



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0101**
Plaintiff, For: Violation of Section 3(h)
of R.A. 3019

Present

- versus -

ANTONIO R. FLOIRENDO, JR.,
Accused. **FERNANDEZ, SJ, J.,**
Chairperson
MIRANDA, J. and
VIVERO, J.
DE LA CRUZ,* J.
MORENO, J.**

Promulgated:

JAN 22 2021

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Antonio R. Floirendo, Jr.'s *Motion for Reconsideration With Motion to Set Case for Oral Arguments (Re: The Decision Dated 26 August 2020)*,¹ and the prosecution's *Comment/Opposition (Re: Accused Floirendo's Motion for Reconsideration with Motion to Set Case for Oral Arguments)*.²

The Court already ruled on the accused's *Motion to Set Case for Oral Arguments* in the Resolution dated November 25, 2020.

The accused prays that the Court reconsider, reverse and set aside its Decision dated August 26, 2020, and render a new one declaring him not guilty of the crime charged. He argues:

* Designated as Special Member of the Special Division of Five in view of the inhibition of J. Gomez-Estoesta (Per Administrative Order No. 12-C-2020 dated November 9, 2020)

** Designated as Special Member of the Special Division of Five (Per Administrative Order No. 5-C-2020 dated February 26, 2020)

¹ Dated September 8, 2020 and filed on even date

² Dated October 12, 2020 and filed by electronic mail on even date

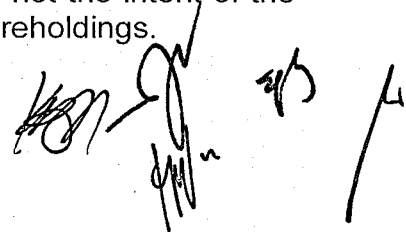
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1. The letter, spirit, and legislative intent of Sec. 3(h) of R.A. No. 3019, and of Sec. 14, Art. VI of the Constitution in relation to R.A. No. 6713, would establish that the law prohibits a "conflict of interest situation."
 - a. The Constitutional deliberations make it clear that what Sec. 14 of Art. VI seeks to prohibit is the Member of the Congress' use of his or her official position to influence the execution of a contract or grant of a franchise or special privilege, to further his or her financial or pecuniary interest.
 - i. The Constitution prohibits the President, Vice-President, Members of the Cabinet and their deputies or assistants, and Members of the Constitutional Commissions, from directly or indirectly participating in any business. This has been interpreted to include shareholdings and membership in the board of directors in a company.
 - ii. Members of the Constitutional Commissions are also prohibited from engaging in "active management" or control of any business which may be affected by the functions of the office.
 - iii. Sec. 14, Art. VI of the Constitution does not have similar prohibitions against participating in any business. Thus, it would appear that the provision does not prohibit a situation where a Member of Congress merely has shareholdings in a corporation that has a contract with the government.
 - b. The constitutional provision should be viewed in relation to R.A. No. 6713.
 - i. Under R.A. No. 6713, divestment is required only when there exists a conflict of interest.
 - ii. R.A. No. 6713 implements Sec. 14, Art. VI of the Constitution.
 - c. The intent in the enactment of Sec. 3(h) of R.A. No. 3019 is to prevent conflict of interest between a public official and interest in a private enterprise. The Senate deliberation would show that it was not the intent of the law to encompass insubstantial shareholdings.



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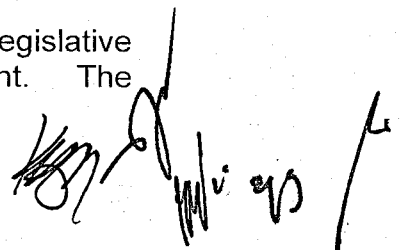
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2. The aforesaid provisions are animated by the same legislative intent. They must, therefore, be read together and harmonized. What is sought to be prohibited is a situation where the private affairs and interests of a public official conflict or interfere with the faithful and regular performance of his or her official duties and functions.
3. There is no conflict of interest in the present case.
 - a. He is not a director, officer, or substantial stockholder of TADECO during the time material to the case.
 - b. His shareholdings in TADECO amounts to a mere 0.89% of the company's outstanding shares of stock, which is not substantial, the same not being sufficient to elect a director of the corporation.
 - c. Even considering his shareholdings in ANFLOCOR, it would still not be sufficient to elect a director of TADECO.
 - d. His interests in TADECO are not opposed to, or affected by, his faithful performance of his official duty. The Congress had nothing to do with the contracts entered into by the BuCor.
 - e. He did not participate in the management of TADECO. Neither did he intervene or take part in the negotiation, approval, or implementation of the JVA, nor use his office or position for his personal or TADECO's gain.
4. The Court's reliance on *Teves v. Sandiganbayan* is misplaced. The ruling in said case supports the conclusion that there should be a conflict of interest.
 - a. R.A. No. 6713 requires divestment only when a conflict of interest arises.
 - b. *Teves* involves a specific law that only applies to a special group of public officers. The prohibition against pecuniary or financial interest in cockpits under R.A. No. 7160 is clear and unequivocal.
 - c. The prohibition under Sec. 89 (3) of R.A. No. 7160 is premised on conflict of interest. It prohibits local government officials or employees from having an interest in a cockpit because said cockpit must have been licensed by the concerned local government unit.
 - d. The Court's interpretation is contrary to the legislative intent behind the requirement of divestment. The



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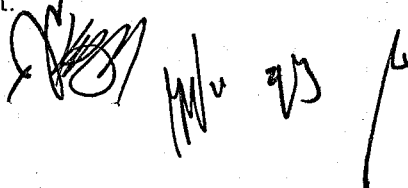
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deliberations in R.A. No. 6713 would show that divestment is required only when a conflict of interest exists.

5. Assuming a conflict of interest existed, he was no longer required to divest his shareholdings in TADECO because he already resigned from his position in TADECO as early as 1998.
 - a. Sec. 9 of R.A. No. 6713 provides:

Section 9. Divestment. – A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.
 - b. The words “and/or” means that the public official has the option of either resigning from the position in the private enterprise, or divesting himself or herself of his or her shareholdings therein, or do both. Once the public officer resigns from the corporation, he or she is no longer required to divest and vice versa. A public officer is not required to do both. Had it been the intention, the provision would have used the conjunction “and.”
 - c. He had resigned from his position as a member of the Board of TADECO in 1998. Having resigned, he is no longer required to divest his shareholdings therein.
6. The prosecution failed to prove the elements of Violation of Sec. 3(h) of R.A. No. 3019.
 - a. Mere ownership of nominal interest in a corporation is not prohibited by law and the Constitution.
 - b. There is no reason to presume that he violated the law and the Constitution by reason that his family owns the controlling shares in a company that transacts with the government.
 - c. It must be the accused who has a financial interest in a certain government contract. Here, he does not have financial interest in the subject JVA. TADECO, the party to the subject JVA, has a personality separate and distinct from him.
7. The second mode of Sec. 3(h) of R.A. No. 3019 requires allegation and proof of intent to gain, and overt acts of the accused using his or her public office to further his or her personal interest.

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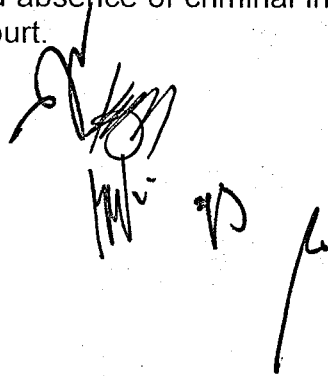
- a. In *Prieto v. Cariaga*,³ it was held that the interest that makes a public official's act fall within Sec. 3(h) of R.A. No. 3019 refers to the "intent to gain, to obtain pecuniary advantage or enrich himself materially while discharging his official duties x x x."
 - b. In *Neri v. Sandiganbayan*,⁴ the Supreme Court summarized the overt acts committed by Neri which justified his conviction.
 - c. In *Doromal v. Sandiganbayan*,⁵ the charge was premised on the fact of the accused's participation in the company as its President and its negotiations with the DECS and NMYC.
 - d. In *Caballero v. Sandiganbayan*,⁶ the Supreme Court reiterated that "[w]hat is contemplated in Sec. 3(h) of the Anti-Graft Law is the actual intervention in the transaction in which one has financial or pecuniary interest in order that liability may attach. For the law aims to prevent dominant use of influence, authority and power."
 - e. From the aforesaid rulings, it can be gleaned that mere possession of "substantial stockholdings" is not sufficient to establish a violation of Section 3(h) of R.A. No. 3019.
 - f. The prosecution failed to prove overt acts showing that he had intent to gain, or that he committed acts to further his interest and violate Sec. 3(h) of R.A. No. 3019 in relation to Sec. 14, Art. VI of the Constitution.
 - g. The 2003 JVA is a mere renewal of previous agreements between TADECO and BuCor. The original contract was executed as early as 1956, and had been renewed several times, even before he became a Member of Congress. He did not influence, or intervene in, the renewal of said contract.
8. Violation of a constitutional prohibition is intrinsically wrong because it goes against the sovereign will. Therefore, violation of Sec. 14, Art. VI of the Constitution should be considered *mala in se*, which requires active participation and criminal intent. His defense of good faith and absence of criminal intent should be given credence by the Court.

³ A.M. No. P-94-1061, March 13, 1995

⁴ G.R. No. 202243, August 7, 2013

⁵ G.R. No. 85468, September 7, 1989

⁶ G.R. Nos. 137355-58, September 25, 2007

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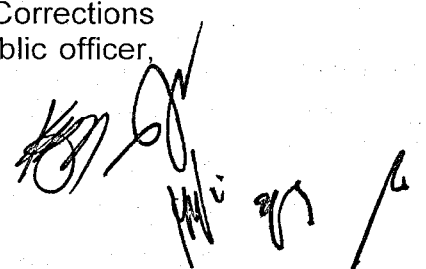
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9. A public official does not need to dispose of his or her shares in a corporation, as long as the public officer does not do anything for the firm and/or corporation in its contract with the government.
 - a. In *People v. Torre Franca*, the Court held that pecuniary or financial interest alone is not the evil sought to be prevented by the anti-graft law. Rather, it is the use of the office of the mayor for private gain, or taking of action, that is contrary to the spirit of Sec. 89 of the Local Government Code and Sec. 3(h) of the Anti-Graft Law which is prohibited.
 - b. Applying the two-pronged test in the aforecited case, it is evident that his mere ownership of nominal shareholdings in TADECO is insufficient for conviction under Sec. 3(h) of R.A. No. 3019.
10. He does not have pecuniary interest in the subject JVA.
 - a. The fact that his siblings and family relatives are listed as shareholders of TADECO in its 2003 General Information Sheet is insufficient to hold that he had pecuniary interest in the subject JVA.
 - b. In *People v. Zurbano*, the Court held that "the existence of relationship *per se* does not automatically translate to having direct or indirect financial interest in the subject contracts. x x x Mere allegation that the parties are related to each other is not conclusive proof of such pecuniary interest."

In its *Comment/Opposition*, the prosecution counters:

1. The accused's arguments are mere reiterations or rehashed versions of those in his *Memorandum* and earlier submissions. These had already been passed upon, and found to be without merit by the Court in the assailed Decision.
2. The prosecution undeniably established all the essential elements of Violation of Sec. 3(h) of R.A. No. 3019 beyond reasonable doubt.
 - a. The first element was established. At the time of the execution of the subject Joint Venture Agreement (JVA) by and between TADECO and the Bureau of Corrections (BuCor), the accused was a high-ranking public officer,



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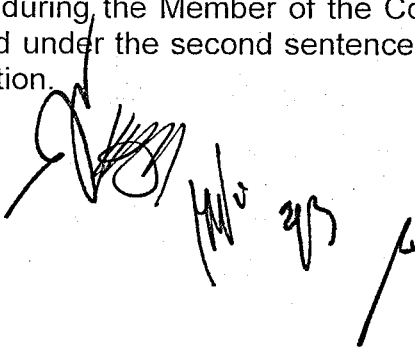
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being then the Representative of the Second (2nd) District of Davao del Norte.

- b. The second element was established.
 - i. In 2003, 2004 and 2005, the accused owned 75,000 shares of stocks worth ₱7,500,000.00 in TADECO. He also owned 537,950 shares of stock worth ₱53,798,000.00 in, and was a member of the Board of Directors of, ANFLOCOR, which owned the majority of TADECO's subscribed and paid-up capital stocks.
 - ii. The subject JVA allowed TADECO to continue utilizing the 5,308.36 hectares of land owned by the BuCor for TADECO's business operations. Because TADECO and ANFLOCOR have personalities separate from that of the accused, his pecuniary or financial interest in said JVA is indirect.
 - iii. There is no evidence to show that he divested himself of his stockholdings in TADECO and ANFLOCOR when the subject JVA was executed. On the contrary, the GIS of both corporations would show that he maintained his shares of stock after the execution of the JVA.
- c. The third element was established.
 - i. Sec. 14, Art. VI of the Constitution prohibits Members of the House of Representatives from having direct or indirect financial or pecuniary interest in any contract with the government, or any subdivision, agency, or instrumentality thereof, during his or her term of office.
 - ii. The accused had indirect financial or pecuniary interest in the subject JVA between TADECO and the BuCor. At the time of the execution of the JVA, the accused was the Representative of the Second (2nd) District of Davao del Norte, in violation of said constitutional provision.
3. Merely having direct or indirect financial interest in any contract with, or in any franchise or special privilege granted by the Government, or any of its subdivisions, agencies, or instrumentalities, during the Member of the Congress' term of office is prohibited under the second sentence of Sec. 14, Art. VI of the Constitution.



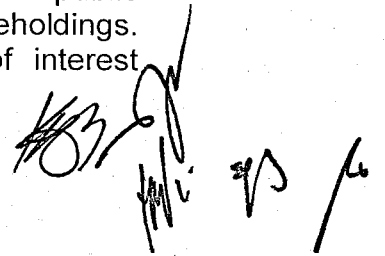
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- a. Actual conflict of interest is not required under the second sentence of Sec. 14, Art. VI of the Constitution. The Constitutional deliberations would show that Sec. 14 was intended to be all-encompassing and all-embracing, regardless of whether an actual conflict of interest exists.
 - b. The Member of Congress' actual use of the official position to influence the execution of the contract with, or the grant of a franchise or special privilege by the Government, to further his or her financial interest is not required for the prohibition to apply. The deliberations would show that the prohibition seeks to prevent the situation wherein a Member of Congress might use his or her influence for his or her own interest.
 - c. The deliberations further show that the prohibited interests are specific to contracts, franchises, or special privileges actually granted by the government.
4. The accused is charged under the second mode of Violation of Sec. 3(h) of R.A. No. 3019, and not for having conflict of interest under R.A. No. 6713. Sec. 3(h) of R.A. No. 3019 and Sec. 14, Art. VI of the Constitution do not qualify the amount of the offender's financial interest in a business, contract, or transaction.
- a. Had the intention been to cover only substantial stockholders of a corporation, and to exclude those with minor stockholdings, the framers of the Constitution would have stated it.
 - b. R.A. No. 6713 and Sec. 14, Art. VI of the Constitution are entirely independent of each other. The provisions of R.A. No. 6713 applied to the accused because he was a public officer. In addition, Sec. 14, Art. VI of the Constitution also applied to the accused because he was a Member of the Congress.
5. Sec. 9 of R.A. No. 6713 does not give the public official the option to either resign from the position in the private enterprise, or to divest himself or herself of shareholdings therein, or both. The use of the word "and" applies to a public official who is both a director or officer, and a stockholder. The use of the word "or" applies to a public official who is a stockholder only.
6. *Teves v. Sandiganbayan* applies to the present case. A reading of the case would show that the existence of conflict of interest under R.A. No. 6713 is not the only situation where a public officer is required to make a divestment of shareholdings. Divestment is also required where the holding of interest



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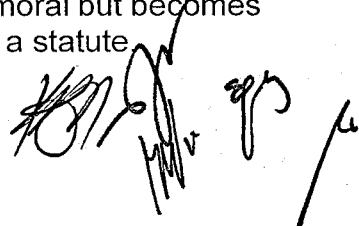
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becomes prohibited by the Constitution or any law. The same principle applies to the present case.

7. The second mode of Violation of Sec. 3(h) of R.A. No. 3019 does not require allegations and proof of intent to gain, or overt acts committed by the accused using his or her office to further his or her own personal interest.
 - a. Under the second mode, mere possession of financial or pecuniary interest prohibited under the Constitution is sufficient for conviction.
 - b. The cases cited by the accused pertain to the first mode of Violation of Sec. 3(h) of R.A. No. 3019, where the public officer intervenes or takes part in his or her official capacity in connection with his or her financial or pecuniary interest in any business, contract or transaction.
 - c. That the subject JVA was a renewal of previous agreements between TADECO and the BuCor does not relieve the accused from liability under the second mode. He remained to be in possession of financial or pecuniary interest, which is prohibited under Sec. 14, Art. VI of the Constitution.
8. That TADECO has a personality separate from the accused will not absolve him of liability under Sec. 3(h). It merely renders his interest in the subject JVA indirect. Subscribing to the accused's contention will render the prohibition under Sec. 14, Art. VI of the Constitution and Sec. 3(h) of R.A. No. 3019 nugatory.
9. The accused's inchoate interest as a stockholder of TADECO refers to his interest in corporate properties and assets, and not to his shareholdings in said corporation.
10. The accused's financial interest in the subject JVA is shown by the fact that he is a shareholder of both TADECO and ANFLOCOR at the time of said JVA's execution, and not by the fact that his immediate family members and relatives are listed as shareholders of TADECO in its 2003 GIS.
11. The second sentence of Sec. 14, Art. VI of the Constitution, and the second mode of Violation of Sec. 3(h) of R.A. No. 3019 are *mala prohibita*.
 - a. *Malum in se* is inherently wrong or immoral in itself, while *malum prohibitum* is not inherently immoral but becomes wrong only because it is prohibited by a statute.



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- b. The second sentence of Sec. 14, Art. VI of the Constitution is *malum prohibitum*. Under said provision, Senators and Members of the House of Representatives are not prohibited from having direct or indirect financial interests *per se*. Thus, having such financial interests is not inherently immoral or wrong in itself.
- c. Similarly, the second mode of Violation of Sec. 3(h) of R.A. No. 3019 does not prohibit a public officer from having direct or indirect financial or pecuniary interest in any business, contract, or transaction *per se*. It becomes wrong only when holding of such interest is prohibited by the Constitution or by some other law.
- d. The second mode of Violation of Sec. 3(h) of R.A. No. 3019 being *mala prohibita*, good faith and lack of criminal intent on the accused's part are not valid defenses.

THE COURT'S RULING

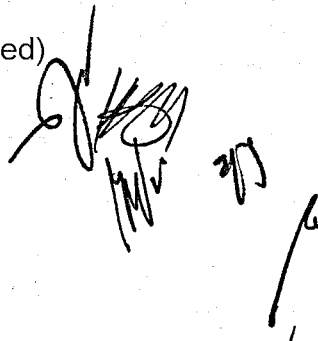
The Court resolves to deny the accused's *Motion for Reconsideration*.

Actual conflict of interest or use of influence is not required for the prohibition under Sec. 14, Art. VI of the Constitution to apply.

Sec. 14, Art. VI of the Constitution provides:

Section 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.

(underscoring supplied)

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Citing the deliberations of the Constitutional Commission, the accused argues that the aforementioned provision of the Constitution contemplates a situation where a Member of Congress is in an actual conflict of interest position, or one where a Member of Congress actually uses his or her influence in the execution of a contract or grant of a franchise or privilege. An examination of the deliberations would show otherwise.

To be sure, as pointed out by the accused, the provision deals with conflict of interest, as well as the Member of Congress' use of influence. The pertinent portions of the deliberations read:

(On conflict of interest)

Sections 18 and 19 of the proposed Article deal with conflict of interests. I think this is a good attempt between the two sections to hold the Members of the legislature accountable for the integrity of their commitment to the public interest so that conflict of interests can be prevented and avoided.⁷ x x x

(On the use of influence)

MR. FOZ: That would be quite unfair. The reason for the prohibition against financial interest is precisely to avoid a situation where a Member of Congress will be able to use his influence in order to push through, for instance, a contract with the government, and also to acquire a franchise or special privilege granted by government not only for himself but on behalf of others, perhaps his clients. But when he is no longer a Member of Congress, he loses the same influence which he would otherwise wield if he were a Member of Congress. So it would be quite unjust for the prohibition to follow him even if he is no longer a Member of Congress.⁸

(underscoring supplied)

However, the aforementioned portions do not support the accused's contention that the prohibitions under Sec. 14, Art. VI of the Constitution apply only when there is an actual conflict of interest situation, or when there is actual use of influence on the part of the Member of Congress. It is clear from the deliberations that the objective of the prohibitions in said provision is not only to prohibit conflict of interests, or the use of influence for the furtherance of their

⁷ Vol. II, R.C.C. No. 36, July 22, 1986

⁸ Vol. II, R.C.C. No. 37, July 23, 1986

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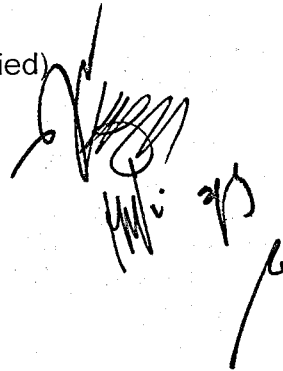
financial interests, on the part of Members of Congress, but to prevent such situations from arising. The accused's insistence that Sec. 14, Art. VI of the Constitution should not be read separately from Sec. 9 of R.A. No. 6713, which specifically deals with actual conflict of interest situations, only further shows that contrary to his contention, the application of the prohibitions in Sec. 14, Art. VI of the Constitution is not limited to situations involving actual conflict of interest or actual use of influence.

Had the framers intended the provision to apply only to actual conflict of interest situations, or to those involving actual use of influence, the provision would have been worded as such. But as worded in its current form, the provision is intended to be all-encompassing and all-embracing, to apply to a wide range of situations from which conflict of interest or such use of influence may arise. This is supported by the deliberations, the pertinent portion of which reads:

MR. DAVIDE: Madam President, the present provision is taken from the original 1973 Constitution and partly from the 1935 Constitution. The particular proposal is in respect to any contract but that is already qualified by "directly or indirectly" – as the wording goes – which means that we cannot perceive an interest, whether direct or indirect, unless it is financial, because it has reference to any contract, a franchise or special privilege granted by the government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation during his term. The concern of the Commissioner had already been remedied, in effect, rather in a very explicit way by the Regalado amendment this morning which amended the last sentence of this section and which now reads as follows: "He shall not intervene in any matter before any office of the government for his pecuniary benefit, or where he may be called upon to act on account of his office."

So we believe that, as worded, the provision is so all-encompassing and all-embracing that we will have a Senator or a Member of the House who cannot even practice his legal profession, nor be interested in any contract for that matter, nor can he even intervene in any cause or matter before any office for his pecuniary benefit or otherwise, where he may be called upon to act on account of his office. We have installed or enthroned a Senator or a Member of the legislature whom we can consider to be perhaps, like Caesar's wife, always above suspicion.⁹

(underscoring supplied)



⁹ Vol. II, R.C.C. No. 37, July 23, 1986

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To put it more concretely, the fact that a Member of Congress has financial interest in a contract with the Government does not necessarily mean that such Member of Congress will inevitably work in the furtherance of such financial interest, to the detriment of public interest, but the framers of the Constitution deemed it wise to prevent such eventuality from arising by putting the aforesaid prohibitions in place.

Divestment is required not only when conflict of interest arises, but also when holding of the interest becomes prohibited.

According to the accused, the Court's reliance on *Teves v. Sandiganbayan*¹⁰ is misplaced because said case actually supports his assertion that divestment is necessary only when there is a conflict of interest. He further contends that the use of the words "and/or" in Sec. 9 of R.A. No. 6713 means that even assuming that there was initially a conflict of interest, it was unnecessary for him to divest himself of his shareholdings in TADECO because he had already resigned from his position as a member of the Board as early as 1998. These contentions are untenable.

First, Sec. 9 of R.A. No. 6713, cited by the accused, reads:

Sec. 9. Divestment. – A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.

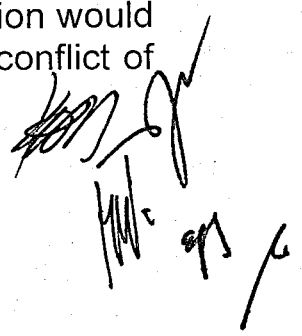
The same rule shall apply where the public official or employee is a partner in a partnership.

The requirement of divestment shall not apply to those who serve the Government in an honorary capacity nor to laborers and casual or temporary workers.

(underscoring supplied)

The accused's interpretation of the aforequoted provision would lead to an absurdity. Following his line of reasoning, if the conflict of

¹⁰ G.R. No. 154182, December 17, 2004



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interest arises from **both** the position **and** the shareholdings or interest, and the provision gives the public official or employee concerned the choice of either resigning from the position in the private business enterprise, **or** divesting himself or herself of his or her shareholdings or interest, then the conflict of interest situation would still remain.

In *Secretary of Justice v. Koruga*,¹¹ the Supreme Court held that statutes should receive a sensible construction. Courts are not to give words meanings that would lead to absurd or unreasonable consequences. *Viz.:*

The general rule in construing words and phrases used in a statute is that in the absence of legislative intent to the contrary, they should be given their plain, ordinary, and common usage meaning. However, a literal interpretation of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contract the evident meaning of the statute taken as a whole. After all, statutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion. Indeed, courts are not to give words meanings that would lead to absurd or unreasonable consequences.

A more sensible interpretation of Sec. 9 of R.A. No. 6713 would be, that in case the conflict of interest arises from **both** the position **and** the shareholdings or interest, then the public official or employee concerned must **both** resign from the position **and** divest himself or herself of his or her shareholdings or interest.

Without question, the purpose of divestment under said provision is to prevent a conflict of interest situation from arising. The words "and/or" are used so the provision would apply to situations where conflict of interest arises as a result of (1) the position held by the concerned public official or employee in a private business enterprise only, **or** (2) his or her shareholdings or interest only, or (3) both the position held **and** the shareholdings or interest.

Using the more sensible interpretation of Sec. 9 of R.A. No. 6713, assuming that there was a conflict of interest, the accused should have resigned from his position in TADECO **and** divested himself of his shareholdings therein.

¹¹ G.R. No. 166199, April 24, 2009

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In any event, as this Court held in the assailed Decision, conflict of interest under Sec. 9 of R.A. No. 6713 is not the only situation wherein a public officer must make a divestment of shareholdings. At the risk of being repetitious, the pertinent portion¹² of the assailed Decision is hereunder quoted:

Verily, under Sec. 9 of R.A. No. 6713, a public official or employee is required to divest himself or herself of his or her shareholdings within sixty (60) days from assumption of office when a conflict of interest arises. But this is not the only situation where a public officer is required to make a divestment of shareholdings.

In *Teves v. Sandiganbayan*, therein accused owned a cockpit since 1983, prior to the effectivity of Republic Act No. 7160 (R.A. No. 7160), which prohibited local officials from having pecuniary interest in cockpits. However, he did not divest himself of the ownership of said cockpit upon the effectivity of said law. The Supreme Court held that the prosecution proved that the accused possessed prohibited interest, and that therein accused public official, as well as his wife, a private individual, should have divested themselves of their ownership over the cockpit upon the effectivity of R.A. No. 7160.
Viz.:

x x x

Clearly, there is a need for a public officer to make a divestment of shareholdings, or any pecuniary or financial interest, once the possession of such pecuniary or financial interest becomes prohibited, regardless of whether or not a situation of conflict of interest has arisen.

There is nothing in the Supreme Court's ruling in *Teves* that would support the accused's contention that the Supreme Court's conclusion therein, *i.e.*, that therein accused public officer possessed prohibited interest, was premised on conflict of interest.

An examination of the pertinent provisions of B.P. Blg. 337¹³ and R.A. No. 7160¹⁴ would show that under both laws, cockpits are regulated by the Sangguniang Bayan and Sangguniang Panlungsod.¹⁵ Under both laws, ordinances are acted upon by the Mayor.¹⁶ However, the express prohibition against holding interests in cockpits only

¹² Decision dated August 26, 2020, pp. 16-18

¹³ Local Government Code

¹⁴ Local Government Code of 1991

¹⁵ B.P. Blg. 337. Sec. 149 (1) (oo) and Sec. 177 (jj); R.A. No. 7160. Sec. 447 (a) (3) (v) and Sec. 458 (a) (3) (v)

¹⁶ B.P. Blg. 337. Sec. 152; R.A. No. 7160. Sec. 54

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appears in R.A. No. 7160. The pertinent provisions of B.P. Blg. 337 and of R.A. No. 7160 read:

B.P. Blg. 337

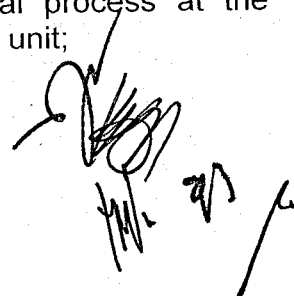
Sec. 41. Officials not to Engage in business Transaction or Possess Pecuniary Interest. – It shall be unlawful for any local government official, directly or indirectly, individually or as a member of a firm:

- (1) To engage in any business transaction with the local government unit of which he is an official or over which he has the power of supervision, or with any of its authorized officials, boards, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;
- (2) To purchase any real estate or other property forfeited in favor of such unit which shall be sold for unpaid taxes or assessment, or by virtue of legal process at the suit of said unit;
- (3) To be surety for any person having contract or doing business with the local government unit for the performance of which surety may be required.

R.A. No. 7160

Sec. 89. Prohibited Business and Pecuniary Interest. –

- (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:
 - (1) Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;
 - (2) Hold such interests in any cockpit or other games licensed by a local government unit;
 - (3) Purchase any real estate or other property forfeited in favor of such local government unit for unpaid taxes or assessment, or by virtue of a legal process at the instance of the said local government unit;



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- (4) Be a surety for any person contracting or doing business with the local government unit for which a surety is required; and
 - (5) Possess or use any public property of the local government unit for private purposes.
- (b) All other prohibitions governing the conduct of national public officers relating to prohibited business and pecuniary interest so provided for under Republic Act Numbered Sixty-seven thirteen (R.A. No. 6713) otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" and other laws shall also be applicable to local government officials and employees.

(underscoring supplied)

On the other hand, the pertinent portion of *Teves* reads:

Even if the ownership of petitioner Edgar Teves over the cockpit were transferred to his wife, still he would have a direct interest thereon because, as correctly held by respondent Sandiganbayan, they remained married to each other from 1983 up to 1992, and as such their property relation can be presumed to be that of conjugal partnership of gains in the absence of evidence to the contrary. Article 160 of the Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains exclusively to the husband or to the wife. And Section 143 of the Civil Code declares all the property of the conjugal partnership of gains to be owned in common by the husband and wife. Hence, his interest in the Valencia Cockpit is direct and is, therefore, prohibited under Section 89 (2) of the LGC of 1991, which reads:

Section 89. Prohibited Business and Pecuniary Interest. – (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

(2) Hold such interests in any cockpit or other games licensed by a local government unit...

x x x

As early as 1983, Edgar Teves was already the owner of the Valencia Cockpit. Since then until 31 December 1991, possession by a local official of pecuniary interest in a cockpit was not yet prohibited. It was before the effectivity of the LGC of 1991, or on January 1990, that he transferred the management of the cockpit to his wife Teresita. In accordance therewith it was Teresita who

