Republic of the Philippines
Supreme Court
Manila

EN BANC

EFRAIM C. GENUINO,
Petitioner,

- *versus* -

COMMISSION ON AUDIT, et al.,
Respondents.

G.R. No. 230818

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,*
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,**
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

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RENE C. FIGUEROA,
Petitioner,

- *versus* -

COMMISSION ON AUDIT,
Respondent.

G. R. No. 244540

Promulgated:

February 14, 2023

x----------x

* No part.
** On official leave.

DECISION

HERNANDO, *J.*:

Before the Court are two consolidated cases:

(1) **G.R. No. 230818 Efraim C. Genuino v. Commission on Audit *(Genuino case)***, for resolution of the Motion for Reconsideration[1] filed by respondent Commission on Audit (COA) of the June 15, 2021 Decision[2] (2021 *Genuino* Decision), granting Efraim C. Genuino's (Genuino) Petition for *Certiorari*,[3] and setting aside the Decision No. 2015-420[4] dated December 28, 2015, and the Resolution No. 2017-073[5] dated March 21, 2017 both issued by the COA.

(2) **G.R. No. 244540 Rene C. Figueroa v. Commission on Audit *(Figueroa case)***, a Petition for *Certiorari*[6] (with application for a stay order) filed by Rene C. Figueroa (Figueroa), seeking to annul Decision No. 2017-271[7] dated September 6, 2017 and Resolution No. 2019-023[8] dated November 26, 2018, both issued by COA.

Factual Antecedents

Genuino and Figueroa were former high-ranking officers of the Philippine Amusement and Gaming Corporation (PAGCOR): Figueroa, a former Senior Vice President (SVP), and Genuino, the former Chairman of the Board of Directors and Chief Executive Officer (CEO).[9]

The controversy started when both Figueroa and Genuino (collectively, petitioners) were included in Notice of Suspension No. 2011-004(10)[10] (Notice of Suspension) dated August 22, 2011, issued by Supervising Auditor Atty. Resureccion Quieta (SA Quieta). The Notice of Suspension suspended in audit the amount of ₱2,000,000.00 relative to the payment of financial assistance granted to Pleasant Village Homeowners Association (PVHA) for the implementation of the association's flood control project in Pleasant Village Subdivision (PVS), Los Baños, Laguna. The Notice of Suspension likewise

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1 *Rollo* (G.R. No. 230818), pp. 262-291.
2 Id. at 235-248. Penned by Associate Justice Edgardo L. Delos Santos and concurred in by all the Members of the Court, except Associate Justice Alfredo Benjamin S. Caguioa who took no part.
3 Id. at 3-26.
4 Id. at 27-30.
5 Id. at 31-38.
6 *Rollo* (G.R. No. 244540), pp. 3-36.
7 Id. at 38-46.
8 Id. at 37.
9 *Rollo* (G.R. No. 230818), p. 80.
10 *Rollo* (G.R. No. 244540), pp. 98-99.

required the persons responsible therein, which include petitioners, to submit supporting documents.[11]

In response, Figueroa wrote to SA Quieta a Request to Lift Notice of Suspension,[12] arguing that the Notice of Suspension lacks legal and factual bases, and that his inclusion therein is wrongful. Figueroa mainly argued that he was designated merely as an alternate signatory of the checks and check vouchers, and never had custody of the funds. He prayed that the suspension be lifted with respect to him immediately.[13]

On February 28, 2012, SA Quieta rendered a Decision[14] excluding Figueroa from the Notice of Suspension. It did not, however, lift the notice of suspension pending submission of supporting documents. SA Quieta's Decision partly reads:

> Our review on your justifications for the above Notices of Suspension was found to be in order and also we established that the degree of your participation in the Check Vouchers for the above suspensions is purely ministerial in nature as then Senior Vice President of PAGCOR. In view thereof, we now exclude you as one of the persons responsible for the above Notices of Suspension. However, we regret to inform you that we can not lift the above Notices of Suspensions because the necessary documents were not yet submitted to this Office.[15]

Nevertheless, following submission by the responsible persons of the supporting documents, the notice of suspension was lifted, as reported under Notice of Settlement of Suspension, Disallowance, and Charge No. 2012-018 dated December 19, 2012[16] (NSSDC), but subject to re-evaluation, thereby temporarily clearing petitioners.

However, Notice of Disallowance No. 2013-002(10)[17] dated February 20, 2013 (Notice of Disallowance) was subsequently issued. It disallowed in audit the payment of the financial grant to PVHA after it has been found that the latter is a private association.

The Notice of Disallowance reads in part:

> The amount of [₱]2,000,000.00 was disallowed in audit because our re-evaluation showed that the donation was spent for private purpose considering that PVHA is a private association. Although the same was already the subject of NS No. 2011-004(10) dated August 22, 2011 due to lack of pertinent supporting documents and subsequently lifted under NSSDC No. 2012-018

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[11] Id.
[12] Id. at 100-105.
[13] Id.
[14] Id. at 106-107.
[15] Id. at 107.
[16] Id. at 40.
[17] Id. at 108-109.

> dated December 19, 2012, after the submission thereof, the former Supervising Auditor of PAGCOR qualified in the said NSSDC that the issue will be re-evaluated upon receipt of the reply on his query from the Head, Engineering Department, Los Baños, Laguna, on whether or not the whole or part of Pleasant Village Subdivision (PVS) were already turned over or donated by the PVHA to the local government of Los Baños, Laguna.
>
> On the basis of the information given by the Secretary to the [Sangguniang] Bayan of the Municipality of Los Baños, in his 2nd Indorsement dated January 18, 2013, that neither the whole nor part of PVS has not be turned over to the local government of Los Baños, it remained a private property.[18]

The disallowance was anchored on the information relayed by the Municipality of Los Baños, Laguna stating that PVS has not been turned over to the local government of Los Baños. Hence, it remained a private property for which public funds cannot be appropriated.[19]

Aggrieved by their inclusion in the Notice of Disallowance, petitioners filed their respective appeals[20] before the COA Corporate Government Sector, Cluster 6 (COA Cluster): Figueroa, on March 15, 2013, where he reiterated his argument that his participation in the transaction was purely ministerial, a contention which he claims was validated by the decision rendered by SA Quieta excluding him from the Notice of Suspension, and effectively cleared him of any liability; and Genuino, on September 24, 2013, arguing that PVS was a public property, and that the donation in favor of PVHA was in furtherance of PAGCOR's corporate social responsibility.

However, petitioners' appeals were denied in COA CGS-6 Decision No. 2014-004[21] dated April 28, 2014. The denial substantially echoed the Notice of Suspension and Notice of Disallowance, stating that the grant of financial assistance to PVHA failed to serve a public purpose as required by law, considering that the latter remained to be a private association. The Decision explains:

> In view of the public purpose requirement as ruled by the Supreme Court, this Office believes that the payment of financial assistance granted to PVHA for the construction of the flood control and drainage system project in the amount of [₱]2,000,000 does not satisfy the requirement of public purpose in its traditional sense or in its broad interpretation. First, the subject property is owned and managed by a private association. x x x Here, PAGCOR could not even present a single document effecting the transfer to the said barangay and that the proper procedure had been followed.[22]

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[18] Id. at 108.
[19] Id.
[20] Id. at 110-124; *rollo* (G.R. No. 230818), pp. 85-97.
[21] *Rollo* (G.R. No. 244540), pp. 78-82.
[22] Id. at 81.

This prompted petitioners to file their respective Petitions for Review[23] before the COA Commission Proper.

Ruling of the Commission on Audit

As to Figueroa

In its September 6, 2017 Decision,[24] the COA dismissed Figueroa's petition. It sustained the disallowance of the financial assistance granted to PVHA considering that it was for a private purpose, in violation of paragraph 2, Section 4, of Presidential Decree No. (PD) 1445,[25] which provides that government funds or property shall be spent or used solely for a public purpose. The COA gave full credence to the certification submitted by the *Sangguniang Bayan* of Los Baños, Laguna, that PVHA has not donated or turned PVS over, in whole or in part, to the local government.

The COA likewise found Figueroa negligent in the discharge of his functions as SVP and alternate signatory of the check voucher, which paved the way for the disbursement of funds in the disallowed transaction. In holding Figueroa personally liable for the disallowed transaction, the COA explained:

> Consequently, as alternate signatory of the President of PAGCOR, Mr. Figueroa should have stated in writing his objections to the questioned transaction to avoid liability. However, as correctly pointed out by the SA, Mr. Figeuroa failed to do so, hence, he cannot be exempted from liability pursuant to Section 106 of PD No. 144 which provides that no accountable officer shall be relieved from liability by reason of his having acted under the direction of a superior officer, unless prior to that act, he notified the superior officer in writing of the illegality of the payment, application, or disposition. To reiterate, Figueroa signed the check and check voucher without written notice stating therein its patent lack of supporting documents to determine the validity of the transaction.[26]

Lastly, the COA dismissed Figueroa's contention that the Decision of SA Quieta excluding him from liability is binding on it, thus:

> Lastly, Mr. Figueroa's contention that the decision of the SA excluding him from liability is binding on the Commission is untenable. It has long been a settled rule that the government is not bound by the errors committed by its agents. x x x Hence, the Commission is not bound by the decision of the SA excluding him from the persons liable under the NS. More importantly, said decision was pertinent to the NS which suspended the subject transaction for lack of supporting documents. In fact, the NS was lifted after the submission of the said documents. In the present case, [Figueroa] is now being held liable

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[23] *Rollo* (G.R. No. 244540), pp. 47-77; *rollo* (G.R. No. 230818), pp. 66-79.
[24] *Rollo* (G.R. No. 244540), pp. 38-46.
[25] Entitled "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES." Approved: June 11, 1978.
[26] *Rollo* (G.R. No. 244540), p. 44.

> under the ND for signing the check and check voucher which gave way to the disbursement of an unlawful transaction. x x x[27]

The dispositive portion of the COA Decision reads:

> **WHEREFORE**, premises considered, the Petition for Review of Mr. Rene Figueroa, former Senior Vice President, Philippine Amusement and Gaming Corporation, Ermita, Manila, is **DENIED**. Accordingly, Commission on Audit Corporate Government Sector-6 Decision No. 2014-004 dated April 28, 2014, which affirmed Notice of Disallowance No. 2013-002(10) dated February 20, 2013, on the grant of financial assistance to Pleasant Village Homeowners Association, Los Baños, Laguna, for its flood control and drainage system project in the amount of [₱]2,000,000.00 is **AFFIRMED**.[28]

Figueroa moved for reconsideration, but the same was denied by COA in Resolution No. 2019-23[29] dated November 26, 2018.

As to Genuino

Unlike Figueroa's petition which was dismissed on the merits, Genuino's was summarily dismissed for being filed out of time. The COA noted that Genuino's petition was filed beyond the six-month period allowed by its rules. The dispositive portion of COA Decision reads:

> **WHEREFORE**, premises considered, the petition for review of Mr. Efraim C. Genuino, former Chairman of the Board of Directors and Chief Executive Officer of Philippine Amusement Gaming Corporation is hereby **DISMISSED**. Accordingly, CGS-6 Decision No. 2014-044 *(sic)* dated April 28, 2014, which affirmed Notice of Disallowance No. 2013-002(10) dated February 20, 2013, is **FINAL AND EXECUTORY**.[30]

Displeased, Genuino filed a Motion for Reconsideration,[31] reiterating his arguments and adding that, contrary to COA's initial findings, his petition was timely filed.

In Resolution No. 2017-073[32] dated March 21, 2017, the COA corrected itself and agreed with Genuino that the petition was timely filed. However, after weighing the merits of the petition, the COA ultimately dismissed the same, echoing the reasoning in the *Figueroa case* that PVS is a private property for which public funds cannot be appropriated. The COA likewise held Genuino solidarily liable for the disallowed amount, being the official who approved the grant, and the payment of the financial assistance.

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[27] Id.
[28] Id. at 44-45.
[29] Id. at 37.
[30] *Rollo* (G.R. No. 230818), p. 29.
[31] Id. at 39-53.
[32] Id. at 31-38.

Further Proceedings

Unrelenting, Figueroa filed the present petition imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COA in issuing the questioned COA Decision and Resolution.

Meanwhile, Genuino filed a Petition for *Certiorari* with a prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction on April 19, 2017. In the Decision[33] dated June 15, 2021 (2021 *Genuino* Decision), this Court granted Genuino's petition and set aside Decision No. 2015-420 and Resolution No. 2017-073 issued by COA.

In ruling for Genuino, the Court found that COA's audit jurisdiction over PAGCOR is limited, in view of Section 15 of PD 1869.[34] Specifically, this Court noted:

> To stress, the disposition of this case rests solely on the fact that COA acted with grave abuse of discretion in conducting an audit of PAGCOR's accounts beyond the 5% franchise tax and 50% of the Government's share in its gross earnings as stated in Section 15 of P.D. No. 1869. The Court, therefore, makes no pronouncement whether the financial assistance granted to PVHA was violative of the public purpose requirement under P.D. No. 1445 and the propriety of holding petitioner civilly liable therefor, for having been rendered moot and academic.[35]

The dispositive portion of the 2021 Genuino Decision reads:

> **WHEREFORE**, the Petition for *Certiorari* with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction is **GRANTED**. The Commission on Audit Decision No. 2015-420 dated December 28, 2015 and the Resolution dated March 21, 2017 are hereby **REVERSED** and **SET ASIDE**.
>
> **SO ORDERED**.[36]

Unconvinced, COA filed the present Motion for Reconsideration[37] dated November 3, 2021 seeking the reversal of the June 15, 2021 Decision.

Meanwhile, on November 2, 2021, Figueroa filed a Manifestation with Motion to Reverse COA Decision.[38] In this motion, Figueroa essentially seeks the same reliefs asked in his petition – the reversal of COA Decision No. 2017-

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[33] Id. at 235-248.
[34] Entitled "CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 163/2, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)." Approved: July 11, 1983.
[35] *Rollo* (G.R. No. 230818), p. 246.
[36] Id.
[37] Id. at 262-291.
[38] Id.

271 and Resolution No. 2019-023. He argues that his petition must be similarly resolved.

Thus, the present consolidated cases.

Issues

Considering that the factual circumstances of the two cases are closely related, We deem it prudent to summarize the issues to the following:

1. Whether the COA's audit jurisdiction over PAGCOR is limited;

2. Whether the disallowance of the subject transaction was proper;

3. Whether petitioners may be held personally liable for the disallowed transaction; and

4. Whether a stay order may be issued in favor of Figueroa.

Our Ruling

The Court grants COA's Motion for Reconsideration in G.R. No. 230818. Consequently, the 2021 *Genuino* Decision is hereby reversed. Necessarily, Figueroa's Petition for *Certiorari* must likewise be dismissed. Ultimately, Decision Nos. 2015-420 and 2017-271, and Resolution Nos. 2017-073 and 2019-023, all issued by COA, are reinstated and sustained.

The audit jurisdiction of COA over PAGCOR is not limited by Section 15 of PD 1869

After an exhaustive reassessment of the case records, the Court grants COA's Motion for Reconsideration in G.R. No. 230818 and abandons the 2021 *Genuino* Decision. The COA's audit jurisdiction over PAGCOR is not limited by Section 15 of PD 1869.

To recall, We declared in the 2021 *Genuino* Decision that the COA exercises **limited** audit jurisdiction over PAGCOR by virtue of Sec. 15 of PD 1869, thus:

> 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 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 50% of the gross earnings pertaining to the Government as its share.** (Emphasis in the original)

The aforesaid 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 x x x"[39]

The 2021 *Genuino* Decision gave merit to Genuino's argument that Sec. 15 of PD 1869 limited COA's audit jurisdiction over PAGCOR to funds coming from the 5% franchise tax and 50% of the gross earnings pertaining to the Government as its share. Thus, finding that the COA does not have jurisdiction over the disallowed transaction, the 2021 *Genuino* Decision no longer proceeded to determine the propriety of the financial assistance to PVHA and the liability, if any, of Genuino.

A second look, however, will reveal that such conclusion runs inconsistent with Article IX-D, Secs. 2 and 3 of the 1987 Constitution, which state:

SECTION 2. The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

SECTION 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

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[39] *Rollo* (G.R. No. 230818), p. 243.

It is clear from the foregoing provisions that the COA shall have the "power x x x to examine, audit, and settle **all accounts** pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, x x x including government-owned or controlled corporations with original charters." The broad and encompassing language used by the provision unmistakably discloses the objective to avert any exception or limitation to COA's jurisdiction, and to do away with provisions of law with similar import, such as Sec. 15 of PD 1869.

While it is true that implied repeals are not favored, they are nevertheless not prohibited. In *Mecano v. Commission on Audit*,[40] the Court held:

> Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, the one law cannot be enforced without nullifying the other.[41]

This repeal by implication becomes even more evident if We take notice of the fact that PD 1869 was enacted in 1983, or before the promulgation of the 1987 Constitution. Thus, when PD 1869 was passed, it was under the authority of the 1973 Constitution, under which Art. XII-D, Sec. 2 states:

> SECTION 2. The Commission on Audit shall have the following powers and functions:
>
> (1) Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations; keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive, or extravagant expenditures or uses of funds and property.

Interestingly, Art. IX-D, Sec. 3 of the 1987 Constitution which prohibits the passage of a law exempting any government entity from the jurisdiction of the COA, neither existed nor had a counterpart provision in the 1973 Constitution.

While the above-cited provision may seem essentially similar to its counterpart in the 1987 Constitution, a closer look will reveal one significant difference: the provision in the 1987 Constitution specifically mentions government-owned or controlled corporations **with original charters**, while

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[40] 290-A Phil. 272 (1992).
[41] Id. at 282.

the 1973 Constitution version did not. In the Court's view, this reveals the clear intention of the framers of the 1987 Constitution to strengthen and widen the audit jurisdiction of the COA.

Further and more importantly, Art. XVIII, Sec. 3 of the 1987 Constitution provides:

> SECTION 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

The clear import therefore of Art. XVIII, Sec. 3 of the 1987 Constitution is that all existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances **inconsistent** with the provisions of the 1987 Constitution are rendered **inoperative**. As already discussed, Sec. 15 of PD 1869 is one such law inconsistent with Art. IX-D, Secs. 2 and 3 of the 1987 Constitution. Thus, the same is deemed inoperative.

In view of the foregoing, We hereby reverse the 2021 *Genuino* Decision and hold that PAGCOR, being a government-owned or controlled corporation with its own original charter, and its funds regardless of source, come within the broad purview of Art. IX-D, Secs. 2 and 3 of the 1987 Constitution. In effect, the "revenue and receipts of, and expenditures or uses of funds" which are held in trust by or pertaining to it, are subject to COA's audit jurisdiction, contrary to Sec. 15 of PD 1869, and the restrictions mentioned therein.

In fine, We hold that the COA has jurisdiction to audit PAGCOR funds, even those not coming from either the 5% franchise tax, or the 50% of the gross earnings as the government's share by virtue of Art. IX-D, Secs. 2 and 3 of the 1987 Constitution. Consequently, the subject Notice of Disallowance is valid.

Having settled the issue on the *validity* of the Notice of Disallowance, We now resolve its *propriety*. We hold that the issuance of the Notice of Disallowance was proper.

The subject transaction was for a private purpose; hence, the disallowance was proper

On this point, Figueroa relies heavily on the contention that under PD 1869, the subject disbursement is allowed. He states:[42]

> 27. However, the amended PAGCOR charter, Presidential Decree (P.D.) No. 1869 allows, among others,

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[42] *Rollo* (G.R. No. 244540), pp. 15-16.

> TITLE I – General Provisions
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> SECTION 1. Declaration of Policy. – It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:
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> [x x x x]
>
> (b) To establish and operate clubs and casinos, for amusement and recreation, including sports gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will:
>
> (1) **generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects,** Tulungan ng Bayan Centers, Nutritional Programs, Population Control, and such other essential public services;

28. The same law also clearly allows what is exactly the purpose of the questioned transaction, namely, funding and financing of infrastructure and/or socio-civic projects such as flood control and sewage systems, thus,

> SEC. 7. Powers, Functions and Duties of the Board of Directors. – The Board shall have the following powers, functions and dutes;
>
> a) To allocate and distribute, with the approval of the Office of the President of the Philippines, the earnings of the Corporation earmarked to **finance infrastructure and socio-civic projects;**

29. It therefore appears that PAGCOR has been given not merely the authority but the mandate to fund and finance socio-civic and infrastructure projects throughout the country, foremost of which was enumerated, are flood control and sewage systems!

30. To be clear and to erase any doubt of statutory conflicts, P.D. 1869, which supersedes COA's cited P.D. 1445, ultimately provides,

> SEC. 19. Repealing Clause – All laws, decrees, executive orders, administrative orders, rules or regulations, inconsistent herewith are hereby repealed, amended or modified accordingly.[43] (Emphasis in the original)

Figueroa insists that: first, PD 1869 impliedly repealed provisions of PD 1445 which are inconsistent with the former; and second, due to this implied repeal, PAGCOR is now authorized to allocate and disburse funds for projects mentioned above. Figueroa fundamentally asserts that, as long as the project funded is one of those above-listed, it may be allowed regardless of whether it is for a private or a public purpose.

Meanwhile, Genuino asserts that contrary to COA's findings, PVS has become a public property in view of its turnover from PVHA to *Barangay* Tuntungin-Putho, Los Baños, Laguna. As proof of this turnover, Genuino cites

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[43] Id.

the Minutes[44] of the Regular Meeting of *Sangguniang Barangay* dated August 17, 2009, which states such fact.

The Court disagrees with petitioners.

As correctly held by the respondent, there is no incongruence between the two statutes which would result to a repeal by implication of one by the other.

Sec. 4 of PD 1445 provides:

> **Section 4.** *Fundamental principles.* Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:
>
> x x x x
>
> 2. Government funds or property shall be spent or used solely for public purposes.

The provision is clear and absolute in requiring government funds to be spent or used solely for public purposes. The requirement, without a doubt, covers PAGCOR funds which is a government agency. From this, We can reasonably draw the conclusion that the socio-civic projects mentioned in the above-cited provision of PD 1869 may be allocated with public funds, provided that the requirement of public purpose is satisfied.

This conclusion in fact finds support in the provision Figueroa himself cited, where it is stated that PAGCOR shall "generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects, *Tulungan ng Bayan* Centers, Nutritional Programs, Population Control, **and such other essential public services**."[45]

Note that at the end of the enumeration, the statute mentions the phrase "and such other essential public services."[46] Applying the statutory construction principle of *ejusdem generis*, the true essence of the provision becomes clear: the socio-civic projects, such as flood control projects as in this case, which PAGCOR may fund must be in the nature of an "essential public service." Again, this is more in line with Sec. 4 of PD 1445, which requires government funds to be used **solely** for public purposes. At this juncture, it may be well to reiterate that every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[47]

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[44] *Rollo* (G.R. No. 230818), pp. 237-238.
[45] Rollo (G.R. No. 244540), pp. 296-297; emphasis in the original omitted and emphasis supplied.
[46] Id. at 297.
[47] *Pulido v. People*, G.R. No. 220149, July 27, 2021, citing *Hagad v. Gozo-Dadole*, 321 Phil. 604, 614 (1995).

To be clear, there is no question that PAGCOR may fund and finance socio-civic activities. We agree with Figueroa on that point. In fact, it is mandated under PD 1869. However, it is the nature of such socio-civic project that will determine its validity.

Neither is there merit in Genuino's contention that the turnover of PVS has been the subject of a *Sangguniang Barangay* meeting, as the same is not a mode of acquiring ownership under the law.

It is a basic principle in civil law that there are only seven modes of acquiring ownership over a property. These are:

A. *Original mode* (not owned before by somebody else)

1. Occupation
2. Creation or work (*e.g.*, intellectual creation)[48]

B. *Derivative mode* (owned before by somebody else)

3. Succession
4. Donation
5. Acquisitive prescription
6. Law (*e.g.*, expropriation)
7. Tradition (as a result of certain contracts such as sale, barter, assignment, etc.)[49]

Evidently, being the subject in a *Sangguniang Barangay* meeting, or any meeting for that matter, is not a mode of acquiring ownership recognized by the law. As correctly held by the COA, there must be a positive act from the previous owner before the new owner can acquire dominion over the property. Otherwise, the property remains private, until the local government of Los Baños, Laguna, acquires the property through the modes recognized by law.

Moving forward, in the landmark case of *Pascual v. Secretary of Public Works*[50] *(Pascual)*, the Court laid down the test of validity of a public expenditure, thus:

> It is a general rule that *the legislature is without power to appropriate public revenue for anything but a public purpose* x x x **It is the essential character of the direct object of the expenditure which must determine its validity** as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. *Incidental*

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[48] *Acap v. Court of Appeals*, 321 Phil. 381, 390 (1995).
[49] Id.
[50] 110 Phil. 331 (1960).

> advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does *not* justify their aid by the use of public money.[51] (Emphasis supplied)

In *Pascual*, this Court nullified the appropriation of public funds for the construction of a feeder road located inside a privately-owned subdivision. It was held that "[i]nasmuch as the land on which the projected feeder roads were to be constructed belonged then to respondent Zulueta, **the result is that said appropriation sought a private purpose**, and hence, was null and void."[52]

This principle is restated in *Planters Products, Inc. v. Fertiphil Corporation*[53] *(Planters)*, where the Court explained:

> The power to tax can be resorted to only for a constitutionally valid public purpose. By the same token, taxes may not be levied for purely private purposes, for building up of private fortunes, or for the redress of private wrongs. They cannot be levied for the improvement of private property, or for the benefit, and promotion of private enterprises, except where the aid is incident to the public benefit.[54]

To further highlight the principle, We cite here the pertinent discussion in *Albon v. Fernando*[55] *(Albon)*, where the Court nullified appropriations made to a privately-owned subdivision for the widening, repair, and improvement of its sidewalks, to wit:

> Therefore, the use of LGU funds for the widening and improvement of privately-owned sidewalks is unlawful as it directly contravenes Section 335 of RA 7160. This conclusion finds further support from the language of Section 17 of RA 7160 which mandates LGUs to efficiently and effectively provide basic services and facilities. The law speaks of infrastructure facilities intended primarily to service the needs of the residents of the LGU and "which are *funded out of municipal funds.*" It particularly refers to "*municipal* roads and bridges" and "similar facilities."[56]

Again in *Young v. City of Manila*[57] *(Young)*, where the Court likewise ruled against the use of public funds for the purpose of filling the low-lying streets of Antipolo Subdivision, a privately-owned subdivision, thus:

> We are therefore of the opinion and so hold that the plaintiff cannot compel the defendant city of Manila to purchase from him the street areas described in his complaint. Neither can he be compelled to donate said land and transfer his title to the City so that the latter may build and maintain the streets. **But as long**

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51 Id. at 340.
52 Id. at 341-342. Emphasis supplied.
53 572 Phil. 270 (2008).
54 Id. at 280.
55 526 Phil. 630 (2006).
56 Id. at 639. Citations omitted.
57 73 Phil. 537 (1941).

> **as the plaintiff retains the title and ownership of said street areas, he is under obligation to pay the land taxes thereon as well as to reimburse to the City the expenses of filling the same.**[58] (Emphasis supplied)

At this juncture, it is quite easy to see the common denominator among *Pascual, Albon,* and *Young*: the use of public funds for improvements made to a privately-owned subdivision is against the law.

Figueroa asserts that the project "funded in 'one village' will not necessarily benefit only that village exclusively. Rather, all surrounding areas either benefit from or suffer from infrastructures meant to address flooding x x x."[59] Further, he claims that "it would not be a stretch to say that the flood control measures may not just benefit residents of a specified subdivision[,] but the entire periphery constituting an even wider public scope. x x x While not all were helped, that part of the public constituting the residents of said village were still helped."[60]

A construction project located inside a privately-owned subdivision is planned with the benefit of that subdivision as the primary consideration. Any benefit to the outer community, while welcome, is normally incidental only. This is the ordinary course of things and not the other way around, as petitioners would seem to want us to believe.

While it may be true that a larger community will be benefited by the project, such benefit is merely incidental to the primary purpose of the project, which is the improvement of PVHA. This is evident in the statements of Figueroa himself, when he recognized that the project will "not necessarily benefit only that village exclusively." To Our mind, this statement acknowledges that the primary benefit is for PVHA.

Neither are we unaware of R.A. 9904,[61] also known as the *Magna Carta* for Homeowners' Associations, several provisions of which seem to enlarge the principle of "public purpose" and validate the questioned public expenditure in favor of projects inside privately-owned subdivisions. The Court does not dispute that, to some extent, a public purpose is fulfilled by the grant of the financial assistance for the implementation of PVHA's flood control project. Indeed, this is in line with the aim of R.A. 9904 for the State to "endeavor to make available resources and assistance that will help [homeowners' associations] fulfill their roles in serving the needs and interests of their

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[58] Id. at 542-543.
[59] *Rollo* (G.R. No. 244540), p. 322.
[60] Id. at 298.
[61] Entitled "AN ACT PROVIDING FOR A MAGNA CARTA FOR HOMEOWNERS AND HOMEOWNERS' ASSOCIATIONS, AND FOR OTHER PURPOSES." Approved: January 7, 2010.

communities x x x."[62] In fact, in *Planters,* the Court has already expressed that the concept of "public purpose" is an evolving one, to wit:

> The term "public purpose" is not defined. It is an elastic concept that can be hammered to fit modern standards. Jurisprudence states that "public purpose" should be given a broad interpretation. It does not only pertain to those purposes which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform.[63]

However, We must not forget that *Pascual* has already laid down a standard in determining the validity of a public expenditure. With that, We cannot sustain such amplification of the principle as justification for the expenditure of public funds. While the concept of "public purpose," taken alone, may be given such extended, flexible, and evolving meaning, the same cannot be said when disbursement of public funds is involved. In the latter scenario, the Court must adhere to the view laid down in *Pascual*, *i.e.*, that "[i]ncidental advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does not justify their aid by the use of public money."[64] Again, expenditure of public funds requires that the purpose be mainly for the public, with any benefit to private enterprises be merely incidental, and not the other way around. This narrow view laid in *Pascual* is put in place precisely to serve as guard against the squander of state resources, and to avoid the likely abuse that may follow from easing up the otherwise strict guidelines in the expenditure of valuable state funds.

There is nothing in the records showing that petitioners have fully justified the expense of PAGCOR's funds for a public purpose. It behooved upon petitioners to so establish that the flood control project within the private subdivision in question served a public purpose. For that matter, the Court now rules that in all events, it becomes the burden of the public official concerned to prove that state funds are being spent for a public purpose.

We stress that *Planters* now categorically qualifies that the concept of public purpose is an evolving one, as to soften *Pascual's* strict interpretation thereof.

To reiterate, if the payment of the financial grant is allowed, and the project constructed using public funds, there is no denying that PVHA will be the main beneficiary. Said private property will be the primary recipient of the

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[62] Id. at Section 2.
[63] Supra note 48, at 296.
[64] Supra note 46, at 340. Italics omitted.

improvement, and any benefit to the larger community and the public in general shall, at most, be speculative and merely incidental. This cannot be allowed for being in direct contravention with the mandate of PD 1445.

Petitioners are personally liable under the disallowed transaction.

Figueroa denies liability by arguing that the power to approve the transaction belonged to the PAGCOR Board and not to him; thus, he could not have approved it. He likewise contends that his function as a second alternate signatory of the check and check vouchers was purely ministerial. Therefore, according to him, he cannot be held liable for these reasons.

Meanwhile, as to his alleged non-liability, Genuino claims good faith on his part and the entire Board of Directors. Moreover, he contends that the approval of the payment was a collegial act of the entire Board, and not his alone; thus, to hold only him liable is tantamount to "evident discrimination and selective persecution."[65]

Petitioners are mistaken.

Figueroa tries to avoid liability by diminishing the importance of his participation as signatory of the checks and check vouchers. He attempts to impress upon this Court that since there was nothing patently alarming on the face of the documents, his only participation was the insignificant and mechanical act of physically affixing his signature on the checks and check vouchers. Surely, We cannot subscribe to this argument.

That Figueroa "simply signed the check and check voucher"[66] is of no moment, for by affixing his signature therein, Figueroa authorized the release of funds. Surely, the COA is correct in its assessment that had it not been for Figueroa's signature, the funds would have never been disbursed.[67] Therefore, it is incorrect for Figueroa to say that he "simply signed" the check and check vouchers. Verily, the act of affixing one's signature is neither meaningless nor simply mechanical; it signifies that the signatory has read, agreed, and understood the document he has signed.

Figueroa goes on to say further that not only was he a mere signatory, but a second alternate signatory whose only duty was to sign in the absence of the

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[65] *Rollo* (G.R. No. 230818), p. 18. Emphasis and italics omitted.
[66] *Rollo* (G.R. No. 244540), p. 18.
[67] Id. at 373.

first alternate signatory and the principal signatory. However, it is undeniable that Figueroa still signed the check and check vouchers, and his signature authorized the release of the funds. That Figueroa was a mere second alternate signatory does not lessen the authority and discretion given to him. Figueroa could have simply refused to sign the check and check vouchers had he exercised basic prudence after determining that the financial grant was for a privately-owned subdivision. Obviously, he failed to do this.

We cannot also ignore the fact that Figueroa – as the SVP – was designated to be the second alternate signatory. This circumstance negates Figueroa's assertion that he was not duty-bound to exercise discretion and prudence. Surely, if the duty to be delegated was to simply sign documents, anybody else could have been appointed, even a lowly rank-and-file employee. But this is not the case. Figueroa was specifically chosen because he was the SVP – a ranking official who is presumed, and expected, to have the ability, acumen, and aptitude to examine and scrutinize documents for signature.

These pronouncements are equally true for Genuino. As correctly argued by the COA, Genuino, as Chairman of the Board, "is expected to possess legal knowledge in the requirements and implications in granting such financial assistance."[68] Neither can he use good faith as a defense, as intent is not material in this controversy.

As to the amount of petitioners' liability, Sec. 103 of PD 1445 provides:

> **Section 103**. *General liability for unlawful expenditures*. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Meanwhile, 43, Chapter5, Book VI of the 1987 Administrative Code[69] states:

> **Section 43**. *Liability for Illegal Expenditures*. – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.
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> x x x x

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[68] *Rollo* (G.R. No. 230818), p. 36.

[69] Executive Order No. 292, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987.'" Approved: July 25, 1987.

In addition, Section 38, Chapter 9, Book I of the 1987 Administrative Code states:

> **Section 38.** *Liability of Superior Officers.* – (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.
>
> (2) Any public officer who, without just case, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.
>
> (3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Guided by the foregoing provisions, the Court in *Torreta v. Commission on Audit*[70] *(Torreta)* laid down the guidelines in the refund of amounts disallowed by the COA, to wit:

> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
>
> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>
> a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
>
> b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
>
> c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.
>
> d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.

The Court recognizes that the guidelines in *Torreta* were crafted specifically for refunds arising from government contracts for the procurement

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[70] G.R. No. 242925, November 10, 2020.

of goods and services involving the use or expenditures of public funds. The present case, however, is slightly different, as it involves not the procurement of goods and services, but a financial grant to a private entity. This notwithstanding, as both cases involve the wrongful expenditure of public funds, We see no reason why the guidelines in *Torreta* may not be applied in the present case.

Based on paragraph 2b of guidelines, We hold that petitioners may be properly held liable for the disallowed transaction.

First, petitioners are both approving officers. In arguing otherwise, Figueroa states:

> 34. **Respondent itself already stated petitioner was merely an alternate signatory to the same. The power to approve or authorize transactions involving public funds is defined by law and that power clearly belongs to the board of directors.**
>
> 35. The aforecited P.D. 1869 is explicit in the granting of authority to PAGCOR's board of directors, to wit:
>
> > SEC. 7. Powers, Functions and Duties of the Board of Directors. – The board shall have the following powers, functions and duties;
> >
> > a) To allocate, distribute, with the approval of the Office of the President of the Philippines, the earnings of the Corporation earmarked to **finance infrastructure and socio-civic projects;** ([E]mphasis supplied)[71]

Meanwhile, Genuino passes responsibility to the Board, saying that as chairman, the approval was not his act alone but that of the entire Board.

We cannot assent to these arguments. Petitioners try to play it too technical by making a hair-splitting distinction between the duties of the board and their actions.

To "approve," in its ordinary sense, means "to give formal or official sanction."[72] In Our view, petitioners committed these acts by signing the checks and check vouchers, and approving the payment. Again, We emphasize that the funds would not have been disbursed without petitioners' crucial participation.

Second, we find petitioners guilty of gross negligence. They simply cannot hide behind the fact that they lack legal education or training, and therefore should not be expected to determine the validity of the transactions that pass

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[71] *Rollo* (G.R. No. 244540), p. 17.
[72] Merriam-Webster. (2011). Approve. In *Merriam-Webster' Dictionary of Law* (2011 ed., p. 30).

through their desk. Surely, Figueroa would not have been the SVP, and Genuino the CEO and Chairman of the Board, if they did not have the necessary qualifications. It is in light of this background that We find petitioners guilty of gross negligence for failing to exercise the required level of prudence for a person like them, which led to the signing and approval of the checks and check vouchers, and ultimately, the disbursement of the funds.

Thus, applying the rules laid down in *Torreta*, we hold petitioners liable for being approving officers in the transaction, and for having exhibited gross negligence.

As to the actual amount to be returned, the same may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit*, as instructed by paragraph 2c of the *Torreta* guidelines. Notably however, while PVHA is included in the Notice of Disallowance as the payee, it is not the ultimate recipient of the funds, but rather the laborers and workers PVHA will hire to construct the flood control project. Moreover, there are other persons named in the Notice of Disallowance who may, or may not, be held liable. Thus, the Court deems it proper to remand the present case to the COA for the determination of the amount to be returned by petitioners.

As a final note, We emphasize that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, not only on the basis of the doctrine of separation of powers, but also for their presumed expertise in the laws that they are entrusted to enforce.[73]

A stay order may not be issued in favor of Figueroa.

As to Figueroa's prayer for a stay order, We find no compelling basis to issue the same. Other than his statements, Figueroa failed to substantiate the "great injustice" and "irreparable harm" he alleges that may result if the stay order is not issued. While We certainly extend Our compassion to him, it is unfortunately not a basis for the issuance of the relief he seeks.

Further, there is no showing that the COA Decision and COA Resolution assailed in the present cases are already ripe for execution. To reiterate, Figueroa's exact liability is still undetermined, considering that there are other persons named in the Notice of Disallowance who may or may not be held

[73] *Abpi v. Commission on Audit*, G.R. No. 252367, July 14, 2020.

liable. Thus, for these reasons, We find no compelling reason to issue a stay order in favor of Figueroa.

In fine, We find no grave abuse of discretion on the part of the COA in issuing the assailed rulings.

Prospective application of this ruling.

Considering the novel pronouncements made by the Court in this Decision, We deem it necessary to emphasize that this opinion shall apply prospectively and shall not affect parties who had relied on, and acted upon, the force of former contrary views. This is rooted in justice and fairness, as explained in *People v. Jabinal*:[74]

> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, x x x. The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretatio legis vim obtinet*" — the interpretation placed upon the written law by a competent court has the force of law. x x x [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.

WHEREFORE, Decision is hereby rendered:

1. **GRANTING** the Motion for Reconsideration filed by respondent Commission on Audit in G.R. No. 230818; accordingly, Efraim C. Genuino's Petition for *Certiorari* is **DISMISSED**;

2. **DISMISSING** Rene C. Figueroa's Petition for *Certiorari* and **DENYING** the prayer for the issuance of a stay order in G.R. No. 244540; and

3. **AFFIRMING** Commission on Audit Decision Nos. 2017-271 dated September 6, 2017, and 2015-420 dated December 28, 2015; and Commission on Audit Resolution Nos. 2019-023 dated November 26, 2018, and 2017-073 dated March 21, 2017.

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[74] 154 Phil. 565-571 (1974).

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

I concur. See separate opinion

MARVIC M. V. F. LEONEN
Associate Justice

No part
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Pls. see Separate Opinion

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

I join the concurring and dissenting opinion of J Antonio Kho, Jr.

SAMUEL H. GAERLAN
Associate Justice

on official leave
RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

See concurring and dissenting opinion.

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ALEXANDER G. GESMUNDO
Chief Justice