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SECOND DIVISION

[G.R. No. 202097. July 3, 2019]

DEPARTMENT OF EDUCATION,[1] *petitioner, vs.* **RIZAL TEACHERS KILUSANG BAYAN FOR CREDIT, INC., represented by TOMAS L. ODULLO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; WRIT OF *MANDAMUS*; PROPER ONLY TO COMPEL PERFORMANCE OF MINISTERIAL DUTIES; DISCUSSED. — For the writ of *mandamus* to prosper, the applicant must prove by preponderance of evidence that "there is a clear legal duty [or a ministerial duty] imposed [by law] upon the office or the officer sought to be compelled to perform an act, and when the party seeking *mandamus* has a clear legal right to the performance of such act." x x x ***Padilla v. Congress, et al.,*** emphasized that "*[m]andamus* never issues in doubtful cases. While it may not be necessary that the ministerial duty be absolutely expressed, it must however, be clear. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed." Further, ***Umali v. Judicial and Bar Council*** distinguished a ministerial act from a discretionary act, *viz:* "A purely ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or

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[1] Please note that as early as August 13, 2004, the trial court had already ordered the substitution of former Secretary Raul Roco and former Undersecretary Ernesto Pangan as parties-respondents after they ceased holding the posts. They were to be replaced by then incumbent Secretary Edilberto C. De Jesus and Undersecretary Juan Miguel M. Luz. But the substitutions were not effected. Thus, to avoid the injustice of including these former officials as respondents in their official capacities when they had long ceased to be, this Court has *motu proprio* corrected the case title to conform to present circumstances and the presumed intent of both courts below and the parties in the case.

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impropriety of the act done. On the other hand, if the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive." Conversely, *mandamus* will not compel a public official to do anything which is not his or her duty or otherwise give the applicant anything to which he or she is not entitled to under the law.

2. **ID.; ID.; ID.; ID.; RTKBCI HAS NO CLEAR LEGAL RIGHT TO DEMAND THAT DEPED ACT AS ITS COLLECTING AND REMITTING AGENT FOR THE LOANS RTKBCI EXTENDED TO PUBLIC SCHOOL TEACHERS; CASE AT BAR. —** Here, [respondent] RTKBCI must prove that a law or regulation compels DepEd to continue as RTKBCI's collecting and remitting agent for the loans the latter extended to public school teachers and that RTKBCI is, by such law or regulations, entitled to the collection and remittance of these payments. x x x [However,] RTKBCI *has failed to prove* that a writ of *mandamus* is the appropriate legal remedy to compel DepEd as a matter of legal obligation to collect and remit on its behalf payments from concerned public school teachers. x x x RTKBCI has no clear legal right to demand that DepEd act as its collecting and remitting agent. [T]his is not one of DepEd's power, duties, and functions. Rather, it is an accommodation that DepEd does — not for the benefit of any private lending agency but as a means to protect and promote the teachers' welfare.

3. **ID.; ID.; ID.; ID.; ID.; NEITHER ESTOPPEL NOR PRACTICE ENGENDERS A CLEAR LEGAL DUTY FOR DEPED TO ACT AS RTKBCI'S COLLECTION AND REMITTANCE AGENT; WRIT OF *MANDAMUS* NOT A PROPER REMEDY IN CASE AT BAR. —** Neither estoppel nor practice engenders a clear legal duty for DepEd to act as RTKBCI's collection and remittance agent. As held in ***Peña v. Delos Santos,*** "[e]stoppel is a principle in equity and pursuant to Article 1432, *Civil Code,* it is adopted insofar as it is not in conflict with the provisions of the *Civil Code* and other laws." Estoppel, thus, cannot supplant and contravene the provision of law clearly

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applicable to a case, and conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy. DepEd cannot be held in estoppel to ascribe upon it a clear legal duty to act in situations where the paramount consideration mandated DepEd to protect and promote of the teachers' welfare in accordance with its power, duties, and functions under Section 7, RA 9155. It is both against law and public policy to uphold the collection and remittance accommodation afforded to private lending institutions when to do so was and would be prejudicial to its express mandate under RA 9155 to protect and promote the teachers' welfare.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Roxas & Roxas Law Offices for respondent.

D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

May the Department of Education (DepEd) be compelled by writ of mandamus to collect, by salary deductions, the loan payments of public school teachers and remit them to the Rizal Teachers Kilusang Bayan for Credit, Inc. (RTKBCI)?

This petition for review assails the *Decision* dated May 30, 2012 of the Court of Appeals[2] in CA-G.R. SP No. 106515 entitled *"Rizal Teachers Kilusang Bayan for Credit, Inc., represented by Tomas L. Odullo v. Department of Education, Hon. Secretary Raul S. Roco and Undersecretary Ernesto S. Pangan"* which affirmed, in the main, the *Decision*[3] dated January 23, 2008 of the Regional Trial Court (RTC)-Branch 19, Manila in Civil

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[2] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justice Franchito N. Diamante and Associate Justice Leoncia Real-Dimagiba, concorring, *rollo,* pp. 58-67.

[3] *Rollo,* pp. 220-228.

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Case No. 01-102346 granting the writ of *mandamus* prayed for therein directing DepEd and its responsible offices or divisions to release to RTKBCI the amount of ₱111,989,006.98 representing the loan payments of public school teachers and to continue implementing the payroll deduction scheme on RTKBCI's behalf until the loans would have been fully paid.

Antecedents

For the benefit of public school teachers, DepEd devised and implemented a payroll deduction scheme for the loans they secured from DepEd's duly accredited private lenders. RTKBCI was among DepEd's accredited private lenders which availed of the latter's payroll deduction scheme. To facilitate DepEd's collections and remittances, RTKBCI was assigned Deduction Codes 209 and 219. DepEd was also paid two percent of the total monthly deductions as administrative fees.

By Memorandum dated July 4, 2001, DepEd Undersecretary Ernesto S. Pangan directed Dr. Blanquita D. Bautista, Chief Accountant and Officer-in-Charge, Finance and Management Service to hold the remittance of the collections for February to June 2001; and suspend as well the salary deduction scheme for RTKBCI pending resolution of the teachers' numerous complaints against RTKBCI's alleged unauthorized excessive deductions and connivance with some DepEd's personnel in charge of effecting these deductions.[4] Some of these letters read:

"February 24, 2001

Hon. Raul Roco
Secretary, Department of Education, Culture and Sports
DECS Complex, Meralco Avenue
Pasig City

S i r:

x x x x x x x x x

x x x Ako at ang aking asawa ay nag utang sa nasabing kooperatiba, Ako po ang utang ko ay ₱10,000.00 at ang aking asawa na ang pangalan

[4] *Id.* at 59.

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nya ay Santiago G. Gurrobat, guro din ay ₱15,000.00 noong 1996. Ako po noong binawasan ng ₱800.00 sa loob ng dalawang taon. Pagkatapos ng dalawang taon (nahinto) na ito dahil ganoon ang nakalagay sa Payroll. Masaya na po ako dahil (nahinto) na. Akala ko po bayad na ako sa ₱10,000.00 na utang ko sa loob ng dalawang taon. Ang halagang naibawas sa akin ay ₱19,200.00, di bayad na dahil ₱10,000.00 lamang ang inutang ko. Pero pagkaraan naman ng ilang buwan, dalawa o tatlo, binawasan na naman ako sa halagang hindi parehas. Kung minsan ₱2,000.00 o ₱3,000.00 o ₱6,000.00 na hindi parehas buwan-buwan. Hanggang umabot ng ₱41,211.00.

x x x x x x x x x

Ganoon din sa asawa ko, noong ibinabawas ay mababang halaga, kung misan ₱800.00, ₱700.00 at ₱500.00 hanggang sa umabot ng dalawang taon dahil (iyon) ang nakalagay sa Payroll at nahinto sa sinasaad ng payroll. Akala po namin tapos na dahil kung ang ibinawas sa loob ng dalawang taon ay sobra-sobra na sa halagang inutang kasali na iyong interest. Pero sa hindi inaasahan, bumalik naman ulit pagkaraan ng dalawang buwan. Ganoon din ang ginawa ng asawa ko sumulat sa mga tao na aking nabanggit sa itaas, umaasang matulungan kami, pero hindi dahil inihinto ng dalawang buwan o tatlo at ibinalik na naman ng DECS-IBM ang bawas sa payroll at ang nakalagay sa payroll ay walang kataposan. Sa ngayon ang nakalakip sa Certificate of Deduction sa payroll ng Division of Catanduanes ay ₱59,074.00. Kung hindi ito (mahihinto) at hintayin ang mahabang taon ay aabot ng ₱100,000.00 sa halagang inutang ng asawa ko na ₱15,000.00.

x x x x x x x x x

Ano kaya ang milagrong ibinibigay ng R.T.K.B.C, Inc. sa In Charge ng Catanduanes sa DECS-IBM kung bakit madaling maibalik ang ibinabawas sa madaling panahon, hindi na hinihintay ang (tatlong) buwan hindi na sinusunod ang kahilingan ng guro at ang masaklap pa nito ipinahihinto ng Chief ng DECS-IBM ang mga iba pang deductions na hindi sa R.T.K.B.C, Inc.

Sir, siguro kung hindi ito maihinto sa susunod na buwan mamamatay na kami sa gutom. Biro mo Sir, sa isang buwan ang aking take home pay ay ₱3,200.00 sa aking asawa ay ₱2,000.00, sapat na ba ito sa isang buwan na walo kaming kumakain? Ang sa aking ₱3,000.00 ibinabayad ko sa personal kong utang buwan-buwan dahil namatay ang Nanay ko wala po naman kaming perang panggastos sa kanyang pagkamatay noon Agosto, 2000. Ang sa kabaong hindi po naming

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na bayaran ng (buo). Inireklamo na po kami sa Barangay Captain namin. Ano naman ang ibabayad na ang natira ay ₱2,000.00. Iyon ₱3,000.00 na suweldo ko ibinabayad ko dahil ang utang ko ay ₱20,000.00 matatapos ito sa Mayo 2001.

x x x x x x x x x

Very truly yours,

VIOLETA T. GURROBAT

SANTIAGO G. GURROBAT

LUCILA TAPEL"

"March 09, 2001

Hon. Raul Roco
Secretary of Education, Culture, and Sports
ULTRA, Pasig City

Sir:

x x x x x x x x x

This has reference to the attached letter of complaint of Mrs. Rosario Rono against me, for having paid in part as one of two co-makers with my personal loan with the Rizal Teachers Kilusang Bayan or RTKB located at Bangbang St., Sta. Cruz, Manila.

x x x x x x x x x

If you would only spare a little of your time to look into the attached Statement of Account herewith, you will maybe agree with me, Your Honor, that RTKB had done enormous injustice to the three of us, because of the exorbitant penalties and interests they charged against my loan in not so long interval from the moment I transferred station to the time they deducted my co-makers(') payments. Besides, I barely received a net proceeds of ₱15,000.00 from my ₱22,000.00 loan through their agent. With the sum that I already paid them and the sum paid by my co-makers, it clearly appeared that my loan is already overpaid.

x x x We live on a hand-to-mouth subsistence, me being the breadwinner. I am sending my four sons to school, three of whom are in college, one in high school. I feel desperate about the situation because Mrs. Rono is asking me to pay her immediately the sum of ₱30,000.00 plus. I don't know where to get the money to pay her. I have barely ₱2,116.00 in my monthly check. I only depend on your intervention so that this big problem will be solved.

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x x x x x x x x x

Very truly yours,

MRS. OSMANA M. SALOMON
Teacher
Tayabas West District
Tayabas, 4327, Quezon"

"July 12, 2001

Dear Sir,

Good day. I would like to inform you about my deductions in RTKBC.

Last Jan. 6, 1997 I have a loan. My loan was ₱20,000.00 but the cash given me was only ₱16,000.00.

My payments were begun/started last Dec. 1997 amounting ₱334.00, then April 1998 to May 1999 ₱889.00, then June 1999 and July ₱2,224.00, Aug to March 2000 ₱2,524.00, then April 2000 ₱1,635, until now I have a deduction of ₱3,323.00 Jan. 2001 to July 2001, so how many all in all. It amounts of ₱62,316.00.

Kaya wala nang katapusan and deduction kong ito bakit kaya, may balance pa raw ako na ₱20,000.00. Sobra na sila sa ginagawa nila sa akin, sila na nga ang nakikinabang sa aking sahod lahat na lang sa kanila.

x x x x x x x x x

Very truly yours,

NATIVIDAD B. RAMIREZ"

"March 3, 2001

Hon. Raul S. Roco
Secretary
Department of Education, Culture and Sports
2/F Rizal Building I, University of Life
Meralo (sic) Ave., Pasig City

Sir,

x x x x x x x x x

Totoo po akong nakautang ng halagang ₱8,000.00 sa RTKB noong 1993, Agosto ngunit nabawas nilang lahat ito. (Kalakip po nito ang detalye na nakatala A.) Nagpa transfer po ako dito sa lalawigang ito mula NCR noong October 1994. Sa hindi ko po inaasahan ay biglang

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may lumabas na bawas ang RTKB ng buwan ng Agosto, 1999. (Ang detalye po nito ay kalakip bilang B). Dahil nga po sa wala na akong utang, nagrequest po ako sa IBM na ihinto ang pagbabawas at nangyari po ito saloob (sic) ng limang buwan dahil sa pagdating muli ng buwan ng October, 2000 ay nagsimula na naman pong magbawas ang RTKB sa iba't-ibang halaga hanggang ngayon Pebrero, 2001 at maaaring sa mga susunod pang buwan ay magpatuloy itong walang katapusan. Napakalaki na po ang nabawas nila sa aking sahod na umaabot na po sa Forty-eight thousand one hundred seventy-nine (₱48,179).

x x x x x x x x x

Lubos na gumagalang,

LUZVIMINDA Z. RUENATA
Employee NO. 4618708
Div. 035 Sta. 010"

Responding to Undersecretary Pangan's directive, RTKBCI wrote[5] the former demanding the release of the collections. By letter dated September 12, 2001, Undersecretary Pangan denied[6] the demand. He asserted that the suspension of the salary deduction scheme was necessary to protect the concerned public school teachers.

Proceedings before the Trial Court

On November 29, 2001, RTKBCI filed with RTC-Manila the petition for *mandamus*[7] to compel DepEd and then Secretary Raul Roco and Undersecretary Pangan to remit to RTKBCI the loan collections and continue with the salary deduction scheme until the loans of the public school teachers should have been fully paid. The petition was raffled to Branch 19.

RTKBCI claimed it was among DepEd's accredited lending agencies and had a standing arrangement with the latter to avail of the payroll deduction scheme under Codes 209 and 219. Section 36 of RA 8760, *General Appropriations Act of 2000,* authorizing agencies and offices with existing deduction

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[5] Record, pp. 15-16.

[6] *Id.* at 17.

[7] *Rollo,* pp. 68-71.

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arrangements with private lenders to continue the same until the teachers' loans should have been fully paid.

The petition also sought actual damages of ₱5,000,000.00 and ₱500,000.00 for attorney's fees.[8]

Meantime, then Secretary Roco and Undersecretary Pangan resigned from their respective posts. DepEd manifested that these officials were replaced by then Secretary Edilberto C. De Jesus and Undersecretary Juan Miguel M. Luz. On August 13, 2004, the trial court ordered the substitution of parties-respondents in the case title but no action was made to implement it. Hence, as stated, the Court has *motu proprio* dropped Secretary Roco and Undersecretary Pangan as respondents and retained DepEd as the only party-respondent in the case title.

RTKBCI presented as its lone witness its consultant and liaison officer William G. Hernandez. He testified that DepEd acted arbitrarily and without due notice when it refused to remit the collections it had and eventually stopped the payroll deduction scheme in RTKBCI's favor.[9]

The Trial Court's Ruling

By *Decision* dated January 23, 2008,[10] the trial court granted the writ of *mandamus* prayed for and ordered DepEd to release to RTKBCI the collections amounting to ₱111,989,006.98. DepEd was also ordered to pay actual damages of ₱5,000,000.00 and attorney's fees of ₱500,000.00.

The Court of Appeals' Ruling

On DepEd's appeal, the Court of Appeals, under *Decision* dated May 30, 2012, affirmed in the main, but deleted the award of actual damages:

WHEREFORE, the assailed Decision dated January 23, 2008 of the RTC, Branch 19, City of Manila is AFFIRMED with MODIFICATION to read, as follows:

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[8] *Id.* at 71.

[9] TSN, September 20, 2007, pp. 14-24.

[10] *Rollo,* pp. 220-228.

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> WHEREFORE, judgment is rendered in favor of petitioner Rizal Teachers Kilusang Bayan for Credit, Inc. and against respondents Department of Education and its responsible officers/division. Accordingly, let a writ of mandamus issue, ordering said respondents to release in favor of petitioner the amount of ₱111,989,006.98, representing withheld remittances and to allow petitioner to proceed with its deductions under the payroll deductions scheme until the sums due as payment of the loans to petitioner are satisfied. Further, respondents are ordered to pay petitioner the amount of ₱500,000.00 as attorney's fees.
>
> SO ORDERED.

The Court of Appeals sustained the alleged clear legal right of RTKBCI to receive the payments which DepEd had already collected through the payroll deduction scheme. The Court of Appeals acknowledged that the payroll deduction scheme started as a privilege but became a property right of RTKBCI after DepEd authorized RTKBCI to avail of the scheme and actually collected the payments for RTKBCI's account.

The Present Petition

Petitioner DepEd now invokes the Court's discretionary appellate jurisdiction to review and reverse the Decision dated May 30, 2012 of the Court of Appeals. We present below the parties' conflicting arguments, *viz:*

DepEd	RTKBCI
1. DepEd's payroll deduction scheme is prohibited by law and contrary to the welfare of public school teachers. Hence, the writ of *mandamus* does not lie to compel DepEd to provide the relief sought by RTKBCI. 2. RTKBCI's accreditation by DepEd as a lending agency for public school teachers and its enrolment in DepEd's payroll	1. The continuous implementation of the payroll deduction scheme conformed with Section 36, RA 8760 (GAA FY 2000) and RA 4760, both authorizing government offices to continue with their existing salary deduction scheme with private lenders until all outstanding loans or policy premiums would have been paid. DepEd violated these statutes when it

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deduction scheme under Deduction Code Nos. 209 and 219 do not create a clear legal property right in favor of RTKBCI and a clear legal duty on DepEd to recognize and enforce such alleged right. 3. DepEd has already refunded the amounts collected as loan payments from concerned public school teachers to the latter. 4. The numerous complaints by affected public school teachers against RTKBCI's alleged unauthorized or over-deductions rendered RTKBCI without any clear legal right to seek relief from and under DepEd's payroll deduction scheme.	suspended the salary deduction scheme despite their clear directives to carry one with such scheme. 2. After DepEd itself granted accreditation to RTKBCI to collect payment through payroll deduction and charged 2% of the monthly collections as administrative fees, the former should be deemed estopped from asserting that it was a prohibited arrangement. 3. Although as a rule a writ of *mandamus* will not lie to compel the performance of an act involving the exercise of discretion, the exception is when there is grave abuse of discretion or when manifest injustice or palpable excess of authority will cause a petitioner to lose the right he or she is entitled to. In this case, the exception exists because DepEd unilaterally deprived RTKBCI of its property right arising from RTKBCI's loan transactions with concerned public school teachers.

The parties both agree that the collection and remittance of the payments may only be authorized by law. Their arguments, though hinge on the interpretation of laws and regulations, if any, pertaining to the payroll deduction scheme.

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Core Issue

May DepEd, by writ of *mandamus*, be compelled to continue to collect and remit on RTKBCI's behalf loan payments from public school teachers?

Ruling

We first reckon with the rules governing the writ of *mandamus*:

One. For the writ of *mandamus* to prosper, the applicant must prove by preponderance of evidence that "there is a clear legal duty imposed upon the office or the officer sought to be compelled to perform an act, and when the party seeking *mandamus* has a clear legal right to the performance of such act."[11] As explained in ***Pacheco v. Court of Appeals:***[12]

> Mandamus lies to compel the performance of a clear legal duty or a ministerial duty imposed by law upon the defendant or respondent to perform the act required that the law specifically enjoins as a duty resulting from office, trust or station. A clear legal right is one that is founded or granted by law. Unless the right to relief is clear, mandamus will not issue. If there is any discretion as to the taking or non-taking of the action sought, there is no clear legal duty.

Padilla v. Congress, et al.,[13] emphasized that "*[m]andamus* never issues in doubtful cases. While it may not be necessary that the ministerial duty be absolutely expressed, it must however, be clear. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed."

Further, ***Umali v. Judicial and Bar Council***[14] distinguished a ministerial act from a discretionary act, *viz:* "A purely ministerial act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to

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[11] *Knights of Rizal v. DMCI Homes, Inc., et al.,* 809 Phil. 453, 527 (2017).

[12] 389 Phil. 200, 203 (2000).

[13] G.R. No. 231671, July 25, 2017, 832 SCRA 282, 370.

[14] G.R. No. 228628, July 25, 2017, 832 SCRA 194, 225-226.

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the mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. On the other hand, if the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment. Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive."

Conversely, *mandamus* will not compel a public official to do anything which is not his or her duty or otherwise give the applicant anything to which he or she is not entitled to under the law.[15]

Here, RTKBCI must prove that a law or regulation compels DepEd to continue as RTKBCI's collecting and remitting agent for the loans the latter extended to public school teachers and that RTKBCI is, by such law or regulations, entitled to the collection and remittance of these payments.

Two. DepEd and RTKBCI have enumerated the following laws and regulations involving the collection and remittance of the loan payments of public school teachers:

(a) Section 21, RA 4670 *(The Magna Carta for Public School Teachers)*;[16]
(b) Section 36, RA 8760, *(General Appropriations Act (GAA) FY2000)*;[17]

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[15] See *Star Special Watchman and Detective Agency, Inc., et al. v. Puerto Princesa City, et al.,* 733 Phil. 62, 77 (2014).

[16] Deductions Prohibited. No person shall make any deduction whatsoever from the salaries of teachers except under specific authority of law authorizing such deductions: *Provided, however,* That upon written authority executed by the teacher concerned, (1) lawful dues and fees owing to the Philippine Public School Teachers Association, and (2) premiums properly due on insurance policies, shall be considered deductible.

[17] Authorized Deductions. — Deductions from salaries, emoluments or other benefits accruing to any government employee may be allowed for the payment of obligations due or owing to government lending institutions such as government banks, the Government Service Insurance System, duly licensed insurance companies, savings and loans associations, and those organized for, and managed by, government employees. Deductions under Section 21 of R.A. No. 4670, otherwise known as the

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(c) Section 54, PD 807 *(Civil Service Decree)*;[18]
(d) Section 262, Volume I of the *Government Auditing and Accounting Manual issued by the Commission on Audit;*[19]
(e) Circular No. 21, S. 1969[20] issued by Director of Public Schools Juan L. Miguel *"Prohibiting the Payment*

Magna Carta for Public School Teachers may be allowed, including such deductions representing amortizations arising from educational loan for tuition fees, reasonable amount for textbooks and other school obligations granted by insurance companies duly licensed by the Insurance Commission: PROVIDED, That such deductions shall not reduce the employee's monthly take home pay to an amount lower than Two Thousand Pesos (₱2,000.00), after deducting all other statutory deductions: PROVIDED, FURTHER, That the agencies and offices with existing deductions arrangements with private lenders shall continue such deductions until the credits/loans outstanding or the premiums of the policies in force at the date of passage of this Act shall have been fully paid.

[18] Section 54. *Liability of Disbursing Officers.* Except as may otherwise be provided by law, it shall be unlawful for a treasurer, or other fiscal officer to draw or retain from the salary due an officer or employee any amount for contribution or payment of obligations other than those due the government or its instrumentalities.

[19] a. withholding tax;
b. premium for GSIS and retirement insurance, Medicare and PAG-IBIG contributions;
c. settlement of government claims against the employee;
d. disallowance from accounts;
e. allotment of fixed monthly amount to members of the family or a dependent relation of an officer or employee upon written authorization for the same to the disbursing officer; and
f. deposits and repayment of loans owing to government lending institutions or associations organized and managed by government employees upon written authorization for the same to the disbursing officer.

[20] PROHIBITING PAYMENT OF SALARY TO PERSONS OTHER THAN THE EMPLOYEE CONCERNED

To Superintendents:

1. Quoted hereunder is Memorandum Order No. 93 dated February 5, 1968, of the Executive Office entitled "Prohibiting Payment of Salary to Any Person Other Than the Employees Concerned, Except As Provided Herein."

It has been observed that some employees delegate the collection of their salaries to attorneys-in-fact on the strength of powers of attorney or other forms of authority in favor of other persons, evidently in satisfaction of obligations contracted by them. This practice should be discouraged in view of its adverse effects on the efficiency and morale of employees whose incentive to work is necessarily impaired, since their salary or a portion thereof goes to other persons.

To curb this unwholesome practice, it is hereby directed that henceforth no cashier or disbursing officer shall pay to attorneys-in-fact or other persons who may be authorized under a power of attorney or other forms of authority to collect the salary of an employee,

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of Salary to Persons Other than the Employee Concerned," which circular was upheld in the 1983 case *Tiro vs. Hontanosas*;

(f) DECS Order No. 44, S. 1997[21] issued by Secretary Ricardo T. Gloria on May 6, 1997, reiterating the policy under Circular No. 21;

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except when the persons so designated and authorized is an immediate member of the family of the employee concerned, and in all other cases, except upon proper authorization of the Assistant Executive Secretary for Legal and Administrative Matters, with the recommendation of the Financial Assistant.

All orders or regulations inconsistent herewith are hereby revoked.

This order shall take effect immediately.

2. Accordingly, it is desired that, henceforth, cashiers or disbursing officers pay the salary due any school employee or issue the treasury warrant of any teacher direct to such employee or teacher, except when authority to collect the salary or treasury warrant has been given to another person, and the person so authorized is an immediate member of the family of the employee or teacher concerned.

3. Any previous regulation issued by this Office inconsistent with this Circular is hereby revoked.

[21] 1. Background. This Office has observed the proliferation of unauthorized lending groups or persons involved in lending activities within the DECS system. Noted also is the collusion between and among some DECS personnel and lending groups, persons, DECS officials and other personnel involved In lending activities to facilitate the collection of the salaries/cheques of teachers and other personnel, in whole or in part, through unauthorized deduction or withholding schemes, evidently in satisfaction of obligations contracted with them. These activities have reduced some of our personnel to collection agents who are given certain percentage for the Job, and denigrated the efficiency and morale of our teachers and other personnel, especially those in the field offices.

Time and again, this particular problem has cropped up and this Department has consistently addressed the problem and maintained its stand against these practices.

2. Policy Statement. In view thereof and in line with our commitment to stop graft and corrupt practices and to bring back the dignity of teachers, the Department establishes its policy against all forms of unauthorized salary deductions, withholding of checks and lending activities within the DECS system. It shall provide guidelines on the release of the cheques/salaries of teachers and other personnel as herein set forth.

3. Prohibitions. Henceforth, the Department promulgates the following prohibitions against Its officials and other personnel, to wit:

a. No lending activities in any form shall be allowed within the DECS system in all levels unless authorized by law or by the Secretary;

b. No person shall make any deduction whatsoever from the salaries, cheques of teachers and other personnel except under specific authority of law authorizing such deductions provided, however, that upon written authority executed by the teacher concerned, lawful dues and fees owing to the Philippine Public School Teachers Association, Teachers'

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Three. DepEd Order No. 049-17 is relevant.

DEPED ORDER NO. 049-17 *(Revised Guidelines on Accreditation and Re-Accreditation of Private Lending Institutions under the Automatic Payroll Deduction System Program)*

I. RATIONALE

These guidelines are issued to enhance the existing rules and criteria set under DepEd Memorandum No. 228, s. 2011, on the Department's Accreditation/Re-accreditation of Private Lending Institutions (PLIs), for continuous systems improvement.

II. LEGAL BASIS

A. Only entities expressly authorized by law may avail of the privileges under APDS, in view of the following:

1. Section 21 of RA 4670 re: Magna Carta for Public School Teachers which states that "No person shall make any deduction whatsoever from the salaries of teachers except under specific authority of law authorizing such deductions";
2. Section 66, Title I (A), Book V of the Administrative Code of 1987, which stipulates that "Except as may otherwise be provided by law, it shall be unlawful for a treasurer or other fiscal officer to draw or retain from the salary due an officer or employee, any amount for contribution or payment of obligations other than those due the government or its instrumentalities:"
3. General Provisions, Section 47. Authorized Deductions (General Appropriations Act for FY 2017) which states that "Deductions from salaries and other benefits accruing to any government employee, chargeable against the appropriations for Personnel Services, may be allowed for the payment of an individual employee's contributions or obligations due the following, and in the order of preference stated below:

   a. The BIR, PHILHEALTH, GSIS and HDMF;
   b. Non-stock savings and loan associations and mutual benefits associations duly operating under existing laws and

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Cooperatives of which they are members, and premiums properly due on insurance policies, shall be deductible;

c. No DECS officials or personnel shall introduce, operate, support or abet, directly or indirectly, any form of lending activities within the DECS system;

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cooperatives which are managed by and/or for the benefit of the government employees;

c. Associations or provident funds organized and managed by government employees for their benefit and welfare;
d. GFIs authorized by law and accredited by appropriate government regulating bodies to engage in lending;
e. Licensed insurance companies; and
f. Thrift banks and rural banks accredited by the BSP."[22]

4. Department of Justice (DOJ) Opinion No. 36, s. 2008 signed by former DOJ Secretary Raul M. Gonzales, stating that financing companies are duly qualified to participate in the APDS by virtue of the Financing Company Act, as amended.

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IV. POLICY STATEMENT

1. The grant of automatic payroll deduction for loans extended to DepEd teachers/personnel and the issuance of a "lending code" to private lending institutions (PLIs) is a privilege extended by the Department and not a right to be invoked by any party and shall be subject to DepEd regulations.
2. The DepEd shall regulate the use of its APDS to protect and secure its employees' welfare. Specifically, this shall translate into:

    2.1 Accreditation/Re-accreditation of PLIs specifically authorized by law to make deductions from the salaries of government employees (particularly DepEd personnel). Such organizations shall be duly registered with the proper government regulatory bodies;
    2.2 Provision of a ceiling on interest rates, service charges, and other fees charged by lending institutions participating in the scheme in order to prevent usurious lending; and
    2.3 Prevention and/or elimination of illegal and unauthorized deductions from DepEd personnel's salaries.

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[22] Note that this provision is subject to conditional implementation in accordance with the President's Veto Message, December 19, 2017, Volume I-B, pages 649-650, R.A. No. 10964.

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9. Entities participating in the APDS shall also conform with the ceilings on interest and non-interest rates on loans as shown below. Only loans with term of up to three (3) years will be accommodated under the APDS. Illustrations for the loan computations from one (1) to three (3) years are attached and marked as Enclosures "A-l" to "A-3". The said rates may be adjusted anytime by the Department depending on the prevailing market rates and other policy considerations.

Particulars	Ceilings
Contractual Interest Rates (based on diminishing/declining principal balance)	1 year — 7.500% per annum (p.a.) or 0.625% per month 2 years — 9.000% p.a. or 0.750% per month 3 years — 9.660% p.a. or 0.805% per month
One-time Other Charges (Must be itemized in the Disclosure Statement)	6.000%, deducted upfront from the principal amount of loan
Effective Interest Rates (EIR) p.a.	1 year — 21.091% 2 years — 16.351% 3 years — 14.886%

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VII. MONITORING AND EVALUATION

A. Monitoring the compliance of APDS accredited entities with these guidelines and the APDS-MOA, including addressing issues that arise in the implementation thereof, shall be undertaken by DepEd through the APDS Task Forces and the APDS Secretariat.

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VIII. FINAL PROVISIONS

A. REPEALING CLAUSE
All rules, regulations and issuances, which are inconsistent with these guidelines are hereby repealed or modified accordingly.

B. PENALTY CLAUSE
Violation of any provision of these revised guidelines or parts thereof shall be dealt with accordingly.

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- DM No. 540, s. 2009 — Re-opening of Accreditation of Private Lending Institutions under the Department's Automatic Payroll Deduction System
- DM No. 228, s. 2011 — Re-opening of Accreditation/Re-accreditation of the Private Lending Institutions (PLIs) under the DepEd Automatic Payroll Deduction System (APDS) Clean-up Program
- DM No. 229, s. 2012 — Re-opening of Accreditation of Private Lending Institutions under the Department's Automatic Payroll Deduction System

Four. Section 7 of RA 9155 *(Governance of Basic Education Act of 2001)* sets forth the power, duties and functions of DepEd and the different levels of supervision and regulation of educational activities.[23] Notably, DepEd's activities as collection

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[23] SECTION 7. Powers, Duties and Functions. — The Secretary of the Department of Education shall exercise overall authority and supervision over the operations of the Department.

A. National Level

In addition to his/her powers under existing laws, the Secretary of Education shall have authority, accountability and responsibility for the following:

(1) Formulating national educational policies;
(2) Formulating a national basic education plan;
(3) Promulgating national educational standards;
(4) Monitoring and assessing national learning outcomes;
(5) Undertaking national educational research and studies;
(6) Enhancing the employment status, professional competence, welfare and working conditions of all personnel of the Department; and
(7) Enhancing the total development of learners through local and national programs and/or projects.

The Secretary of Education shall be assisted by not more than four (4) undersecretaries and not more than four (4) assistant secretaries whose assignments, duties and responsibilities shall be governed by law. There shall be at least one undersecretary and one assistant secretary who shall be career executive service officers chosen from among the staff of the Department.

B. Regional Level

There shall be as many regional offices as may be provided by law. Each regional office shall have a director, an assistant director and an office staff for program promotion and support, planning, administrative and fiscal services.

Consistent with the national educational policies, plans and standards, the regional director shall have authority, accountability and responsibility for the following:

(1) Defining a regional educational policy framework which reflects the values, needs and expectations of the communities they serve;

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and remittance agent for accredited private lending institutions are not among its core power, duties, and functions.

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(2) Developing a regional basic education plan;
(3) Developing regional educational standards with a view towards benchmarking for international competitiveness;
(4) Monitoring, evaluating and assessing regional learning outcomes;
(5) Undertaking research projects and developing and managing regionwide projects which may be funded through official development assistance and/or other funding agencies;
(6) Ensuring strict compliance with prescribed national criteria for the recruitment, selection and training of all staff in the region and divisions;
(7) Formulating, in coordination with the regional development council, the budget to support the regional educational plan which shall take into account the educational plans of the divisions and districts;
(8) Determining the organization component of the divisions and districts and approving the proposed staffing pattern of all the employees in the divisions and districts;
(9) Hiring, placing and evaluating all employees in the regional office, except for the position of assistant director;
(10) Evaluating all schools' division superintendents and assistant division superintendents in the region;
(11) Planning and managing the effective and efficient use of all personnel, physical and fiscal resources of the regional office, including professional staff development;
(12) Managing the database and management information system of the region;
(13) Approving the establishment of public and private elementary and high schools and learning centers; and
(14) Performing such other functions as may be assigned by proper authorities.

C. Division Level

A division shall consist of a province or a city which shall have a schools division superintendent, at least one assistant schools division superintendent and an office staff for programs promotion, planning, administrative, fiscal, legal, ancillary and other support services.

Consistent with the national educational policies, plans and standards, the schools division superintendents shall have authority, accountability and responsibility for the following:

(1) Developing and implementing division education development plans;
(2) Planning and managing the effective and efficient use of all personnel, physical and fiscal resources of the division, including professional staff development;
(3) Hiring, placing and evaluating all division supervisors and schools district supervisors as well as all employees in the division, both teaching and non-teaching personnel, including school heads, except for the assistant division superintendent;
(4) Monitoring the utilization of funds provided by the national government and the local government units to the schools and learning centers;
(5) Ensuring compliance of quality standards for basic education programs and for this purpose strengthening the role of division supervisors as subject area specialists;

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Five. A *General Appropriations Act* such as RA 8760 would automatically lapse at the end of such fiscal year for which it

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(6) Promoting awareness of and adherence by all schools and learning centers to accreditation standards prescribed by the Secretary of Education;
(7) Supervising the operations of all public and private elementary, secondary and integrated schools, and learning centers; and
(8) Performing such other functions as may be assigned by proper authorities.

D. Schools District Level

Upon the recommendation of the schools' division superintendents, the regional director may establish additional schools district within a schools' division. Schools districts already existing at the time of the passage of this law shall be maintained. A schools' district shall have a schools' district supervisor and an office staff for program promotion.

The schools district supervisor shall be responsible for:
(1) Providing professional and instructional advice and support to the school heads and teachers/facilitators of schools and learning centers in the district or cluster thereof;
(2) Curricula supervision; and
(3) Performing such other functions as may be assigned by proper authorities.

E. School Level

There shall be a school head for all public elementary schools and public high schools or a cluster thereof. The establishment of integrated schools from existing public elementary and public high schools shall be encouraged.

The school head, who may be assisted by an assistant school head, shall be both an instructional leader and administrative manager. The school head shall form a team with the school teachers/learning facilitators for delivery of quality educational programs, projects and services. A core of non-teaching staff shall handle the school's administrative, fiscal and auxiliary services.

Consistent with the national educational policies, plans and standards, the school heads shall have authority, accountability and responsibility for the following:
(1) Setting the mission, vision, goals and objectives of the school;
(2) Creating an environment within the school that is conducive to teaching and learning;
(3) Implementing the school curriculum and being accountable for higher learning outcomes;
(4) Developing the school education program and school improvement plan;
(5) Offering educational programs, projects and services which provide equitable opportunities for all learners in the community;
(6) Introducing new and innovative modes of instruction to achieve higher learning outcomes;
(7) Administering and managing all personnel, physical and fiscal resources of the school;
(8) Recommending the staffing complement of the school based on its needs;
(9) Encouraging staff development;
(10) Establishing school and community networks and encouraging the active participation of teachers' organizations, nonacademic personnel of public schools, and parents-teachers-community associations;
(11) Accepting donations, gifts, bequests and grants for the purpose of upgrading teachers'/learning facilitators' competencies, improving and expanding

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has been enacted by operation of law.[24]

Gauged by the foregoing rules, RTKBCI *has failed to prove* that a writ of *mandamus* is the appropriate legal remedy to compel DepEd as a matter of legal obligation to collect and remit on its behalf payments from concerned public school teachers. Consider:

First. It is true that DepEd can no longer argue that it is powerless to institute a payroll deduction scheme for accredited private lending institutions. The reason is DepEd's continuous interpretation of statutes that it has the power to do so not only as a privilege and accommodation to private lending institutions but also as a scheme to protect and promote the teachers' welfare.

DepEd, nonetheless, has no legal duty to act as a collecting and remitting agent for RTKBCI. The latter has not shown that it remains an accredited private lending institution entitled to avail of the payroll deduction system. Assuming that RTKBCI is still DepEd accredited, DepEd is not precluded from suspending its activities under the payroll deduction scheme *vis-à-vis* a private lending agency such as RTKBCI. The payroll deduction scheme expressly describes the services it offers as a privilege. As such, DepEd may act as a collecting and remitting agent for a private lending agency, but doing so must always

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school facilities and providing instructional materials and equipment. Such donations or grants must be reported to the appropriate district supervisors and division superintendents; and

(12) Performing such other functions as may be assigned by proper authorities.

The Secretary of Education shall create a promotions board, at the appropriate levels, which shall formulate and implement a system of promotion for schools' division supervisors, schools district supervisors, and school heads. Promotion of school heads shall be based on educational qualification, merit and performance rather than on the number of teachers/learning facilitators and learners in the school.

The qualifications, salary grade, status of employment and welfare and benefits of school heads shall be the same for public elementary, secondary and integrated schools.

No appointment to the positions of regional directors, assistant regional directors, schools' division superintendents and assistant schools' division superintendents shall be made unless the appointee is a career executive service officer who preferably shall have risen from the ranks.

[24] *Philippine Constitution Association, Inc. v. Gimenez,* 154 Phil. 594, 598 (1974).

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be in consonance with DepEd's power, duties, and functions under Section 7 of RA 9155.

RTKBCI has no clear legal right to demand that DepEd act as its collecting and remitting agent. To reiterate, this is not one of DepEd's power, duties, and functions. Rather, it is an accommodation that DepEd does - - - not for the benefit of any private lending agency but as a means to protect and promote the teachers' welfare. Hence, the only feasible characterization of this activity its being a mere privilege. To otherwise characterize this activity is to demean and degrade the stature of DepEd as the sovereign regulator and supervisor of basic education and to reduce it to being a mere collection and remittance agency for private lending institutions.

Further, a dubious case is antithetical to the requirement of a clear legal right in *mandamus* cases. Here, there have been unresolved complaints against RTKBCI for overpayments, excessive deductions and even connivance between RTKBCI and DepEds' own personnel in charge of implementing the salary deduction scheme. DepEd had also long decided to return the collected payments to the teachers concerned. These two circumstances, therefore, make RTKBCI's demand no longer feasible in terms of clarity and exactness of the right and the practicability of its recognition and enforcement.

Second. Neither estoppel nor practice engenders a clear legal duty for DepEd to act as RTKBCI's collection and remittance agent.

As held in ***Peña v. Delos Santos,***[25] "[e]stoppel is a principle in equity and pursuant to Article 1432, *Civil Code,* it is adopted insofar as it is not in conflict with the provisions of the *Civil Code* and other laws." Estoppel, thus, cannot supplant and contravene the provision of law clearly applicable to a case, and conversely, it cannot give validity to an act that is prohibited by law or one that is against public policy.[26]

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[25] 782 Phil. 123 (2016).

[26] *Id.* at 134.

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DepEd cannot be held in estoppel to ascribe upon it a clear legal duty to act in situations where the paramount consideration mandated DepEd to protect and promote of the teachers' welfare in accordance with its power, duties, and functions under Section 7, RA 9155. It is both against law and public policy to uphold the collection and remittance accommodation afforded to private lending institutions when to do so was and would be prejudicial to its express mandate under RA 9155 to protect and promote the teachers' welfare.

In any event, RTKBCI is hard-pressed to establish the essential elements of estoppel. In relation to the party sought to be estopped, these are: 1) a clear conduct amounting to false representation or concealment of material facts or, at least, calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; 2) an intent or, at least, an expectation, that this conduct shall influence, or be acted upon by, the other party; and 3) the knowledge, actual or constructive, by him of the real facts.[27] With respect to the party claiming estoppel, the conditions he or she must satisfy are: 1) lack of knowledge or of the means of knowledge of the truth as to the facts in question; 2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and 3) action or inaction based thereon of such character as to change his position or status calculated to cause him injury or prejudice.[28]

It has not been shown that DepEd intended to conceal the actual facts concerning the nature of its role as a collection and remittance agent of RTKBCI as a privilege and as an accommodation to the latter on one hand, and a protective and promotive mechanism for the welfare of teachers, on the other. More important, RTKBCI has been shown not to be totally unaware of the aforementioned nature of DepEd's role and its primary responsibility to teachers, among other stakeholders,

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[27] See *Shopper's Paradise Realty & Development Corp. v. Rogue,* 464 Phil. 116, 124-125 (2004).

[28] *Id.* at 125.

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and only secondarily and subsidiarily to private lending institutions such as RTKBCI.

Continued practice in domestic legal matters does not rise to the level of a legal obligation. The first sentence of Article 7 of the *Civil Code* states, "[l]aws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary." There can be no clear legal duty and clear legal right where to do so would compel DepEd to violate its power, duties, and functions under Section 7 of RA 9155, specifically toward the protection and promotion of the teachers' welfare. In the latter case, no practice, continued or otherwise, would establish and validate such clear legal duty and clear legal right.

In terms of international law where practice could give rise to a legally binding rule, ***Bayan Muna v. Romulo***[29] explained:

> Customary international law or international custom is a source of international law as stated in the Statute of the ICJ. It is defined as the "general and consistent practice of states recognized and followed by them from a sense of legal obligation. In order to establish the customary status of a particular norm, two elements must concur: State practice, the objective element; and opinio juris sive necessitates, the subjective element.
>
> State practice refers to the continuous repetition of the same or similar kind of acts or norms by States. It is demonstrated upon the existence of the following elements: (1) generality; (2) uniformity and consistency; and (3) duration. While, opinio juris, the psychological element, requires that the state practice or norm "be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."

RTKBCI has failed to show that DepEd's alleged practice of acting as a collector and remitter of loan payments on its behalf was general and consistent, much less, that DepEd did so as a sense of legal obligation. DepEd, on the contrary, has been adamant that it acted as collector and remitter only by way of accommodation and privilege.

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[29] 656 Phil. 246, 302-303 (2011).

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Third. RTKBCI cannot rely on Section 36 of RA 8760 to anchor its claim of clear legal duty. As for the GAA FY 2000, by operation of law, it automatically lapsed by the end of such fiscal year.

In the modern world, education is considered a basic human right for it is a powerful tool by which people from socially and economically marginalized countries can be lifted out of poverty. This is the reason behind the State's mandate to make education accessible to all its citizens. Its importance cannot be overemphasized and is now in the same league of national concerns as national defense, economic growth, and international relations of the country. Section 5(5),[30] Article XIV of the *Constitution* has directed that education be accorded the highest budgetary priority.

The State has also made it part of its national policy to ensure that teachers achieve advancement in their career, for they are, after all, the partners of the State in fulfilling its mandate of providing quality education. The *Constitution,* thus, provides:

> (4) The State shall enhance the right of teachers to professional advancement. Non-teaching academic and non-academic personnel shall enjoy the protection of the State.[31]

But professional growth cannot be achieved if teachers are not doing well in their personal lives. The personal and professional well-being of teachers must go hand-in-hand. The State must, therefore, enforce laws, formulate rules and implement programs intended to promote the general interest of teachers. This is in accord with the State's duty to ensure its citizens with dignity, welfare, and security.

Further, teachers have no one else to turn to for protection of their welfare except the State itself. For its part, the State is

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[30] The State shall assign the highest budgetary priority to education and ensure that teaching will attract and retain its rightful share of the best available talents through adequate remuneration and other means of job satisfaction and fulfillment.

[31] Article XIV, Section 5(4), Constitution.

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duty bound to render such protection in observance of its duty under the doctrine of *parens patriae*. *Parens patriae* means parent of his or her country. It refers to the State in its role as "sovereign" or the State in its capacity as a provider of protection to those unable to care for themselves. In fulfilling this duty, the State may resort to the exercise of its inherent powers: police power, eminent domain and power of taxation.[32] In implementing the payroll deduction system, DepEd performed a function only secondarily to favor RTKBCI as a private lending institution and primarily to protect and promote the welfare of teachers and institutions of basic education.

ACCORDINGLY, the petition for review on *certiorari* is **GRANTED.** The *Decision* dated May 30, 2012 of the Court of Appeals[33] in CA-G.R. SP No. 106515, entitled *"Rizal Teachers Kilusang Bayan for Credit, Inc., represented by Tomas L. Odullo v. Department of Education, Hon. Secretary Raul S. Roco and Undersecretary Ernesto S. Pangan,"* is **REVERSED** and **SET ASIDE,** and the Complaint for *Mandamus* and Damages in Civil Case No. 01-102346, **DISMISSED.**

SO ORDERED.

Carpio, S.A.J. (Chairperson), Perlas-Bernabe, Caguioa, and *Reyes, J. Jr., JJ.,* concur.

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[32] See *Southern Luzon Drug Corporation v. The Department of Social Welfare and Development, et al.,* 809 Phil. 315, 339 (2017). [citations omitted]

[33] Penned by Justice Hakim S. Abdulwahid with Justice Franchito N. Diamante and Justice Leoncia Real-Dimagiba, concurring; *rollo,* pp. 58-67.