



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, SB-14-CRM-0107
Plaintiff, For: Violation of Section 3(e)
of R.A. 3019

Present

- versus -

VIRGILIO PONCIANO A. OCAYA
Accused.

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.

Promulgated:

JUL 05 2022 [Signature]

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Virgilio Ponciano A. Ocaya's Motion for Reconsideration,1 and the prosecution's Comment/Opposition (Re: Accused Ocaya's Motion for Reconsideration Dated April 1, 2022).2

On March 18, 2022, the Court rendered its judgment convicting the accused of Violation of Sec. 3(e) of Republic Act No. 3019 (R.A. No. 3019). The dispositive portion of the Decision3 reads:

WHEREFORE, accused VIRGILIO PONCIANO A. OCAYA is found GUILTY beyond reasonable doubt of Violation of Sec. 3(e) of Republic Act No. 3019, and is accordingly sentenced to suffer the penalty of imprisonment of six (6) years and one (1) month, as minimum, to eight (8) years, as maximum, with perpetual disqualification from public office.

1 Dated April 1, 2022; Record, Vol. 10, pp. 263-420
2 Dated April 11, 2022; Record, Vol. 10, pp. 421-438
3 Record, Vol. 10, pp. 208-257

[Signatures]

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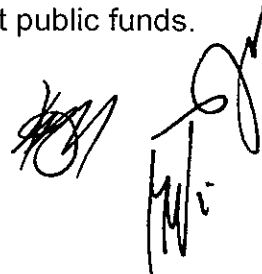
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The accused is **DIRECTED** to return to the Presidential Commission on Good Government (PCGG) the amount of One Hundred Twenty-Nine Thousand Six Hundred Pesos (₱129,600.00), which he received as double compensation therefrom from January to June 2003.

SO ORDERED.

In his instant *Motion for Reconsideration*, the accused prays that the Court reverse and set aside the said Decision, and render a judgment acquitting him of *Violation of Sec. 3(e) of R.A. No. 3019*. He avers:

1. The prosecution failed to prove beyond reasonable doubt the existence of the elements of Violation of Sec. 3(e) of R.A. No. 3019.
2. His position as Deputy Administrator for Administration and Legal Affairs (DA-ALA) of Metropolitan Waterworks and Sewerage System – Regulatory Office (MWSS-RO) is not a public office.
 - a. MWSS-RO was not created by law, but by contract, *i.e.*, the two (2) concession agreements executed in 1997.
 - i. The President's power of control over, and to reorganize, executive agencies does not include the power to create a public office.
 - ii. There is no express provision in law providing for the creation of MWSS-RO.
 - b. MWSS-RO does not use public funds, but the concession fees paid by private corporations.
 - i. In *Genuino v. Commission on Audit*, it was held that the Operating Expenses Fund of Philippine Amusement and Gaming Corporation (PAGCOR), a government-owned or -controlled corporation, is not under Commission on Audit's (COA) audit jurisdiction because COA's jurisdiction is limited to funds that are actually remitted to the National Government.
 - ii. MWSS-RO's funds came from the concession fees paid by the private concessionaires to MWSS. The said funds were never transmitted to the National Government, and are thus, not public funds.



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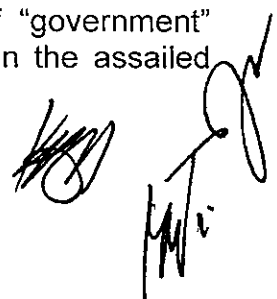
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- iii. His salary as DA-ALA does not constitute compensation from the government.
 - c. His termination was not subject to the review of the Office of the President, but by an appeals panel.
 - d. The revisions of the concession agreements in 2021 show that MWSS-RO was not a public office at the time he worked thereat in 2003.
3. His alleged additional or double engagement as Legal Counsel of the Presidential Commission on Good Government (PCGG) is not considered employment in the government service.
- a. Prosecution witness Ma. Cecilia C. Flores testified that his position at PCGG is not a plantilla position, and that he can neither be considered a regular nor contractual employee.
 - b. As PCGG Legal Counsel, no contributions for GSIS, Pag-IBIG and PhilHealth were not deducted from his compensation. Furthermore, he did not receive thirteenth (13th) month pay. Finally, his attendance at work was not monitored.
4. The prosecution failed to prove that he received compensation from PCGG. The payrolls it presented are mere photocopies, and it failed to establish the requirements for the admission of secondary evidence.
5. His purported receipt of salaries does not constitute evident bad faith.
- a. He could not have acted with evident bad faith because there are difficult questions of law regarding the status of MWSS-RO, and whether his position in PCGG makes him a government employee.
 - b. He honestly believed that MWSS-RO was not a public office, and he deduced that his engagement at PCGG was not considered government service.

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

1. MWSS-RO is a public office created pursuant to authority of law.
 - a. MWSS-RO falls within the definition of "government" under Section 2(b) of R.A. No. 3019. In the assailed



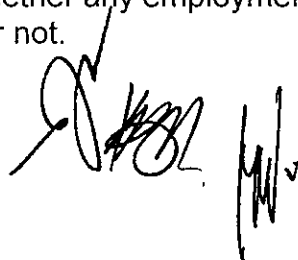
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Decision, the Court thoroughly discussed MWSS-RO's nature as a public office.

- b. There is no law expressly providing for the creation of MWSS-RO. The same was created by authority of law, as the MWSS Charter, as amended by Presidential Decree No. 425, delegates to MWSS the power to create branches and agencies necessary for the conduct of its affairs, and authorizes the MWSS Board of Trustees to create positions in MWSS.
2. MWSS-RO's funds are allocated from MWSS Corporate Office's (MWSS-CO) budget, and are thus, public funds.
 - a. *Genuino v. COA* merely ruled on COA's audit jurisdiction over PAGCOR. It did not rule that funds that have not been transmitted to the National Government are not public funds. The Supreme Court even ruled that PAGCOR's resources are public in nature, but there is a special law which limits COA's audit jurisdiction over PAGCOR's funds.
 - b. There is no special law that specifically removes MWSS-RO's funds from COA's audit jurisdiction.
 - c. MWSS-RO's budget is given to it by MWSS-CO. Furthermore, MWSS-RO's corporate operating budget is subject to the approval of the Department of Budget and Management.
 3. MWSS-RO officials are subject to the jurisdiction of the Civil Service Commission, Office of the Ombudsman, and the Sandiganbayan.
 4. The revised concession agreements purportedly executed on March 31, 2021 were not presented during trial, and cannot be alleged only in the accused's present *Motion for Reconsideration*. The accused's claim that the 2021 revisions made the MWSS-RO a public office even contradicts his defense that a public office cannot be created by the concession agreements.
 5. The accused's position as PCGG Legal Counsel on a full-time basis is government service.
 - a. Witness Flores' statement on the nature of the accused's employment in PCGG was her mere opinion. She is not competent to declare whether any employment in PCGG is government service or not.

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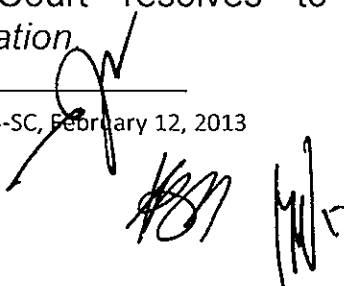
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- b. The accused should have adduced evidence to prove that he believed that his work as PCGG Legal Counsel is not government service, but he did not.
 - c. In *Re: Request of (Ret.) Chief Justice Artemio V. Panganiban for Recomputation of His Creditable Service for the Purpose of Recomputing His Retirement Benefits*,⁴ the Supreme Court recognized former Chief Justice Artemio Panganiban's work as legal counsel to the Department of Education, and as consultant to the Board of National Education, as government service.
6. The prosecution sufficiently established the accused's receipt of compensation from both MWSS-RO and PCGG.
- a. The Court had already ruled on the admissibility of the PCGG payrolls, and admitted the same. The prosecution presented several witnesses to identify the said payrolls, and witness Luzviminda Torren even testified that she or her subordinates handed to the accused his salary in the form of cash.
 - b. As early as in his *Counter-Affidavit* dated June 3, 2004, the accused admitted that he simultaneously received compensation from PCGG and MWSS-RO.
7. The accused acted with evident bad faith when he willfully obtained additional employment with PCGG and received compensation from both MWSS-RO and PCGG.
- a. At the time the accused was employed with both agencies, he knew that his positions constitute public service.
 - b. The accused knew that he held public office because of his duties and responsibilities as DA-ALA.
 - c. He raised his uncertainty as to the nature of his position in PCGG for the first time in his *Memorandum*, and he did not present evidence to support his claim that his work with PCGG was not government service.

THE COURT'S RULING

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

⁴ A.M. No. 10-9-15-SC, February 12, 2013



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*The accused's position as DA-ALA
at MWSS-RO was a public office*

The accused insists that he was not a public officer when he held the position of DA-ALA because MWSS-RO is not a public office. He argues that the President had no authority to create a public office, and the same cannot be created by contract. The Court had already addressed this matter in the Decision dated March 18, 2022, wherein the Court discussed at length the creation of MWSS-RO, and held that MWSS-RO is a public office created by authority of law. For convenience, the pertinent portion⁵ of the assailed Decision is hereunder quoted:

The MWSS-RO falls within the definition of "government" under Sec. 2(a) of R.A. No. 3019.

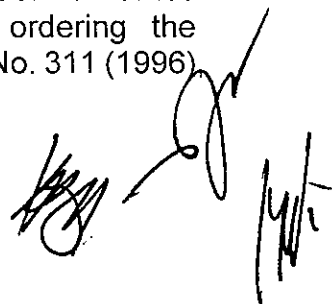
First, a discussion on the pertinent laws and issuances that eventually led to the creation of the MWSS-RO.

The MWSS is a government corporation created in 1971, under Republic Act No. 6234 (R.A. No. 6234). Under the said law, the MWSS shall "own and/or have jurisdiction, supervision and control over all waterworks and sewerage system in the territory comprising the cities of Manila, Pasay, Quezon, Cavite and Caloocan, and the municipalities of Antipolo, Cainta, Las Piñas, Makati, Malabon, Mandaluyong, Marikina, Montalban, Navotas, Parañaque, Pasig, Pateros, San Juan, San Mateo, Taguig, Taytay, all of Rizal Province, the municipalities of Bacoor, Imus, Kawit, Noveleta, Rosario, all of Cavite province and Valenzuela, Bulacan."

More than two decades later, in 1995, Republic Act No. 8041 (R.A. No. 8041) was enacted, and authorized the President to "enter into negotiated contracts for the financing, construction, repair, rehabilitation, improvement and operation of water facilities and projects related to increasing water supply, its treatment and its distribution to industrial and household consumers," and to reorganize the MWSS and the Local Waterworks and Utilities Administration (LWUA), including the privatization of any or all segments of the said agencies, their operations or facilities, if necessary, to make them more effective and innovative in addressing the looming water crisis.

Pursuant to R.A. No. 8041, then President Fidel V. Ramos issued Executive Order (E.O.) No. 286 (1995), ordering the reorganization of the MWSS and the LWUA; and E.O. No. 311 (1996)

⁵ Decision dated March 18, 2022, pp. 35-39; Record, Vol. 10, pp. 243-247



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ordering the MWSS to enter into arrangements that will result in the involvement or participation of the private sector in the segments, operations and/or facilities of the MWSS. Under E.O. No. 311, such participation includes franchising, concession, management, or other such arrangements.

On February 21, 1997, pursuant to R.A. No. 8041 and the said Executive Orders, the MWSS entered into separate Concession Agreements with Manila Water, and with Maynilad. Art. 11.1 of the Concession Agreements provided for the organization of the MWSS-RO, the functions of which include monitoring the awarded Concession Agreements, and reviewing and monitoring water supply and sewerage rates. Article 11.1 of Concession Agreements reads:

ARTICLE 11. REGULATORY OFFICE

11.1 Organization

The MWSS Board of Trustees shall establish and fund a regulatory office (the "Regulatory Office") to be organized and operated in a manner consistent with the description contained in Exhibit A hereto, subject to such changes thereto that the MWSS Board of Trustees may make from time to time, and shall have the functions and powers described in that Exhibit. Decisions of the Regulatory Office requiring action by the MWSS Board of Trustees, including decisions affecting the level of Standard Rates, shall promptly be submitted to the Board in accordance with Section 7.1 hereof.

(emphasis and underscoring supplied)

Item 1 of the "Exhibit A" mentioned in Article 11.1 reads:

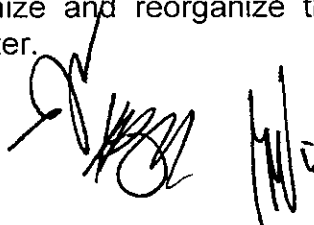
Organization and Operation of the Regulatory Office

1. General

The Regulatory Office shall be established under the jurisdiction of the MWSS Board of Directors, pursuant to Section 4(c) of the MWSS Charter and in accordance with other applicable laws and regulations, not less than 30 days after the Commencement Date. No change will be made to the MWSS Charter in connection with the establishment of the Regulatory Office. Rather, the powers and responsibilities of the Regulatory Office shall be as set out in the Concessionaire Agreement, including this Exhibit A.

(underscoring supplied)

From a cursory reading of the aforequoted portions of the Concession Agreements, it is immediately apparent that although the Concession Agreements indeed provide for the organization of the MWSS-RO, the said office was not created by the Concession Agreements, but pursuant to the MWSS Board of Trustees' power to organize and reorganize the MWSS, as provided in the MWSS Charter.



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In *Secretary of the Department of Transportation and Communications (DOTC) v. Mabalot*, the Supreme Court was called upon to resolve the issue of whether the President, through the Secretary of the DOTC, may issue an order for the creation and establishment of the Land Transportation Franchising Regulatory Board – Cordillera Administrative Region (LTFRB-CAR) Regional Office. Ruling in the affirmative, the Supreme Court explained that there are three modes by which a public office may be created, *i.e.*, (1) by the Constitution, (2) by law, or (3) by authority of law. The creation and establishment of the LTFRB-CAR Regional Office was made pursuant to the third mode. *Viz.:*

At this point, it is *apropos* to reiterate the elementary rule in administrative law and the law on public officers that a public office may be created through any of the following modes, to wit, either (1) *by the Constitution (fundamental law)*, (2) *by law (statute duly enacted by Congress)*, or (3) *by authority of law*.

Verily, Congress can delegate the power to create positions. This has been settled by decisions of the Court upholding the validity of reorganization statutes authorizing the President to create, abolish or merge offices in the executive department. Thus, at various times, Congress has vested power in the President to reorganize executive agencies and redistribute functions, and particular transfers under such statutes have been held to be within the authority of the President.

(underscoring supplied)

Similar to the LTFRB-CAR Regional Office, the MWSS-RO was created by authority of law. The pertinent provisions of R.A. No. 6234, as amended by Presidential Decree No. 425 (1974), read:

Sec. 2. Creation, Name, Domicile and Jurisdiction.

x x x

(b) The domicile and principal place of business of the System shall be in the City of Manila. The System shall have such branches and agencies as may be necessary for the proper conduct of its affairs.

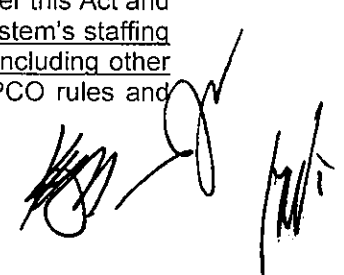
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Sec. 4. The Board of Trustees; Composition, Qualifications; Tenure; Power and Duties. – x x x

The Board, moreover, shall have the following specific powers and duties:

x x x

(c) Subject to the provisions of existing laws and regulations, and upon the recommendations of the General Manger, or motu proprio, to organize, reorganize in a manner other than what is provided for under this Act and Section 3 of Republic Act No. 4177, and determine the System's staffing pattern and the number of personnel, to fix their salaries including other emoluments, and to define their power and duties. WAPCO rules and



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regulations shall not apply to the System; however, for the above purpose, the Board shall take into consideration similar staffing patterns and salary ranges obtaining in other government corporations of the same category as the System;

(underscoring supplied)

The aforementioned provisions show that the MWSS-RO was created by authority of law, and is a part, or an agency, of the MWSS. In R.A. No. 6234, the Congress delegated to the MWSS—which acts through its Board of Trustees—the power to create branches and agencies necessary for the conduct of its affairs. Thereafter, then President Ferdinand E. Marcos, exercising legislative powers, issued Presidential Decree No. 425, which expressly authorized the MWSS Board of Trustees to create positions in the MWSS. Notably, Exhibit A of the Concession Agreements cited Sec. 4(c) of the MWSS Charter as the legal basis for the establishment of the MWSS-RO.

(citations omitted)

The accused then argues that he cannot be considered a public officer because MWSS-RO's funds are not public funds, and because his termination was not subject to the review of the Office of the President, but by an appeals panel. Citing *Genuino v. Commission on Audit*,⁶ the accused contends that MWSS-RO's funds are not public funds because the concession fees paid by the private concessionaires were not transmitted to the national government.

The accused's contention is untenable. In *Genuino*, the Supreme Court held that COA has limited jurisdiction over PAGCOR's funds because PAGCOR's Charter expressly limited COA's audit jurisdiction to the 5% franchise tax and 50% share of the Government in PAGCOR's gross earnings. *Viz.:*

Petitioner's contention that COA has limited audit jurisdiction over PAGCOR finds basis in its very own Charter. Specifically, Section 15 of P.D. No. 1869 reads:

TITLE V
Government Audit

SEC. 15. *Auditor* – The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said

⁶ G.R. No. 230818, June 15, 2021

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salaries and other expenses shall be paid by the Corporation. **The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.** (Emphasis supplied)

The aforementioned provision is unequivocal that with respect to PAGCOR, the COA's audit jurisdiction is limited to the 5% franchise tax and 50% share of the Government in its gross earnings. This express limitation on COA's general audit power was purposely adopted to provide some flexibility in PAGCOR'S operations, to wit:

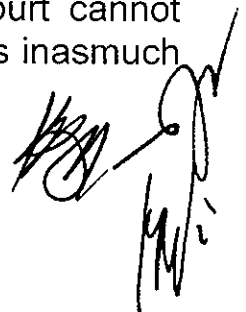
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Contrary to the accused's claim, nowhere in *Genuino* did the Supreme Court rule that COA had limited jurisdiction over PAGCOR's funds because a GOCC's funds must be transmitted to the national government for the same to be considered public funds. As pointed out by the prosecution, although the Supreme Court did not rule on the nature of PAGCOR's funds, it recognized that PAGCOR'S resources are public in nature, and would have been under COA's audit jurisdiction if not for the provision in the PAGCOR Charter expressly limiting COA's audit jurisdiction. *Viz.:*

Despite COA's general mandate to ensure that "all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, x x x" the same cannot prevail over a special law such as P.D. No. 1869 or the 'PAGCOR Charter." In granting a special charter to PAGCOR, legislature is presumed to have specially considered all the relevant factors and circumstances in granting the same, being mindful of PAGCOR'S dual role: first, to operate and to regulate gambling casinos and second, to generate sources of additional revenue to fund infrastructure and socio-civic projects, and other essential public services.

At any rate, as this Court ruled in the assailed Decision, there is no question that the accused, as DA-ALA, held public office because MWSS-RO was created by authority of law. The source of MWSS-RO's funds and the body with the authority to review the termination of members of MWSS-RO will not change MWSS-RO's nature as an agency, or a part, of MWSS, a GOCC.

Finally, with regard to MWSS-RO's nature, the Court cannot consider the 2021 revisions in the Concession Agreements inasmuch

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as the same was not presented during the trial, much less, offered and admitted into evidence.⁷

The prosecution failed to prove beyond reasonable doubt that the accused's engagement as PCGG Legal Counsel was employment in the government

Next, the accused argues that there was no prohibited additional or double employment in the government because his engagement as PCGG Legal Counsel is not government service. Citing the testimony of prosecution witness Flores, the accused argues that his engagement as PCGG Legal Counsel is not considered employment in the government service because (1) the position is not a plantilla position; (2) there was no employer-employee relationship, there were no deductions for GSIS, Pag-IBIG, and PhilHealth contributions, and he was not given thirteenth (13th) month pay; and (3) his attendance was not monitored. This contention is impressed with merit, and the Court must re-examine the nature of his engagement as PCGG Legal Counsel.

The pertinent provisions on prohibitions against holding additional office or employment in the government under the Constitution and the Administrative Code of 1987 read:

Constitution⁸

Section 7. x x x

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

Administrative Code of 1987⁹

Sec. 54. Limitation on Appointment. – (1) x x x

⁷ 2019 Amendments to the 1989 Revised Rules on Evidence (A.M. No. 19-08-15-SC), Rule 132, Sec. 34. Offer of evidence. – The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified.

⁸ Sec. 7, Art. IX-B

⁹ Book V, Title I, Subtitle A, Chapter 8, Sec. 54 (3)

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(2) x x x

(3) Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

The aforequoted provisions prohibit appointive officials from holding any other "office" or "employment" in the Government, unless allowed by law or by the primary functions of their position. The issue that must be resolved is whether the accused's engagement as PCGG Legal Counsel constitutes "employment" in the government.

That the accused was an employee of the PCGG finds support in the evidence on record:

1. In the undated *Certification*,¹⁰ Carmelita T. Sese, HRMO-IV of PCGG, certified that the accused "assumed office as PCGG Legal Counsel effective September 2, 2002."
2. The Memorandum dated September 2, 2002 issued by Commissioner Victoria A. Avena¹¹ states "[t]his is to appoint ATTY. VIRGILIO P.A. OCAYA as PCGG Legal Counsel under Expense Entitlement (EE), with the salary of TWENTY FOUR THOUSAND PESOS (₱24,000.00) MONTHLY EFFECTIVE SEPTEMBER 2, 2002."
3. During her testimony, prosecution witness Ma. Cecilia C. Flores repeatedly referred to the remuneration received by the accused as "salary."¹² She also testified that Expense Entitlement personnel were required to submit their Statement of Assets and Liabilities (SALN).¹³ Under Sec. 8(A)¹⁴ of

¹⁰ Exhibit N-26

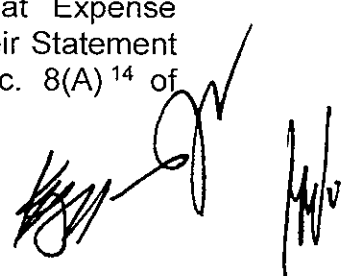
¹¹ Exhibit N-29

¹² TSN, January 7, 2019, pp. 21, 22, 25

¹³ TSN, January 7, 2019, p. 33

¹⁴ **Section 8. Statements and Disclosure.** – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. – All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.



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Republic Act No. 6713 (R.A. No. 6713), only public officials and employees are required to file the said SALN.

4. Prosecution witness Atty. Emilio A. Asi, Jr., then the resident auditor at the PCGG, declared in his Judicial Affidavit that after he learned about the accused's employment with MWSS-RO, he conducted an investigation and issued Audit Observation Memorandum No. 2003-08 dated July 23, 2003,¹⁵ addressed to then PCGG Chairperson Haydee B. Yorac. Thereafter, he received a letter from Commissioner Vyva Victoria M. Aguirre explaining that her office was not informed of the accused's employment with MWSS-RO, and stating that the accused was required to explain the matter, and to return the compensation he received from PCGG.¹⁶ These indicate that PCGG officials considered the accused to be an employee of PCGG.
5. Even the accused, in his Judicial Affidavit, declared that he was appointed as Legal Counsel of PCGG, and that he was employed therein. He merely insisted that there was no additional or double compensation because MWSS-RO is not a public office.¹⁷

On the other hand, the evidence on record also supports the theory that the accused's engagement as PCGG Legal Counsel does not constitute employment with the government:

1. Witness Flores testified that PCGG Legal Counsel is not a plantilla position and there is no employer-employee relationship between the PCGG and Expense Entitlement Personnel. No deductions for contributions to the GSIS, Pag-IBIG and PhilHealth are made from the remuneration of such personnel, and they do not receive benefits such as 13th month pay.¹⁸
2. Witness Flores testified that Expense Entitlement personnel did not submit a time card, and that the only requirement was a

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The document must be filed:

- (a) within thirty (30) days after assumption of office;

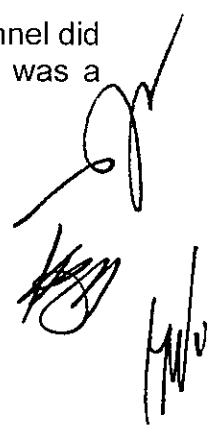
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¹⁵ Exhibit AA

¹⁶ *Judicial Affidavit of Atty. Emilio A. Asi, Jr.* dated January 15, 2019, p. 8; Record, Vol. 5, p. 17

¹⁷ *Judicial Affidavit of Accused Virgilio Ponciano A. Ocaya* dated October 3, 2019, pp. 3-4; Record, Vol. 7, pp. 362-363

¹⁸ TSN, January 7, 2019, pp. 29-31



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certification of services rendered signed by the supervisor.¹⁹
The accused similarly testified that they had no mandated work hours.²⁰

3. Allotment and Obligation Slip (ALOBS) No. 02-10-A0078²¹ dated October 10, 2002, pertaining to the payment of the accused's initial expense entitlement for the period September 2-30, 2002 shows that the said expense entitlement is classified as an expense under Maintenance and Other Operating Expense (MOOE),²² and not under Personal Services (PS).²³

There is nothing in the evidence on record that would shed light on the nature of the accused's duties and responsibilities as PCGG Legal Counsel, and the Court cannot determine whether the accused's engagement constitutes employment in the government or if the same is merely a contract of consultancy services, which is not considered government service.²⁴ It is basic that if the evidence is susceptible of two interpretations, one consistent with the accused's innocence and the other consistent with his or her guilt, the accused must be acquitted.²⁵ Thus, the Court cannot consider the accused's engagement as PCGG Legal Counsel to be employment in the government, and the accused must be acquitted had the present charge for *Violation of Sec. 3(e) of R.A. No. 3019* been solely based on his alleged double or additional employment in the government.

There was double or additional compensation

The prosecution failed to prove beyond reasonable doubt that the accused's engagement at PCGG constitutes employment in the government, and hence, there was no prohibited holding of another office or employment in the government. Nonetheless, his receipt of remuneration from PCGG constitutes double or additional

¹⁹ TSN, January 7, 2019, p. 31

²⁰ TSN, January 20, 2020, p. 5

²¹ Exhibit N-23

²² *Manual on the New Government Accounting System for National Government Agencies, Volume III. Chapter 1, Sec. 7. b. Maintenance and Other Operating Expenses (MOOE)* – These accounts include expenses necessary for the regular operations of an agency like, among others, traveling expenses, training and seminar expenses, water, electricity, supplies expense, maintenance of property, plant and equipment, and other maintenance and operating expenses.

²³ *Manual on the New Government Accounting System for National Government Agencies, Volume III. Chapter 1, Sec. 7. a. Personal Services (PS)* – These accounts include basic pay, all authorized allowances, bonus, cash gifts, incentives and other personnel benefits of officials and employees of the government.

²⁴ Civil Service Commission Memorandum Circular No. 27, s. 1993

²⁵ Please see *People v. Salidaga*, G.R. No. 172323, January 29, 2007

x -----x

compensation, which is prohibited under the Constitution and the Administrative Code of 1987, the pertinent provisions of which read:

Constitution²⁶

Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Administrative Code of 1987²⁷

Sec. 56. Additional or Double Compensation. – No elective or appointive public officer or employees shall receive additional or double compensation unless specifically authorized by law nor accept without the consent of the President, any present, emolument, office, or title of any kind from any foreign state.

Pensions and gratuities shall not be considered as additional, double or indirect compensation.

In *Re: Gross Violation of Civil Service Law on the Prohibition Against Dual Employment and Double Compensation in the Government Service Committed by Mr. Eduardo V. Escala, SC Chief Judicial Staff Officer, Security Division, Office of Administrative Services*,²⁸ therein respondent held the position of Chief Judicial Staff Officer, Security Division, Office of Administrative Services (OAS) at the Supreme Court, and at the same time, he was employed as Chief Inspector at the Philippine National Police (PNP) Aviation Security Group. It was held that his concurrent employment at the Supreme Court and the PNP constituted dual employment, and that he received double compensation because he received salaries and other benefits from both the Supreme Court and the PNP.

In the present case, although, as previously discussed, the accused's engagement in PCGG does not constitute dual employment in the government, such engagement is considered as engaging in the

²⁶ Sec. 8, Art. IX-B

²⁷ Book V, Title I, Subtitle A, Chapter 8, Sec. 56

²⁸ A.M. No. 2011-04-SC, July 5, 2011

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private practice of his profession without authority, which is prohibited under Sec. 7(b)(2) of R.A. No. 6713. The provision reads:

Section 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) x x x

(b) Outside employment and other activities related thereto. – Public officials and employees during their incumbency shall not:

(1) x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

(3) x x x

As discussed in the assailed Decision, from January to June 2003, the accused, as DA-ALA, was an appointive official of MWSS-RO. During the same period, he accepted engagement as PCGG Legal Counsel on a full-time basis. The accused failed to show that he was authorized by the Constitution or law, or that he was given written permission by the Head of Agency,²⁹ to work in PCGG, whether as an employee or as a consultant engaged in the private practice of law. As with the respondent in *Re: Gross Violation of Civil Service Law*, herein accused's source of compensation, *i.e.*, engagement as PCGG Legal Counsel, was unauthorized. Thus, the remuneration he received, as proved by the payrolls,³⁰ the testimony of prosecution witness

²⁹ *Civil Service Commission Memorandum Circular No. 15, s. 1999* dated August 27, 1999. **Rule XIII, Sec. 18.** Unless otherwise provided by law, no officer or employee shall engage directly or indirectly in any private business or profession without a written permission from the head of agency. Provided that this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities required that their entire time be at the disposal of the government: Provided further, that if an employee is granted permission to engage in outside activities, the time devoted outside of office hours should be fixed by the head of the agency so that it will not impair in any way the efficiency of the officer or employee nor pose a conflict or tend to conflict with the official functions. (underscoring supplied)

³⁰ Exhibits N-10 to N-21

X -----X

Luzviminda R. Toren,³¹ and even the accused's own admission,³² constitutes additional or double compensation.

In fine, there is nothing in the accused's *Motion for Reconsideration* that would warrant the reversal of the assailed Decision.

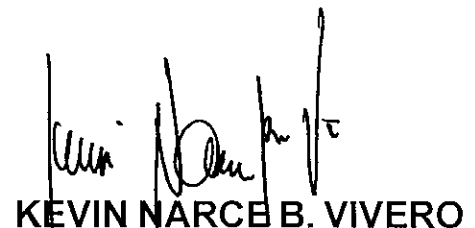
WHEREFORE, the accused's *Motion for Reconsideration* is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCE B. VIVERO
Associate Justice

³¹ *Judicial Affidavit of Luzviminda R. Toren* dated December 11, 2018, p. 11; Record, Vol. 3, p. 332

³² TSN, October 23, 2019, pp, 39-40