

EN BANC

[G.R. No. 213660, July 05, 2016]

DR. WENIFREDO T. OÑATE, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

PERALTA, J.:

This is a petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court (*Rules*), to reverse the Commission on Audit (COA) Decision No. 2014-126^[1] dated June 20, 2014, which ruled that the payment of the legal services of Atty. Alex A. Arejola shall be the personal liability of petitioner Dr. Wenifredo T. Oñate (*Dr. Oñate*).

Sometime in June 2009, a retainership contract^[2] was entered into by and between Atty. Alex A. Arejola and Camarines Norte State College (CNSC), as represented by its President, Dr. Oñate. Pursuant thereto, Atty. Arejola was engaged to act as the legal counsel of CNSC for a period of one (1) year,^[3] renewable every year, at a monthly retainer fee of P10,000.00 net of tax and appearance fee of P500.00 and P1,500.00 for every hearing attended within and outside, respectively, "of Camarines Norte. The terms of reference of the legal consultant were as follows:

1. To prosecute the administrative case(s) against erring CNSC faculty or staff before the CSC and/or Committee designated for the purpose of hearing the Administrative Case; to draft the formal charge, pleadings, memoranda; to appear and actively prosecute the case, in case of appeal to the Civil Service Commission or Court of Appeals;
2. To represent, appear and submit pleadings, if necessary, in behalf of the CNSC in all cases, administrative or court cases pending in any judicial or quasi-judicial agency;
3. To give legal advise (*sic*) in all matters referred to him by the President or Vice President at appropriate instances subject to consultation, verification or clarification with the Legal Service of the Commission on Higher Education;
4. To represent the President in case's against him, in action or cases inherently related to his performance of his functions; and
5. To perform such other functions inherently related to his function as Legal Counsel of CNSC, and submit monthly work accomplishment reports to justify payment of compensation as legal consultant and counsel.^[4]

In a letter^[5] dated July 8, 2010, the Office of the Solicitor General (OSG) granted the request for deputation of Atty. Arejola as special attorney of the OSG authorized to represent CNSC and/or its officials and employees in all civil, criminal and administrative cases, but subject to the existing rules and regulations of the Department of Budget and Management (DBM) and respondent COA. However, in COA Legal Retainer Review (LRR) No. 2010-1586 dated December 2, 2010, Dr. Oñate's request for written concurrence was denied for violation of COA Circular No. 86-255^[7] dated April 2, 1986, as amended by COA Circular No. 95-011^[8] dated December 4, 1995, which was espoused in *Polloso v. Hon. Gangan*^[9] Accordingly, on February 15, 2011, the COA issued a Notice of Disallowance,^[10] which found the following persons liable for the disallowed amount of P184,649.25:

Atty. Alex A. Arejola	-	Claimant/Legal Counsel
Arthur Z. Elizes	-	Accountant III
Madelon B. Lee	-	Accountant III
Yodelito Icaro	-	MAA III
Ela Regondola	-	VP for Admin
Emma Sumaway	-	Budget Officer
Yolanda Gahol	-	Budget Officer
Dr. Wenifredo T. Ofiate	-	College President ^[11]

Dr. Oñate moved to reconsider the decision,^[12] but the COA Commissioners affirmed the questioned LRR. Relying on *Polloso v. Hon. Gangan and Santayana v. Alampay*,^[13] it was held that the payment for the legal services of Atty. Arejola shall be the personal liability of Dr. Ofiate as the official concerned who secured and who actually benefited therefrom. Hence, this petition praying that the COA Decision finding him solely liable be set aside.

The petition is granted.

Camarines Norte State College was created by Republic Act No. 7352.^[14] Under Executive Order (E.O.) No. 292, or the *Administrative Code of 1987*, a state college is classified as, a chartered institution.^[15] As such, only the OSG is authorized to represent CNSC and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers.^[16]

COA Circular No. 95-011 stresses that public funds shall not be utilized for the payment of services of a private legal counsel or law firm to represent government agencies in court or to render legal services for them. Despite this, the same circular provides that in the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the OSG or the Office of the Government Corporate Counsel (OGCC), as the case may be, and the written concurrence of the COA shall first be secured before the hiring or employment of a private lawyer or law firm. The prohibition covers the hiring of private lawyers to render any form of legal service - whether or not the legal services to be performed involve an actual legal controversy or court litigation.^[17] The purpose is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered

to the government, which is in line with the COA's constitutional mandate to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties.^[18]

The Court has invariably sustained the statutory authority of the OSG and the OGCC as well as the necessity of COA concurrence in the cases of government-owned and/or controlled corporations,^[19] local government units,^[20] and even a state college^[21] like the CNSC. We see no legal justification to deviate from the settled jurisprudence. Here, the COA noted, and Dr. Oñate never disputed, that while the OSG authorization was obtained the CNSC belatedly requested for the COA's concurrence on May 27, 2010,^[22] which is less than a week prior to the expiration of the contract on June 1, 2010. The rule is absolute; partial compliance or honest mistake due to ignorance of the law^[23] is not and can never be a valid defense.

Nonetheless, petitioner must not be entirely accountable for the refund of the disallowed amount. Evidence on record indubitably shows that he was properly armed with the necessary CNSC Board approval before he secured the legal services of Atty. Arejola. Consistent with COA Circular No. 86-255, as amended, in relation to Section 103 of Presidential Decree-No. 1445 (*Government Auditing Code of the Philippines*)^[24] as well as Section 52,^[25] Chapter 9, Title I-B, Book V and Section 43,^[26] Chapter V, Book VI of the Administrative Code, the board of trustees who approved Board Referendum No. 2, s. 2009,^[27] which granted authority to Dr. Oñate to enter into a retainer's contract with Atty. Arejola but did not require the prior conformity of the OSG and written concurrence of the COA, should also be held liable for the unauthorized disbursement of public funds.^[28] Indeed, when a government entity engages the legal services of private counsel or law firm, it must do so with the necessary authorization required by law; otherwise, its officials bind themselves to be personally liable for compensating such legal services. Moreover, while the private counsel or law firm, in this case Atty. Arejola, is likewise responsible for receiving the subject amount, such liability is without prejudice to the filing an action, if necessary, against the parties involved in the unlawful release of public funds.^[29]

WHEREFORE, the petition is **GRANTED**. COA Decision No. 2014-126 dated June 20, 2014 is **AFFIRMED WITH MODIFICATION**.

Petitioner Dr. Wenifredo T. Oñate, the CNSC Board of Trustees, and the other persons found liable for the disavowed amount of P184,649.25 in LRR No. 2010-158 dated December 2, 2010, are personally and solidarity liable for the reimbursement of the amount paid for the legal services rendered by Atty. Alex A. Arejola.

In the interest of due process, however, considering that the board of trustees were not impleaded in the case, the Commission on Audit is **DIRECTED** to **ORDER** them to file a memorandum and/or call a hearing to allow the presentation of evidence that may exempt them from any liability.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Perez,