

MALACAÑANG
MANILA
BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 249

**IMPOSING THE PENALTY OF SUSPENSION OF NINE (9) MONTHS
WITHOUT PAY ON EXECUTIVE DIRECTOR ELSA BAYANI AND
DEPUTY EXECUTIVE DIRECTOR ASUNCION MACALALAG OF THE
NATIONAL NUTRITION COUNCIL (NNC)**

This is an administrative case filed by Engelbert R. Kho Yute, Accountant III, against Executive Director Elsa Bayani, Deputy Executive Director Asuncion Macalalag and Finance Management Officer II Angelito G. Ramos, all of the National Nutrition Council (NNC), for various offenses involving the use and management of funds of the NNC.

In its Resolution, The Presidential Commission Against Graft and Corruption (Commission) found the following:

“On Charge No. 1: - Misuse and/or illegal use of public funds for the salaries, etc. of contractual employees.

Complainant's actual charge is diversion of funds. The respondents could not show any evidence purporting to be the approval by the Department of Budget and Management of the diversion. The 1st indorsement dated February 15, 1990 from the Civil Service Commission finding the need to hire contractual employees subject to the availability of funds and related COA auditing rules, *did not include the required DBM approval for re-alignment of funds for personal services.* (italics supplied)

On Charge No. 2: - On the alleged illegal and/or unlawful deposit/disbursement of UNICEF donated funds -

The bone of contention on this issue is whether the funds called by the complainant as “donations” are “trust receipts” as claimed by the respondents.

It is clear that the General Appropriations Act of 1989, 1990 and 1991 invariably refer to the funds as trust receipts. The apparent objection of complainant is on the deposit of a portion of said funds with a depository bank, the PNB, claiming that the entire fund should have been deposited with the National Treasury. The General Appropriation Act provides that the receipts shall be deposited in an authorized

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government depository bank or in the National Treasury (Sec. 4 thereof earlier quoted).

Complainant, in an attempt to bolster his contention that this is not so, submitted in evidence a COA Circular (82-188), dated June 15, 1982. A perusal of said Circular, however, shows that the subject is "guidelines in the countersigning of checks/warrants issued to withdraw from trust receipts deposited with authorized government depository banks or the National Treasury". The aforementioned subject of the Circular is by itself evidence that the National Treasury is not the lone depository as it allows deposit with authorized government depository banks.

If only to put this issue at rest, respondents submitted a letter dated September 6, 1989 of then Secretary of Agriculture Carlos G. Dominguez addressed to the PNB Branch FTI, Taguig, Metro Manila, requesting the latter for the opening of a Combo Account under the account title "NNC/UNICEF URBAN LAKASS (Lalakas ang Katawang Sapat sa Sustansiya)". Assuming arguendo, that the act is offensive to the circular/guidelines pointed to by complainant, the herein respondents would be blameless because the responsibility would rest squarely on the shoulders of then Secretary of Agriculture Dominguez.

Charge No. 3: - Payments in advance to certain contractors. Complainant's evidence consist of contracts entered into between NNC and various contractors wherein said contracts stipulate several payments. The contract with Psycom Resource Planners, Inc. reveals that, indeed, there was advance payment, i.e., 15% (P187,500) upon signing of contracts, 35% (P437,500) upon submission of June 1989 Certificate of Performance (CP), 25% (P312,500) upon submission of July 1989 CP. The Commission notes that this is violative of Sec. 88 of P.D. No. 1445 which provides as follows:

Sec. 88. Prohibition against advance payment on government contracts. - The government shall not be obliged to make an advance payment for services not yet rendered or supplies and materials not yet delivered under any contract therefor. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the

agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.”

Charge No. 4: - Payment of expenses which do not promote public welfare -

The amounts involved were insignificant that the respondents' explanation that they were tokens of the agency's appreciation to Secretary Dominguez for his substantial contribution to the NNC's cause, is well-taken.

Charge No. 5: - Entering into contracts without the Certificate of Availability of Funds: - The Commission notes that the of *respondents could produce only three (3) Requests for Allocation Allotment (EDCOM Construction, Marcial Narvaez and Las Brisas Hotel) and could not submit evidence for the other contracted firms (Kiangan Youth Hotel, Villa Pansol Hot Spring, Marfida Uy).* (italics supplied)

Charge No. 6: - Misuse/misappropriation of P33,230.00 of NAFC trust to pay for board and lodging of Mrs. Elsa Bayani.

The Commission also notes that the *respondents did not meet the issue squarely in this charge. Their averment that the seminar in question was in connection with the LAKASS program is insufficient explanation.* (italics supplied)

Charge No. 7: - Entering into contract with 39 state colleges/universities -

The pertinent rule (Sec. 64 P.D. 1177) indicates that there are certain requisites for contracting the services outside the NNC, and these are:

- a. The contracts shall be for specific services;
- b. Said services cannot be provided by the regular staff or agency; and
- c. The contracts shall be for a specific period of time, with a definite expected output.

The respondents proved that the above requisites were met. Moreover, the Workshop, which was related to the LAKASS program was conducted on a nationwide basis involving 14 regional centers. Contracting with the state colleges/universities was not only justified but cost-saving.

Charge No. 8: - Splitting of Vouchers: -

The Commission is convinced that there was no splitting of vouchers involved.

Charge No. 9: - Entering into negotiated contracts without public bidding. -

The contract that conspicuously is involved in this charge is that entered into with Psycom Planners, Inc. (consideration: P1.250 million) where, indeed, no public bidding was done. But this is a negotiated contract where the Secretary can enter into as allowed by Sec. 2 of Executive Order No. 301, s. of 1987. The contract in question was signed by then Secretary Dominguez.

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Of the nine (9) charges, complainant could prove only Charges 1 and 3 as above-indicated. However, in Charge 3, it appears that the contract was signed and executed by then Secretary Carlos Dominguez. In both cases, the government did not actually suffer any loss."

After a careful review of the evidence on record, this Office finds that respondents committed the following administrative offenses:

- a. Realigned funds without the required DBM approval;
- b. Entered into six (6) contracts without the required Certificates of Availability of Funds. They merely submitted evidence of Requests for Allocation Allotment for only three of the contracts they entered into; and
- c. Charged the expenses of their April 1991 Team Building Seminar against the NAFC Trust Fund in

violation of 84(2) of P.D. 1445. There was no programmed amount in the 1991 work and financial plan of the LAKASS project for the team building workshop. The Commission finds that respondents failed to meet the issue squarely and noted that the explanations they advanced were insufficient.

Regarding the advance payments made to certain contractors on Charge No. 3, the same were in violation of Sec. 88, P.D. No. 1445. However, it appears that the contract was signed and executed not by respondents but by then Secretary Carlos Dominguez.

The fact that the government did not suffer any loss from the infractions committed by respondents, as found by the Commission, is of no moment. Respondents committed acts constituting incompetence and inefficiency in the performance of official duties and conduct grossly prejudicial to the best interest of the service punishable under the provisions of the Omnibus Rules Implementing Book V of E.O. No. 292.

IN VIEW OF THE FOREGOING, this Office hereby adopts the findings of the Presidential Commission Against Graft and Corruption. Respondents Executive Director Elsa Bayani and Deputy Executive Director Asuncion Macalalag are each **SUSPENDED FOR NINE (9) MONTHS WITHOUT PAY**.

DONE in the City of Manila, this 2nd day of February in the year of Our Lord, Nineteen Hundred and Ninety Six.



By the President:



RUBEN D. TORRES
Executive Secretary