



Republika ng Pilipinas  
**KAGAWARAN NG KATARUNGAN**  
*Department of Justice*  
 Manila



**ATTY. OMAR V. ROMERO**

Undersecretary for Legal and Legislative Affairs  
 Department of Education  
 Meralco Avenue, Pasig City

24 SEP 2024

Dear **Undersecretary Romero**:

This refers to your request for opinion on the legal personality of the Private Education Assistance Committee (PEAC), specifically on whether it is a public instrumentality or a private body, taking into consideration Section 16, Article XII of the 1987 Constitution, applicable laws and jurisprudence, as well as previous DOJ opinions.

Your letter made reference to the Memorandum of former Secretary of Education Leonor Magtolis Briones to then President Rodrigo Roa Duterte, dated 11 February 2020, and the letter of Vice President and then Secretary of Education Sara Z. Duterte to President Ferdinand R. Marcos Jr., dated 27 September 2022, explaining DepEd's opinion that the PEAC is a public instrumentality. You stated that DepEd's position resonates with the view expressed by the Commission on Audit (COA) on the public character of the PEAC as elucidated in COA's 2018 Performance Audit Report.

You further stated that PEAC being a government instrumentality emanates from the latter's creation by an executive order as a committee under the Office of the President; that it is functioning as a government instrumentality; and that it is not a private corporation.

After a careful review of relevant laws and jurisprudence, we reiterate our position that PEAC is a private entity. Executive Order (EO) No. 156<sup>1</sup>, series of 1968, as amended by EO No. 150, series of 1994, constituted as an irrevocable trust fund the Fund for Assistance to Private Education (FAPE) which was set aside from the Special Fund for Education authorized by United States (US) Public Law 88-94, pursuant to a Project Agreement executed in accordance with the Exchange of Notes between the US Government and the Philippine Government.<sup>2</sup> It was under this EO that PEAC was designated as trustee of the FAPE.

<sup>1</sup> EO No. 156, series of 1968, entitled "Constituting the "Fund for Assistance to Private Education" as an Irrevocable Trust Fund, Creating a "Private Education Assistance Committee" as Trustee, and Providing for the Management thereof."

<sup>2</sup> See EO No. 150, series of 1968, 1<sup>st</sup> Whereas Clause: "WHEREAS, the "Fund for Assistance to Private Education" (hereinafter called the "Fund") was constituted under Executive Order No. 156, Series of 1968, as amended as an irrevocable trust fund to finance various programs of assistance to private education, pursuant to a "Project Agreement", entered into on June 11, 1968, between the Government of the Republic of the Philippines and the Governments of the United States of America, executed in accordance with the "Exchange of Notes" between said governments.



As trustee, the PEAC shall administer, manage and supervise the operations of the FAPE.<sup>3</sup> Among other things, the PEAC is charged with the duty and responsibility to set the investment policy of the FAPE, provide for the receiving and processing of projects sought to be financed by the FAPE, make all decisions on the use of its income and capital gains, including final action on individual applications for grants and/or loans, and perform such other acts and things as may be necessary, proper or conducive to the purpose and objectives of the FAPE and of its programs.<sup>4</sup>

Salient provisions of EO No. 156, as amended, provide:

WHEREAS, pursuant to a "Project Agreement" entered into on June 11, 1968, between the Government of the Republic of the Philippines and the Government of the United States of America, executed in accordance with the "Exchange of Notes" between said Governments, the sum of Six Million One Hundred Fifty-Four Thousand Dollars (\$6,154,000), U.S. currency, from the Special Fund for Education authorized by U.S. Public Law 88-94, will be made available as a "Fund for Assistance to Private Education" for the purpose of providing a permanent trust fund to finance various programs of assistance to private education; and

WHEREAS, for the purpose aforesaid, it is required that the Fund be constituted as an irrevocable trust fund to be managed and administered by a "Private Education Assistance Committee;"

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*SECTION 1. Fund for Assistance to Private Education.* The principal of the Fund shall consist of the aforesaid amount of Six Million One Hundred Fifty-Four Thousand Dollars (\$6,154,000), U.S. currency, or its Philippine peso equivalent as provided in Section 6(a). In order to insure the enduring character of the Fund, the principal thereof shall be maintained in tact but may be augmented from time to time by grants, donations and other lawful transfers by the Government of the Republic of the Philippines or any other public or private entity, the disposition of the income of which shall be governed by the terms and conditions hereinafter outlined.

*SECTION 2. Purpose of the Fund.* The Fund shall be established for the purpose of financing programs of assistance to private education, utilizing only the earnings thereof, whether in the form of interest, dividends or capital gains, through grants and/or loans for faculty training and development in the forms of scholarships, research grants, faculty incentives, interinstitutional cooperative projects, and other programs of benefit to private education, but excluding any support of religious worship or instruction. Contributions, donations, grants, bequests, gifts and/or loans from the Government of the

<sup>3</sup> Section 3, EO No. 156, s. 1968.

<sup>4</sup> Section 4, EO No. 156, s. 1968; DOJ Opinion dated 16 January 1969.



Republic of the Philippines for programs of assistance to private education may be managed and administered by the Private Education Assistance Committee as provided herein. (Emphasis ours)

This is not the first time that the issue of whether PEAC is a public or private entity was raised before this Department.

On 14 January 1969, this Department issued an *Opinion* holding that:

**"It is evident from an examination of the said project agreement and executive order that the Fund created thereunder is merely a "trust fund" and the committee, to administer the same, a "trustee." No intention or attempt to establish a government agency or instrumentality or to constitute the committee members as public officers is discernible from the terms of the said agreement and executive order.** Indeed, a public office cannot exist without authority of law expressed through some constitutional or statutory provision, the creation of a public office being primarily a legislative function.

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..., the **Private Education Assistance Committee may not be considered an agency or instrumentality of the Philippine Government** and its members are not public officers within the scope of the Civil Service Law and the Anti-Graft and Corrupt Practices Act; and it is not subject to the general jurisdiction of the General Auditing Office as defined by law (Sec. 584, Rev. Adm. Code) or the Constitution (Sec. 2, Art. XI)..." (Emphasis ours)

On 16 January 1969, another Opinion was issued, which stated that:

**The fund, then is in the nature of "foreign aid" subject to conditions of the grant** and is clearly not part of the public or government funds of the Philippine treasury that may be appropriated only by act of Congress. (Emphasis supplied)

After the effectivity of the 1987 Philippine Constitution and the Administrative Code, and with the amendments introduced by EO No. 150, series of 1994 this Department issued *Opinion No. 056, s. 1999 dated 20 July 1999*, which discussed the private and autonomous status of PEAC as follows:

As earlier stated, **FAPE is not an instrumentality of the State** since it is **not an agency created by the legislature. Neither is it a government-owned or controlled corporation (GOCC)** as revealed by the **absence of a charter** and thus **making the Civil Service Law inapplicable to it.** Moreover, **it does not fall under the definition of a GOCC** as stated in Section 2 Administrative Order No. 59 dated February 16, 1988...



The mere presence of a Secretary of the Department of Education, Culture and Sports and a representative from the National Economic Development Authority (NEDA) in the Committee as trustees does not give a color of “governmental character” to PEAC. Neither does its purpose, “assistance to private education,” transform it into a public entity. (Emphasis ours)

In *Rama and Lauron v. Nogra, et. al.*,<sup>5</sup> the Supreme Court declared that a law is tested by its results and purposes, and that in seeking the meaning of the law, the primordial concern should be to discover in its provisions the intent of the lawmaker. Thus, although the PEAC was constituted as a committee, EO No. 156 should be read as a whole to ascertain its purpose, rather than focus on a word which might easily convey a meaning which is different from the one actually intended.<sup>6</sup> EO No. 156 was issued merely to implement the Project Agreement and Exchange of Notes between the US Government and the Philippine Government for the purpose of providing assistance to private education in the Philippines, and no intention to constitute the PEAC as a government agency, instrumentality or corporate entity, can be inferred from its provisions.

In that regard, the constitution of the PEAC by an Executive Order, by itself, does not automatically render it as a government agency or instrumentality under the general administrative supervision of the Office of the President pursuant to the 1987 Constitution and the Administrative Code. That much can be inferred from the case of *Phil. Society for the Prevention of Cruelty to Animals (PSPCA) v. COA*,<sup>7</sup> wherein the Supreme Court declared the PSPCA to be a private entity despite having been created by virtue of a special legislation, *i.e.*, Act No. 1285.

In *Dennis A.B. Funa v. Manila Economic and Cultural Office and COA (Funa v. MECO)*, the Supreme Court ruled that the MECO was neither a GOCC nor a government instrumentality, but a *sui generis* private entity that is uniquely situated as compared to other private corporations. Yet despite being considered a non-governmental entity, the Supreme Court nonetheless declared that there are certain portions of its accounts that are subject to COA jurisdiction, because Section 14(1), Book V of the Administrative Code authorizes the COA to audit accounts of non-governmental entities “*required to pay xxx or have government share*” but only with respect to “*funds xxx coming from or through the government*”.

The Supreme Court’s ruling in *Bayani F. Fernando v. COA*,<sup>8</sup> is likewise instructive. Citing *PSPCA v. COA*,<sup>9</sup> the Court clarified that the totality of an entity’s relations with the State must be considered. If the entity is created by the State as the latter’s own agency or instrumentality to help it in carrying out its governmental functions, then that entity is considered public; otherwise, it is private. The Supreme Court further declared that the mere public purpose of an entity’s existence does

<sup>5</sup> *Hermelina Rama and Baby Rama Lauron v. Spouses Medardo Nogra and Purita Nogra and Spouses Ricardo Rama and Mariles Rama*, GR No. 219556, 14 September 2021.

<sup>6</sup> *Philippine Long Distance Telephone Company, Inc. v. City of Davao and Adelaida B. Barcelona*, GR No. 143867, 22 August 2001.

<sup>7</sup> *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit, et. al.*, G.R. No. 169752, 25 September 2007.

<sup>8</sup> *Bayani F. Fernando v. Commission on Audit*, G.R. Nos. 237938 and 237944-45, 04 December 2018.

<sup>9</sup> *Philippine Society for the Prevention of Cruelty to Animals v. Commission on Audit, et. al.*, G.R. No. 169752, 25 September 2007.



not, *per se*, make it a public corporation. The purpose alone of the entity cannot be taken as a safe guide, for the fact is that almost all corporations are nowadays created to promote the interest, good, or convenience of the public.

The Supreme Court further elucidated that the audit jurisdiction of COA extends even to non-governmental entities insofar as the latter receives financial aid from the government, consistent with Presidential Decree (P.D.) No. 1445, otherwise known as the Auditing Code of the Philippines and the Administrative Code.

Section 2 of EO No. 156, which clearly states the purpose of establishing an irrevocable trust fund in order to finance programs of assistance to private education, utilizing only the earnings thereof, through faculty training and developments, does not militate against PEAC's private nature because private entities can exist to promote the interest, good, or convenience of the public. Thus, in line with this Department's prior opinions, the purpose for which PEAC was constituted, as well as its functions and responsibilities, do not partake the nature of sovereign functions.

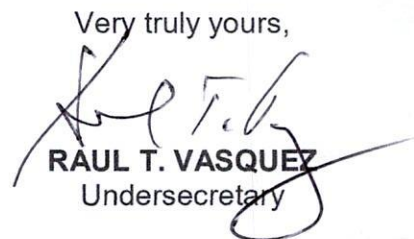
PEAC does not also fall within the purview of the term "instrumentality" as defined under the Administrative Code. As already clarified in the **DOJ Opinion dated 14 January 1969**, "[N]o intention or attempt to establish a government agency or instrumentality or to constitute the committee members as public officers is discernible from the terms of the said agreement and executive order. Indeed, a public office cannot exist without authority of law expressed through some constitutional or statutory provision, the creation of a public office being primarily a legislative function."

The *ex-officio* membership and representation of the Secretary of Education and the National Economic and Development Authority (NEDA) in PEAC, also does not negate its private nature, considering that the private sector members constitute the majority of the committee, and their majority vote as private sector representatives are sufficient to carry decisions of PEAC as the Trustee.<sup>10</sup>

Accordingly, in line with this Department's prior opinions, PEAC is neither a committee, agency or instrumentality within the purview of the Administrative Code and other relevant laws. Nonetheless, despite this, and as elucidated by the Supreme Court in **Fernando v. COA** and in **Funa v. MECO**, the authority of the COA to audit can extend even to non-governmental entities, such as the PEAC, but only in so far as it is consistent with the provisions of Section 2(1)(d) of the Constitution, Presidential Decree (P.D.) No. 1445 also known as the Auditing Code of the Philippines, and the Administrative Code.

Please be guided accordingly.

Very truly yours,

  
**RAUL T. VASQUEZ**  
 Undersecretary

<sup>10</sup> See Section 4, EO No. 150, s. 1994, amending Section 10, EO No. 156, s. 1968.