



REGINALD T. BELTRAN

Attorney-At-Law

19 April 2012

Atty. GILBERT D. CAMALIGAN

Chairman
Board of Governors

Mr. ALFREDO S. SILVA

President

Philippine Association of Water Districts (PAWAD)

2nd Flr., LWUA Bldg.
Katipunan Road, Balara
Quezon City

4/19/12
DR

Gentlemen:

We refer to your query as to whether or not the local water districts (LWDs) are covered by Executive Order Nos. 24 and 65 which were issued by the Office of the President on 10 February 2011 and 02 January 2012, respectively. These presidential issuances seek to prescribe the rules to govern the compensation of members of the Board of Directors/Trustees in government-owned and controlled corporations (GOCCs).

The Local Water-Utilities Administration (LWUA) issued on 16 March 2012 Memorandum Circular No. 005-12 informing all water districts that the compensation of Water District Directors, as provided in Executive Order No. 65, shall take effect upon issuance by the LWUA of the Certificate of LWD Category based on the criteria specified in the Revised Local Water District Manual on Categorization, Recategorization and Other Related Matters (LWD-MaCRO).

At the outset, the elementary principle of separation of powers must be emphasized. The Legislature is the branch of the government solely given the power to legislate or create laws. On the other hand, the executive branch of the government, headed by the President, is the one tasked to implement and enforce the laws of the State. It is in this light that presidential issuances should be understood.

Unit 2-B Cluster 5, San Francisco Gardens
Boni Ave. corner Sacrepante Street
Mandaluyong City, Metro Manila
Landline: (632) 534-41-95 / Mobile: 0922-875-42-12

Presidential issuances are those which the President issues in the exercise of his Ordinance Power under Chapter 2, Book III of Executive Order No. 292 (Administrative Code of 1987). They include executive orders, administrative orders, proclamations, memorandum orders, memorandum circulars, and general or special orders. These issuances have the force and effect of laws.¹ However, the binding and authoritative force of these presidential issuances is derived from the laws which they seek to enforce or implement.

In particular, Executive Orders are "acts of the President providing for rules of a general or permanent character in the implementation or execution of constitutional or statutory powers."² These should be differentiated from executive orders issued by former President Ferdinand E. Marcos during the Martial Law period and by former President Corazon C. Aquino during the revolutionary period under the Freedom Constitution, for they are of the same category and binding force as statutes enacted by the legislature.

One such presidential issuance that has the binding force of a law is Presidential Decree No. 198, otherwise known as the "Provincial Water Utilities Act of 1973", which was enacted by former President Marcos by virtue of his legislative power under Proclamation No. 1081 ("Martial Law Proclamation"). It authorized the different local legislative bodies to form and create their respective water districts through a resolution they will pass subject to the guidelines, rules, and regulations laid down therein. It also created the LWUA which was granted with regulatory power necessary to optimize public service from water utilities operations.

In *Davao City Water District, et. al. vs. Civil Service Commission and Commission on Audit*, G. R. No. 95237-38, 30 September 1991, (which was even cited in the questioned E. O. No. 65), the Supreme Court ruled that local water districts fall under the classification of "GOCCs with original charter" and considered Pres. Decree No. 198 as the charter that creates all LWDs.

Being the charter that creates the LWDs, these entities are primarily governed by the provisions of Pres. Decree No. 198. This law contains a provision that deals specifically with the compensation of the members of the Board of Directors of the LWDs. To wit:

¹ *Persigan v. Angeles*, G. R. No. 64279, 30 April 1984.

² Sec. 2, Book III, Title I, Chapter 2, 1987 Administrative Code.

***Sec. 13. Compensation.** Each director shall receive a per diem to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month. Any per diem in excess of One Hundred Fifty Pesos (P150.00) shall be subject to the approval of the Administration. In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration."³(As amended by Sec. 7, PD 768; R.A. 9286)

Thus, it is plain that under the express provisions of the Provincial Water Utilities Act, the Board of Directors of the LWDs is given the sole authority to fix the per diem which shall be received by their members for every board meeting actually attended by them. It is only when the amount fixed by them exceeds P150.00 that the LWDs have to secure the approval of the LWUA.

The LWDs were all operating under the aforecited provision of Pres. Decree No. 198 when Executive Order No. 24 was issued by Pres. Benigno C. Aquino in January 2011. This presidential issuance came about as a result of the Senate investigations involving several GOCCs including the Metropolitan Water Sewerage System (MWSS). Among the anomalies that were unravelled in the course of the inquiry is the varying and huge monetary benefits being enjoyed by the members of the Board of Directors of certain GOCCs.

Executive Order No. 24 sought to rationalize the compensation for members of the Board of Directors/Trustees in GOCCs by, among others, fixing the maximum per diem per meeting and maximum amount of total per diem per year for the corresponding GOCC classification. Under the E.O., GOCCs shall be classified by size based on their assets and revenues.

The executive order contains a specific provision expressly including the LWDs within the coverage thereof. Thus:

***Section 5. Local Water Districts** - Members of the Board of Directors/Trustees of Local Water Districts shall likewise be subject to the policies and principles set forth herein. Separate rules pertaining to classification and compensation of members of the Board of Directors/Trustees of Local Water Districts shall be issued for this purpose."

³ The word "Administration" refers to the LWUA.

A month prior to the issuance of E.O. No. 24, Senator Franklin M. Drilon, an administration senator, sponsored Senate Bill No. 2640 which aims to promote the financial viability and financial discipline GOCCs. This legislative enactment was eventually signed into law by President Aquino on 03 June 2011 and became known as the "GOCC Governance Act of 2011." This law adopted the scheme set forth in E. O. No. 24 for fixing the limits of compensation that shall be received by the members of the Board of Directors of the GOCCs. Thus, Section 23 of the Act provides:

"Section 23. Limits to Compensation, Per Diems, Allowances and Incentives. – The charters of each of the GOCCs to the contrary notwithstanding, the compensation, per diems, allowances and incentives of the members of the Board of Directors/Trustees of the GOCCs shall be determined by the GCG, using as a reference, among others, Executive Order No. 24 dated February 10, 2011; Provided, however, That Directors/Trustees shall not be entitled to retirement benefits as such directors/trustees."

However, the Act supersedes E. O. No. 24 by expressly excluding the LWDs from the coverage of the law. To wit:

"Section 4. Coverage. This Act shall be applicable to all GOCCs, GICPs/GCEs, and all governmental financial institutions, including their subsidiaries, but excluding the Bangko Sentral ng Pilipinas, state universities and colleges, cooperatives, local water districts, economic zone authorities, and research institutions: Provided, that in economic zone authorities and research institutions, the President shall appoint one-third (1/3) of the board members from the list submitted by the GCG." (underscoring supplied)

The deliberations in the Senate regarding Senate Bill No. 2640, particularly during the period of interpellations of Senator Drilon, further undoubtedly show the legislative intent to exclude LWDs from the application of the law. As a result of the exclusion, the provisions of P. D. No. 198 with respect to the compensation and other benefits of the members of the Board of Directors of the LWDs would remain in force

and operative. This means that these matters shall remain within the sole discretion and powers of the LWD's Board of Directors subject only to the approval of the LWUA on specified cases (e.g., when the per diem fixed by the Board exceeds the amount of P150.00).

Thereafter, on 02 January 2012, the Office of the President issued E.O. No. 65 which serves as a supplement to E.O. No. 24 as it extends the application of the latter to the LWDs. In other words, this is the separate presidential issuance referred to in Section 5 of E.O. No. 24 that will be issued pertaining to the LWDs. Section 4 of E.O. No. 65 provides for the maximum per diem per meeting and maximum amount of total per diem per year that shall be received by the members of the Board of Directors of the LWDs based on their classification level that will be made according to the number of active service connections and equivalent point rating, whichever is lower.

In ***Executive Secretary v. Southwing Heavy Industries, Inc., G. R. No. 164171, 20 February 2006***, the High Tribunal enumerated the requisites for a valid executive order or any administrative rule. According to the Supreme Court, an administrative issuance, such as an executive order, must comply with the following requisites in order to be valid:

- (a) Its promulgation must be authorized by the legislature;
- (b) It must be promulgated in accordance with the prescribed procedure;
- (c) It must be within the scope of the authority given by the legislature; and
- (d) It must be reasonable.

The Supreme Court also held in ***Ople v. Torres, G. R. No. 127686, 23 July 1998***, that an administrative order must be in harmony with the law and should be for the sole purpose of implementing the law and carrying out the legislative policy. It further clarifies that while administrative power enables the President to fix a uniform standard of administrative efficiency and check the official conduct of his agents and for this purpose, he can issue administrative orders, rules and regulations, the latter cannot run counter to the law that it seeks to implement

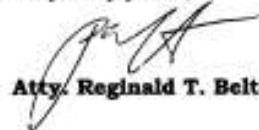
E.O. No. 65 clearly does not meet the requirements laid down in the aforesaid Supreme Court rulings for the simple reason that this executive order totally contravenes the provision of GOCC Governance Act of 2011 that expressly excludes the LWDs from the application of said law. And since this law adopted the compensation scheme prescribed under E.O. No. 24, it logically follows that the clear intention of R.A. 10149 is to exclude the LWDs from the coverage of E.O. No. 24. Noticeably, E.O. No. 65 even mentions in its whereas clauses the Supreme Court ruling in the aforesaid Davao City Water District case. However, this case merely clarifies that LWDs are deemed as 'GOCC with original charter' and hence, they fall under the jurisdiction of both the Civil Service Commission (CSC) and Commission on Audit (COA). The mere fact that LWDs are deemed as such does not automatically make them fall under the coverage of the GOCC Governance Act of 2011 in view of the express provision therein excluding the said entities from the coverage of the law.

Neither can it be argued that E.O. No. 65 is a valid exercise by the President of its power of control over the executive department. For it is the same Constitutional provision upon which the said power is anchored that sets a limit thereto by expressly stating that the President shall ensure that the laws be faithfully executed. Thus, Section 17, Article VII of the 1987 Constitution provides that the "President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed." Stated differently, the exercise of the said power is limited also by the statutes passed by the Legislature. For to hold otherwise would be violative of the basic democratic principle of separation of powers.

In light of the foregoing discussion, it is plain that PAWAD has strong legal grounds to file a petition with the proper court to seek a judicial declaration that E.O. No. 65 and the memorandum circulars issued by LWUA pursuant thereto are null and void and in the process, seek injunctive relief so as to restrain the implementation of the said E.O. and circulars.

Respectfully submitted.

Very truly yours,



Atty. Reginald T. Beltran

