

DOJ OPINION NO. 056, s. 1999
July 20, 1999

Mr. Roberto B. Tan
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Manila

Sir :

Reference is made to the letter dated June 23, 1999 which seeks the opinion of this Department on the "identity" of the Fund for Assistance to Private Education (FAPE) which was established by Executive Order No. 156 dated November 5, 1968, as amended by Executive Order No. 150 dated January 12, 1994 and whether its status as such could enable it to obtain a national government guarantee in contracting loans from multilateral or bilateral funding sources.

As stated in Executive Order No. 156, FAPE is an "irrevocable trust". In its second 'Whereas' clause, it is provided that —

"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". (Emphasis supplied)

It being such, it is neither a corporate or a government entity. It cannot, therefore, exercise the prerogatives usually clothed to corporations and other juridical entities.

In a trust relationship, there are usually three (3) parties (*see 76 Am Jur 2d p. 279*), i.e., the trustor (the United States Government and the Philippine Government pursuant to the Project Agreement which was executed in accordance with the Exchange of Notes), the trustee (the Private Education Assistance Committee [PEAC], acting as a body), and the beneficiary (private education as a whole). The trustor is the one who disposes of the legal ownership over the trust *res* (the Fund) in favor of the trustee. The trustee, being the holder of the legal title, manages and administers the property under the trust in accordance with the terms and conditions thereof and in all his actuations must exercise care, prudence, and good faith. The prerogative of the trustee to manage and administer the trust *res* necessarily carries with it the power to perform whatever acts are necessary in order to further the attainment of the objectives of the trust. In fact, it has been held that it is the general power and duty of a trustee, implied if not expressed, at least in the case of an ordinary trust, to keep funds properly invested (*see Graham Brothers Co. v. Galloway Woman's College, 190 Ark 692, 81 SW2d 837*).

The Private Education Assistance Committee (PEAC), however, is not a legal entity. It could

only act through the votes of the individual trustees. It cannot, therefore, by itself, be a party to any contract. In fact, it has been consistently held that when the administration of a trust is vested in co-trustees, they all form but one collective trustee (*see Coxe v. Kriebel*, 323 Pa 157, 185 A 770, 106 ALR 102), and they must exercise jointly all those powers that call for their discretion and judgment (*see Insurance Co. v. Chase*, 72 US 509, 18 L. Ed 524; *Wilbur v. Almy*, 53 US 180, 13 L. ED 944; *see also 76 Am Jur 2d pp. 520-521*).

As regards the second query, the answer is in the negative. As earlier stated, FAPE is not an instrumentality of the State since it is not an agency created by the legislature (*see Black's Law Dictionary, Sixth Ed., p. 696*). 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 (*see Sec. 2[1], Art. IX B, 1987 Constitution*). Moreover, it does not fall under the definition of a GOCC as stated in Section 2 Administrative Order No. 59 dated February 16, 1988 which provides that —

"SECTION 2. . . . (a) Government-owned and/or controlled corporation hereinafter referred to as GOCC or government corporation, is a *corporation* which the Government, directly or indirectly has ownership of the majority of the capital or has voting control . . ." (*see Op. No. 36, s. 1990 [Emphasis supplied]*).

The mere presence of the 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.

Relevantly, the 1987 Constitution, specifically Section 20 of Art. VII states that:

"SECTION 20. The President may contract or *guarantee foreign loans on behalf of the Republic of the Philippines* with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law. The Monetary Board shall, within thirty days from the end of every quarter of the calendar year, submit to the Congress a complete report of its decisions on applications for *loans to be contracted or guaranteed by the government or government-owned and controlled corporations* which would have the effect of increasing the foreign debt, and containing other matters as may be provided by law" (emphasis supplied)

Nowhere in the above-quoted provision could it be inferred that loans incurred by entities other than government-owned or controlled corporations or government financial institutions are entitled to a guarantee by the Republic of the Philippines. Such an interpretation would expose the Philippine government to unnecessary legal entanglements which the framers of the 1987 Constitution could have never intended.

Furthermore, Section 3 of R.A. No. 4860 (the Foreign Borrowings Act) specifically enumerates the entities that are entitled to a national government guarantee in this manner:

"SECTION 3. The President of the Philippines, upon recommendation of the Secretary of Finance, the Monetary Board of the Central Bank of the Philippines and the National Economic Development Authority, is further authorized, in behalf of the Republic of

the Philippines, to guarantee such loans, credits or indebtedness as may be necessary and upon such terms and conditions, not inconsistent with this Act, as may be agreed upon with the governments of foreign countries with whom the Philippines has diplomatic or trade relations or which are members of the United Nations, their agencies, instrumentalities or financial institutions or with reputable international organizations or non-governmental national or international lending institutions, loans, credits or indebtedness extended directly to, or bonds, debentures, securities or other evidences of indebtedness for sale in international markets issued by:

(A) Corporations-owned or controlled by the Government of the Philippines, Provided, That the proceeds of bonds, debentures, securities or other evidences of indebtedness floated or issued, shall be used to undertake industrial, agricultural, or other economic development projects which are authorized by law or by their respective charters, including but not limited to those enumerated in Annex "A" or by their respective charters and such projects which may from time to time be recommended, by the National Economic Development Authority and approved by the President of the Philippines.

(B) Government-owned or controlled financial institutions for relending to individuals, partnerships, cooperatives, associations or private corporations, whose capital stock, if not fully subscribed, is open to subscription by the general public for projects authorized by the charters of such financial institutions or by law. . ."

It is a settled rule of statutory construction that the express mention of one person, thing, or consequence implies the exclusion of all others. Applying this rule to the second query, since above-quoted legal provision specifically enumerates those entitled to a guarantee by the Republic, an entity (like a trust fund) not expressly mentioned therein is deemed not included.

Please be guided accordingly.

Very truly yours,

(SGD.) JUSTICE SERAFIN R. CUEVAS

Secretary