their attendance of meetings of the Board or in connection with their official business authorized by resolution of the Board.

Similarly, Rule 4, Section 17 of the Implementing Rules and Regulations of Republic Act No. 8292 stated:

SECTION 17. No Compensation for the Chairman, Vice-Chairman and Members of GBs. — The Chairman, Vice-Chairman and Members of the GB of chartered SUCs shall not receive any regular compensation as such but they shall receive entitlements to actual allowances allowed by law, and reimbursement of necessary expenses incurred during or in conjunction with their attendance in the regular meetings or special sessions of the GB or in connection with their performance of official business duly authorized by the GB through a Resolution.

According to the Commission on Audit *En Banc*, the members of the governing boards were only entitled to receive compensation in the form of per diem and reimbursement of actual expenses, if any. They should not be entitled to any other benefit or allowance.^[21]

The Commission on Audit *En Banc* also held that they were not entitled to payments from the special trust funds since their functions were not directly connected with the state university or college's instruction, research, extensions, and other programs or projects. Although they formulate policies that pertain to instruction,

research, and extension projects, the Commission on Audit *En Banc* noted that this policymaking function should not be considered an academic activity similar to those performed by teachers and students.^[22]

In any case, the Commission on Audit *En Banc* ruled that the special trust fund should not be used to pay compensation, per diems, or honoraria,^[23] citing *Benguet State University v. Commission on Audit*.^[24]

Finally, the Commission on Audit *En Banc* found that members of the governing boards who had received the honoraria should refund the amounts received. It found that the members' approval of the resolutions giving themselves the honoraria was self-serving. It also found that their failure to observe existing laws was tantamount to bad faith.^[25]

In a February 14, 2014 Resolution,^[26] the Commission on Audit *En Banc* denied the motions for reconsideration filed by the Philippine Association of State Universities and Colleges and the Bukidnon State University, through its President Victor M. Barroso (Barroso).

Thus, Ricardo E. Rotoras, as the president of the Philippine Association of Universities and Colleges, filed this Petition for Certiorari,^[27] assailing the Decision and Resolution of the Commission on Audit.

Petitioner argues that the governing boards of the state universities and colleges are empowered by Republic Act No. 8292 to grant their members honoraria. Section 4(d), he points out, gives governing boards the authority to disburse funds from income generated by the state universities or colleges for programs or projects, notwithstanding any provision of existing laws, rules, or regulations.^[28]

Petitioner also claims that the conduct of meetings, along with the payment of honoraria for the members' attendance, directly relates to instruction, research, extension, and other programs or projects. These meetings are supposedly integral and inseparable from the instruction, research, and extension programs of the state university or college, because it is during these meetings where the "programs are proposed, deliberated upon, refined, and eventually approved[.]"^[29]

Moreover, petitioner points to Section 4 of Republic Act No. 8292, which, apart from granting governing boards specific powers and duties, likewise allows them to exercise all the powers of a corporation under the Corporation Code.^[30] He cites Section 36(10) of the Corporation Code, which gives the power to extend benefits to directors or trustees:

10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees[.]

Finally, petitioner claims that respondent Commission on Audit gravely abused its discretion in finding that the members of the governing boards acted in bad faith when they received the additional honoraria. He claims that they relied on Section 4(d) of Republic Act No. 8292, as implemented by Commission on Higher Education Memorandum Order No. 03-01 and Commission on Audit Circular No. 2002-002. They also relied on two (2) letter-opinions from the Office of the Solicitor General,