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# OPINION

No. 190  
Series of 2010

FOR : METRO COTABATO WATER DISTRICT  
Gov. Gutierrez Ave., Cotabato City  
ATTENTION : Atty. DELFIN C. HILARIO  
General Manager  
FROM : RAOUL C. CREENCIA  
Acting Government Corporate Counsel  
RE : OPINION WHETHER MCWD IS REQUIRED TO DECLARE  
AND REMIT FIFTY PERCENT (50%) OF ITS ANNUAL  
EARNINGS TO THE NATIONAL TREASURY  
DATE : 28 DECEMBER 2010

=====  
This refers to your letter dated 15 November 2010 requesting our opinion on whether Metro Cotabato Water District (MCWD) is required to declare and remit fifty percent (50%) of its annual earnings to the National Treasury.

You stated that MCWD has an existing Collective Negotiation Agreement (CNA) with its employees' union in accordance with DBM Budget Circular 2006-01 dated 01 February 2006<sup>1</sup> which authorizes the grant of CNA Incentive to rank and file employees.

<sup>1</sup> Grant of Collective Negotiation Agreement (CNA) Incentive



However, as a condition for the grant of CNA Incentive, Item 6.2(c) of the Circular requires that for income generating government-owned or controlled corporations (GOCCs), dividends amounting to at least 50% of their annual earnings must be remitted to the National Treasury in accordance with the provisions of Republic Act (R.A.) 7656<sup>2</sup> dated 09 November 1993.

To quote 6.2(c) of the Circular:

"6.2 The Employees' Organization – Management Consultative Committee or similar body in GOCCs and GFIs shall determine if the employees concerned are entitled to the CNA Incentive based on compliance with the following conditions, pursuant to Section 2, PSLMC Resolution No. 02, s. 2003:

xxx                      xxx                      xxx

c) For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with the provisions of Republic Act No. 7656 dated November 9, 1993."

In this regard, Section 3 of R.A. 7656 provides:

"SECTION 3. Dividends. – All government-owned or -controlled corporations shall declare and remit at least fifty percent (50%) of their annual net earnings as cash, stock or property dividends to the National Government. This section shall also apply to those government-owned or -controlled corporations whose profit distribution is provided by their respective charters or by special law, but shall exclude those enumerated in Section 4 hereof: Provided, That such dividends accruing to the National Government shall be received by the National Treasury and recorded as income of the General Fund." (Emphasis supplied)

You now seek your opinion because water districts were declared GOCCs created under R. A. 198, also known as the "Provincial Water Utilities act of 1973".

<sup>2</sup> AN ACT REQUIRING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS TO DECLARE DIVIDENDS UNDER CERTAIN CONDITIONS TO THE NATIONAL GOVERNMENT, AND FOR OTHER PURPOSES



Section 2 (b) of R.A. 7656 defines a GOCC as follows:

"SECTION 2. *Definition of Terms.* – *As used in this Act, the term:*

Xxx                      xxx                      xxx

"(b) "Government-owned or controlled corporations" refers to corporations organized as a stock or non-stock corporation vested with functions relating to public needs, whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least fifty one percent (51%) of its capital stock. This term shall also include financial institutions, owned or controlled by the National Government, but shall exclude acquired asset corporations, as defined in the next paragraphs, state universities, and colleges." (Emphasis supplied)

In the case of *Manila International Airport Authority vs. Court of Appeals, et al.*<sup>3</sup>, the Supreme Court expounded on the definition of a GOCC, thus:

"A government-owned or controlled corporation must be "organized as a stock or non-stock corporation." MIAA is not organized as a stock or non-stock corporation. MIAA is not a stock corporation because it has no capital stock divided into shares. MIAA has no stockholders or voting shares.

Xxx                      xxx                      xxx

"Section 3 of the Corporation Code defines a stock corporation as one whose "capital stock is divided into shares and . . . authorized to distribute to the holders of such shares dividends . . ." MIAA has capital but it is not divided into shares of stock. MIAA has no stockholders or voting shares. Hence, MIAA is not a stock corporation.

Xxx                      xxx                      xxx

"MIAA is also not a non-stock corporation because it has no members. Section 87 of the Corporation Code defines a non-stock corporation as "one where no part of its income is distributable as dividends to its members, trustees or officers". A non-stock corporation must have members. Even if we assume

<sup>3</sup> G.R. 155650, 20 July 2006, 495 SCRA 591.



that the Government is considered as the sole member of MIAA, this will not make MIAA a non-stock corporation. Non-stock corporations cannot distribute any part of their income to their members. Section 11 of the MIAA Charter mandates MIAA to remit 20% of its annual gross operating income to the National Treasury. This prevents MIAA from qualifying as a non-stock corporation.

"Section 88 of the Corporation Code provides that non-stock corporations are "organized for charitable, religious, educational, professional, cultural, recreational, fraternal, literary, scientific, social, civil service, or similar purposes, like trade, industry, agriculture and like chambers". MIAA is not organized for any of these purposes. MIAA, a public utility, is organized to operate an international and domestic airport for public use.

"Since MIAA is neither a stock nor a non-stock corporation, MIAA does not qualify as a government-owned or controlled corporation. What then is the legal status of MIAA within the National Government?

"MIAA is a government instrumentality vested with corporate powers to perform efficiently its governmental functions. MIAA is like any other government instrumentality, the only difference is that MIAA is vested with corporate powers. . . .

"When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers." (Emphasis supplied)

The above ruling was reiterated by Supreme Court in the case of *MIAA vs. City of Pasay, et al.*<sup>4</sup>.

It is worthy to note that water districts were not created and organized as "stock" or "non-stock" corporations. In fact, a water district has no capital stock divided into shares and has no members and voting shares. Under P.D. 198, a water district is formed through a Resolution enacted by the legislative body of any city, municipality or province<sup>5</sup> and managed by the General Manager as Head of the district and the Board of Directors as the policy making body.

<sup>4</sup> G.R. 163072, 02 April 2009, 583 SCRA 234.

<sup>5</sup> Section 6, P.D. 198, as amended.



Following the definition of a GOCC in the aforementioned cases, water districts are not GOCCs but government instrumentalities exercising corporate powers. They are, therefore, not covered by RA 7656.

Moreover, it bears emphasis that water districts are created purposely for public service. Section 5, Chapter II of PD 198 provides:

"CHAPTER II  
Purpose and Formation

SECTION 5. Purpose. — Local water districts may be formed pursuant to this Title for the purposes of (a) acquiring, installing, improving, maintaining and operating water supply and distribution systems for domestic, industrial, municipal and agricultural uses for residents and lands within the boundaries of such districts, (b) providing, maintaining and operating water collection, treatment and disposal facilities, and (c) conducting such other functions and operations incidental to water resource development, utilization and disposal within such districts, as are necessary or incidental to said purpose." (Emphasis supplied)

Local water districts also do not receive any government subsidy or financial support/appropriation from the government. Its operating income is derived principally from the collection of water consumption fees and loans from Local Water Utilities Administration (LWUA) for its development and expansion programs.

Most important, the manner of utilization and disposition of its income is restricted under Section 41 of PD 198, thus:

"Sec. 41. Disposition of Income. — The income of the district shall be disposed of according to the following priorities:

"First to pay its contractual and statutory obligations and to meet its essential current operating expenses.

"Second, to allocate at least fifty percent (50%) of the balance exclusively as a reserve for debt service and operating and maintenance, to be used for such purposes only during periods of calamities force majeure or unforeseen events.

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"Third, to allocate the residue as a reserve exclusively for expansion and improvement of its physical facilities."  
(Emphasis supplied)

Hence, no part of the water district's income shall be used or disposed of for any other purpose than those mentioned above.

To require the water districts to remit 50% of its earnings to National Treasury would constitute a violation of its Charter on the disposition of its income.

Our opinion notwithstanding, you may seek clarification from the Department of Budget and Management (DBM) on whether Section 6.2 (c) of Budget Circular 2006-1 applies to your case.

A handwritten signature in blue ink, appearing to be "D. Qui", written over a horizontal line. Below the line, there are some handwritten initials or a date, possibly "M/ Sep. 12".

fn:Opinion-CNA-mc wd/usv/AAA/cgs\*