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[G.R. No. 230818. February 14, 2023]

EFRAIM C. GENUINO, *Petitioner*, *v.* **COMMISSION ON AUDIT, et al.,** *Respondents*.

[G.R. No. 244540. February 14, 2023]

RENE C. FIGUEROA, *Petitioner*, *v.* **COMMISSION ON AUDIT,** *Respondent*.

D E C I S I O N

HERNANDO, *J.*:

Before the Court are two consolidated cases:

(1) **G.R. No. 230818 Efraim C. Genuino v. Commission on Audit *(Genuino case)***, for resolution of the Motion for Reconsideration[1] filed by respondent Commission on Audit (COA) of the June 15, 2021 Decision[2] (2021 *Genuino* Decision), granting Efraim C. Genuino's (Genuino) Petition for *Certiorari*,[3] and setting aside the Decision No. 2015-420[4] dated December 28, 2015, and the Resolution No. 2017-073[5] dated March 21, 2017 both issued by the COA.

(2) **G.R. No. 244540 Rene C. Figueroa v. Commission on Audit *(Figueroa case)***, a Petition for *Certiorari*[6] (with application

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1 *Rollo* (G.R. No. 230818), pp. 262-291.

2 Id. at 235-248. Penned by Associate Justice Edgardo L. Delos Santos and concurred in by all the Members of the Court, except Associate Justice Alfredo Benjamin S. Caguioa who took no part.

3 Id. at 3-26.

4 Id. at 27-30.

5 Id. at 31-38.

6 *Rollo* (G.R. No. 244540), pp. 3-36.

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for a stay order) filed by Rene C. Figueroa (Figueroa), seeking to annul Decision No. 2017-271[7] dated September 6, 2017 and Resolution No. 2019-023[8] dated November 26, 2018, both issued by COA.

Factual Antecedents

Genuino and Figueroa were former high-ranking officers of the Philippine Amusement and Gaming Corporation (PAGCOR): Figueroa, a former Senior Vice President (SVP), and Genuino, the former Chairman of the Board of Directors and Chief Executive Officer (CEO).[9]

The controversy started when both Figueroa and Genuino (collectively, petitioners) were included in Notice of Suspension No. 2011-004(10)[10] (Notice of Suspension) dated August 22, 2011, issued by Supervising Auditor Atty. Resureccion Quieta (SA Quieta). The Notice of Suspension suspended in audit the amount of ₱2,000,000.00 relative to the payment of financial assistance granted to Pleasant Village Homeowners Association (PVHA) for the implementation of the association's flood control project in Pleasant Village Subdivision (PVS), Los Baños, Laguna. The Notice of Suspension likewise required the persons responsible therein, which include petitioners, to submit supporting documents.[11]

In response, Figueroa wrote to SA Quieta a Request to Lift Notice of Suspension,[12] arguing that the Notice of Suspension lacks legal and factual bases, and that his inclusion therein is wrongful. Figueroa mainly argued that he was designated merely as an alternate signatory of the checks and check vouchers, and

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7 Id. at 38-46.

8 Id. at 37.

9 *Rollo* (G.R. No. 230818), p. 80.

10 *Rollo* (G.R. No. 244540), pp. 98-99.

11 Id.

12 Id. at 100-105.

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never had custody of the funds. He prayed that the suspension be lifted with respect to him immediately.[13]

On February 28, 2012, SA Quieta rendered a Decision[14] excluding Figueroa from the Notice of Suspension. It did not, however, lift the notice of suspension pending submission of supporting documents. SA Quieta's Decision partly reads:

> Our review on your justifications for the above Notices of Suspension was found to be in order and also we established that the degree of your participation in the Check Vouchers for the above suspensions is purely ministerial in nature as then Senior Vice President of PAGCOR. In view thereof, we now exclude you as one of the persons responsible for the above Notices of Suspension. However, we regret to inform you that we can not lift the above Notices of Suspensions because the necessary documents were not yet submitted to this Office.[15]

Nevertheless, following submission by the responsible persons of the supporting documents, the notice of suspension was lifted, as reported under Notice of Settlement of Suspension, Disallowance, and Charge No. 2012-018 dated December 19, 2012[16] (NSSDC), but subject to re-evaluation, thereby temporarily clearing petitioners.

However, Notice of Disallowance No. 2013-002(10)[17] dated February 20, 2013 (Notice of Disallowance) was subsequently issued. It disallowed in audit the payment of the financial grant to PVHA after it has been found that the latter is a private association.

The Notice of Disallowance reads in part:

> The amount of [P]2,000,000.00 was disallowed in audit because our re-evaluation showed that the donation was spent for private purpose considering that PVHA is a private association. Although the same was already the subject of NS No. 2011-004(10) dated August 22, 2011 due

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[13] Id.

[14] Id. at 106-107.

[15] Id. at 107.

[16] Id. at 40.

[17] Id. at 108-109.

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to lack of pertinent supporting documents and subsequently lifted under NSSDC No. 2012-018 dated December 19, 2012, after the submission thereof, the former Supervising Auditor of PAGCOR qualified in the said NSSDC that the issue will be re-evaluated upon receipt of the reply on his query from the Head, Engineering Department, Los Baños, Laguna, on whether or not the whole or part of Pleasant Village Subdivision (PVS) were already turned over or donated by the PVHA to the local government of Los Baños, Laguna.

On the basis of the information given by the Secretary to the [Sangguniang] Bayan of the Municipality of Los Baños, in his 2nd Indorsement dated January 18, 2013, that neither the whole nor part of PVS has not be turned over to the local government of Los Baños, it remained a private property.[18]

The disallowance was anchored on the information relayed by the Municipality of Los Baños, Laguna stating that PVS has not been turned over to the local government of Los Baños. Hence, it remained a private property for which public funds cannot be appropriated.[19]

Aggrieved by their inclusion in the Notice of Disallowance, petitioners filed their respective appeals[20] before the COA Corporate Government Sector, Cluster 6 (COA Cluster): Figueroa, on March 15, 2013, where he reiterated his argument that his participation in the transaction was purely ministerial, a contention which he claims was validated by the decision rendered by SA Quieta excluding him from the Notice of Suspension, and effectively cleared him of any liability; and Genuino, on September 24, 2013, arguing that PVS was a public property, and that the donation in favor of PVHA was in furtherance of PAGCOR's corporate social responsibility.

However, petitioners' appeals were denied in COA CGS-6 Decision No. 2014-004[21] dated April 28, 2014. The denial

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[18] Id. at 108.

[19] Id.

[20] Id. at 110-124; *rollo* (G.R. No. 230818), pp. 85-97.

[21] *Rollo* (G.R. No. 244540), pp. 78-82.

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substantially echoed the Notice of Suspension and Notice of Disallowance, stating that the grant of financial assistance to PVHA failed to serve a public purpose as required by law, considering that the latter remained to be a private association. The Decision explains:

> In view of the public purpose requirement as ruled by the Supreme Court, this Office believes that the payment of financial assistance granted to PVHA for the construction of the flood control and drainage system project in the amount of [₱]2,000,000 does not satisfy the requirement of public purpose in its traditional sense or in its broad interpretation. First, the subject property is owned and managed by a private association. x x x Here, PAGCOR could not even present a single document effecting the transfer to the said barangay and that the proper procedure had been followed.[22]

This prompted petitioners to file their respective Petitions for Review[23] before the COA Commission Proper.

Ruling of the Commission on Audit

As to Figueroa

In its September 6, 2017 Decision,[24] the COA dismissed Figueroa's petition. It sustained the disallowance of the financial assistance granted to PVHA considering that it was for a private purpose, in violation of paragraph 2, Section 4, of Presidential Decree No. (PD) 1445,[25] which provides that government funds or property shall be spent or used solely for a public purpose. The COA gave full credence to the certification submitted by the *Sangguniang Bayan* of Los Baños, Laguna, that PVHA has not donated or turned PVS over, in whole or in part, to the local government.

The COA likewise found Figueroa negligent in the discharge of his functions as SVP and alternate signatory of the check

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[22] Id. at 81.

[23] *Rollo* (G.R. No. 244540), pp. 47-77; *rollo* (G.R. No. 230818), pp. 66-79.

[24] *Rollo* (G.R. No. 244540), pp. 38-46.

[25] Entitled "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES." Approved: June 11, 1978.

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voucher, which paved the way for the disbursement of funds in the disallowed transaction. In holding Figueroa personally liable for the disallowed transaction, the COA explained:

> Consequently, as alternate signatory of the President of PAGCOR, Mr. Figueroa should have stated in writing his objections to the questioned transaction to avoid liability. However, as correctly pointed out by the SA, Mr. Figueroa failed to do so, hence, he cannot be exempted from liability pursuant to Section 106 of PD No. 144 which provides that no accountable officer shall be relieved from liability by reason of his having acted under the direction of a superior officer, unless prior to that act, he notified the superior officer in writing of the illegality of the payment, application, or disposition. To reiterate, Figueroa signed the check and check voucher without written notice stating therein its patent lack of supporting documents to determine the validity of the transaction.[26]

Lastly, the COA dismissed Figueroa's contention that the Decision of SA Quieta excluding him from liability is binding on it, thus:

> Lastly, Mr. Figueroa's contention that the decision of the SA excluding him from liability is binding on the Commission is untenable. It has long been a settled rule that the government is not bound by the errors committed by its agents. x x x Hence, the Commission is not bound by the decision of the SA excluding him from the persons liable under the NS. More importantly, said decision was pertinent to the NS which suspended the subject transaction for lack of supporting documents. In fact, the NS was lifted after the submission of the said documents. In the present case, [Figueroa] is now being held liable under the ND for signing the check and check voucher which gave way to the disbursement of an unlawful transaction. x x x[27]

The dispositive portion of the COA Decision reads:

> **WHEREFORE**, premises considered, the Petition for Review of Mr. Rene Figueroa, former Senior Vice President, Philippine Amusement and Gaming Corporation, Ermita, Manila, is **DENIED**. Accordingly, Commission on Audit Corporate Government Sector-6 Decision No. 2014-004 dated April 28, 2014, which affirmed Notice of Disallowance

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[26] *Rollo* (G.R. No. 244540), p. 44.

[27] Id.

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No. 2013-002(10) dated February 20, 2013, on the grant of financial assistance to Pleasant Village Homeowners Association, Los Baños, Laguna, for its flood control and drainage system project in the amount of [₱]2,000,000.00 is **AFFIRMED**.[28]

Figueroa moved for reconsideration, but the same was denied by COA in Resolution No. 2019-23[29] dated November 26, 2018.

As to Genuino

Unlike Figueroa's petition which was dismissed on the merits, Genuino's was summarily dismissed for being filed out of time. The COA noted that Genuino's petition was filed beyond the six-month period allowed by its rules. The dispositive portion of COA Decision reads:

WHEREFORE, premises considered, the petition for review of Mr. Efraim C. Genuino, former Chairman of the Board of Directors and Chief Executive Officer of Philippine Amusement Gaming Corporation is hereby **DISMISSED**. Accordingly, CGS-6 Decision No. 2014-044 *(sic)* dated April 28, 2014, which affirmed Notice of Disallowance No. 2013-002(10) dated February 20, 2013, is **FINAL AND EXECUTORY**.[30]

Displeased, Genuino filed a Motion for Reconsideration,[31] reiterating his arguments and adding that, contrary to COA's initial findings, his petition was timely filed.

In Resolution No. 2017-073[32] dated March 21, 2017, the COA corrected itself and agreed with Genuino that the petition was timely filed. However, after weighing the merits of the petition, the COA ultimately dismissed the same, echoing the reasoning in the *Figueroa case* that PVS is a private property for which public funds cannot be appropriated. The COA likewise held Genuino solidarily liable for the disallowed amount, being the official who approved the grant, and the payment of the financial assistance.

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[28] Id. at 44-45.

[29] Id. at 37.

[30] *Rollo* (G.R. No. 230818), p. 29.

[31] Id. at 39-53.

[32] Id. at 31-38.

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Further Proceedings

Unrelenting, Figueroa filed the present petition imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of COA in issuing the questioned COA Decision and Resolution.

Meanwhile, Genuino filed a Petition for *Certiorari* with a prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction on April 19, 2017. In the Decision[33] dated June 15, 2021 (2021 *Genuino* Decision), this Court granted Genuino's petition and set aside Decision No. 2015-420 and Resolution No. 2017-073 issued by COA.

In ruling for Genuino, the Court found that COA's audit jurisdiction over PAGCOR is limited, in view of Section 15 of PD 1869.[34] Specifically, this Court noted:

> To stress, the disposition of this case rests solely on the fact that COA acted with grave abuse of discretion in conducting an audit of PAGCOR's accounts beyond the 5% franchise tax and 50% of the Government's share in its gross earnings as stated in Section 15 of P.D. No. 1869. The Court, therefore, makes no pronouncement whether the financial assistance granted to PVHA was violative of the public purpose requirement under P.D. No. 1445 and the propriety of holding petitioner civilly liable therefor, for having been rendered moot and academic.[35]

The dispositive portion of the 2021 Genuino Decision reads:

> **WHEREFORE**, the Petition for *Certiorari* with Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction is **GRANTED**. The Commission on Audit Decision No. 2015-420 dated December 28, 2015 and the Resolution dated March 21, 2017 are hereby **REVERSED** and **SET ASIDE**.

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[33] Id. at 235-248.

[34] Entitled "CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 163/2, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)." Approved: July 11, 1983.

[35] *Rollo* (G.R. No. 230818), p. 246.

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SO ORDERED.[36]

Unconvinced, COA filed the present Motion for Reconsideration[37] dated November 3, 2021 seeking the reversal of the June 15, 2021 Decision.

Meanwhile, on November 2, 2021, Figueroa filed a Manifestation with Motion to Reverse COA Decision.[38] In this motion, Figueroa essentially seeks the same reliefs asked in his petition — the reversal of COA Decision No. 2017-271 and Resolution No. 2019-023. He argues that his petition must be similarly resolved.

Thus, the present consolidated cases.

Issues

Considering that the factual circumstances of the two cases are closely related, We deem it prudent to summarize the issues to the following:

1. Whether the COA's audit jurisdiction over PAGCOR is limited;

2. Whether the disallowance of the subject transaction was proper;

3. Whether petitioners may be held personally liable for the disallowed transaction; and

4. Whether a stay order may be issued in favor of Figueroa.

Our Ruling

The Court grants COA's Motion for Reconsideration in G.R. No. 230818. Consequently, the 2021 *Genuino* Decision is hereby reversed. Necessarily, Figueroa's Petition for *Certiorari* must likewise be dismissed. Ultimately, Decision Nos. 2015-420 and 2017-271, and Resolution Nos. 2017-073 and 2019-023, all issued by COA, are reinstated and sustained.

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[36] Id.

[37] Id. at 262-291.

[38] Id.

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The audit jurisdiction of COA over PAGCOR is <u>not</u> limited by Section 15 of PD 1869

After an exhaustive reassessment of the case records, the Court grants COA's Motion for Reconsideration in G.R. No. 230818 and abandons the 2021 *Genuino* Decision. The COA's audit jurisdiction over PAGCOR is not limited by Section 15 of PD 1869.

To recall, We declared in the 2021 *Genuino* Decision that the COA exercises **limited** audit jurisdiction over PAGCOR by virtue of Sec. 15 of PD 1869, thus:

Petitioner's contention that COA has limited audit jurisdiction over PAGCOR finds basis in its very own Charter. Specifically, Section 15 of P.D. No. 1869 reads:

TITLE V

Government Audit

SEC. 15. *<u>Auditor</u>*. – The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. **The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and 50% of the gross earnings pertaining to the Government as its share.** (Emphasis in the original)

The aforesaid provision is unequivocal that with respect to PAGCOR, the COA's audit jurisdiction is limited to the 5% franchise tax and 50% share of the Government in its gross earnings. This express limitation on COA's general audit power was purposely adopted to provide some flexibility in PAGCOR's operations x x x"[39]

The 2021 *Genuino* Decision gave merit to Genuino's argument that Sec. 15 of PD 1869 limited COA's audit jurisdiction over

[39] *Rollo* (G.R. No. 230818), p. 243.

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PAGCOR to funds coming from the 5% franchise tax and 50% of the gross earnings pertaining to the Government as its share. Thus, finding that the COA does not have jurisdiction over the disallowed transaction, the 2021 *Genuino* Decision no longer proceeded to determine the propriety of the financial assistance to PVHA and the liability, if any, of Genuino.

A second look, however, will reveal that such conclusion runs inconsistent with Article IX-D, Secs. 2 and 3 of the 1987 Constitution, which state:

> SECTION 2. The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
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> SECTION 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit.

It is clear from the foregoing provisions that the COA shall have the "power x x x to examine, audit, and settle **all accounts** pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, x x x including government-owned or controlled corporations with original charters." The broad and encompassing language used by the provision

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unmistakably discloses the objective to avert any exception or limitation to COA's jurisdiction, and to do away with provisions of law with similar import, such as Sec. 15 of PD 1869.

While it is true that implied repeals are not favored, they are nevertheless not prohibited. In *Mecano v. Commission on Audit*,[40] the Court held:

> Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, the one law cannot be enforced without nullifying the other.[41]

This repeal by implication becomes even more evident if We take notice of the fact that PD 1869 was enacted in 1983, or before the promulgation of the 1987 Constitution. Thus, when PD 1869 was passed, it was under the authority of the 1973 Constitution, under which Art. XII-D, Sec. 2 states:

> SECTION 2. The Commission on Audit shall have the following powers and functions:
>
> (1) Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations; keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive, or extravagant expenditures or uses of funds and property.

Interestingly, Art. IX-D, Sec. 3 of the 1987 Constitution which prohibits the passage of a law exempting any government entity from the jurisdiction of the COA, neither existed nor had a counterpart provision in the 1973 Constitution.

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[40] 290-A Phil. 272 (1992).

[41] Id. at 282.

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While the above-cited provision may seem essentially similar to its counterpart in the 1987 Constitution, a closer look will reveal one significant difference: the provision in the 1987 Constitution specifically mentions government-owned or controlled corporations **with original charters**, while the 1973 Constitution version did not. In the Court's view, this reveals the clear intention of the framers of the 1987 Constitution to strengthen and widen the audit jurisdiction of the COA.

Further and more importantly, Art. XVIII, Sec. 3 of the 1987 Constitution provides:

> SECTION 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

The clear import therefore of Art. XVIII, Sec. 3 of the 1987 Constitution is that all existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances **inconsistent** with the provisions of the 1987 Constitution are rendered **inoperative**. As already discussed, Sec. 15 of PD 1869 is one such law inconsistent with Art. IX-D, Secs. 2 and 3 of the 1987 Constitution. Thus, the same is deemed inoperative.

In view of the foregoing, We hereby reverse the 2021 *Genuino* Decision and hold that PAGCOR, being a government-owned or controlled corporation with its own original charter, and its funds regardless of source, come within the broad purview of Art. IX-D, Secs. 2 and 3 of the 1987 Constitution. In effect, the "revenue and receipts of, and expenditures or uses of funds" which are held in trust by or pertaining to it, are subject to COA's audit jurisdiction, contrary to Sec. 15 of PD 1869, and the restrictions mentioned therein.

In fine, We hold that the COA has jurisdiction to audit PAGCOR funds, even those not coming from either the 5% franchise tax, or the 50% of the gross earnings as the government's share by virtue of Art. IX-D, Secs. 2 and 3 of the 1987 Constitution. Consequently, the subject Notice of Disallowance is valid.

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Having settled the issue on the *validity* of the Notice of Disallowance, We now resolve its *propriety*. We hold that the issuance of the Notice of Disallowance was proper.

The subject transaction was for a private purpose; hence, the disallowance was proper

On this point, Figueroa relies heavily on the contention that under PD 1869, the subject disbursement is allowed. He states:[42]

27. However, the amended PAGCOR charter, Presidential Decree (P.D.) No. 1869 allows, among others,

TITLE I – General Provisions

SECTION 1. Declaration of Policy. – It is hereby declared to be the policy of the State to centralize and integrate all games of chance not heretofore authorized by existing franchises or permitted by law in order to attain the following objectives:

[x x x x]

(b) To establish and operate clubs and casinos, for amusement and recreation, including sports gaming pools (basketball, football, lotteries, etc.) and such other forms of amusement and recreation including games of chance, which may be allowed by law within the territorial jurisdiction of the Philippines and which will:

(1) **generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects**, Tulungan ng Bayan Centers, Nutritional Programs, Population Control, and such other essential public services;

28. The same law also clearly allows what is exactly the purpose of the questioned transaction, namely, funding and financing of infrastructure and/or socio-civic projects such as flood control and sewage systems, thus,

SEC. 7. Powers, Functions and Duties of the Board of Directors. – The Board shall have the following powers, functions and duties;

a) To allocate and distribute, with the approval of the Office of

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[42] *Rollo* (G.R. No. 244540), pp. 15-16.

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> the President of the Philippines, the earnings of the Corporation earmarked to **finance infrastructure and socio-civic projects;**
>
> 29. It therefore appears that PAGCOR has been given not merely the authority but the mandate to fund and finance socio-civic and infrastructure projects throughout the country, foremost of which was enumerated, are flood control and sewage systems;
>
> 30. To be clear and to erase any doubt of statutory conflicts, P.D. 1869, which supersedes COA's cited P.D. 1445, ultimately provides,
>
> SEC. 19. Repealing Clause. – All laws, decrees, executive orders, administrative orders, rules or regulations, inconsistent herewith are hereby repealed, amended or modified accordingly.[43] (Emphasis in the original)

Figueroa insists that: first, PD 1869 impliedly repealed provisions of PD 1445 which are inconsistent with the former; and second, due to this implied repeal, PAGCOR is now authorized to allocate and disburse funds for projects mentioned above. Figueroa fundamentally asserts that, as long as the project funded is one of those above-listed, it may be allowed regardless of whether it is for a private or a public purpose.

Meanwhile, Genuino asserts that contrary to COA's findings, PVS has become a public property in view of its turnover from PVHA to *Barangay* Tuntungin-Putho, Los Baños, Laguna. As proof of this turnover, Genuino cites the Minutes[44] of the Regular Meeting of *Sangguniang Barangay* dated August 17, 2009, which states such fact.

The Court disagrees with petitioners.

As correctly held by the respondent, there is no incongruence between the two statutes which would result to a repeal by implication of one by the other.

Sec. 4 of PD 1445 provides:

> **Section 4.** *Fundamental principles*. – Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

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[43] Id.

[44] *Rollo* (G.R. No. 230818), pp. 237-238.

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x x x x

2. Government funds or property shall be spent or used solely for public purposes.

The provision is clear and absolute in requiring government funds to be spent or used solely for public purposes. The requirement, without a doubt, covers PAGCOR funds which is a government agency. From this, We can reasonably draw the conclusion that the socio-civic projects mentioned in the above-cited provision of PD 1869 may be allocated with public funds, provided that the requirement of public purpose is satisfied.

This conclusion in fact finds support in the provision Figueroa himself cited, where it is stated that PAGCOR shall "generate sources of additional revenue to fund infrastructure and socio-civic projects, such as flood control programs, beautification, sewerage and sewage projects, *Tulungan ng Bayan* Centers, Nutritional Programs, Population Control, **and such other essential public services**."[45]

Note that at the end of the enumeration, the statute mentions the phrase "and such other essential public services."[46] Applying the statutory construction principle of *ejusdem generis*, the true essence of the provision becomes clear: the socio-civic projects, such as flood control projects as in this case, which PAGCOR may fund must be in the nature of an "essential public service." Again, this is more in line with Sec. 4 of PD 1445, which requires government funds to be used **solely** for public purposes. At this juncture, it may be well to reiterate that every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence.[47]

To be clear, there is no question that PAGCOR may fund and finance socio-civic activities. We agree with Figueroa on that

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[45] *Rollo* (G.R. No. 244540), pp. 296-297; emphasis in the original omitted and emphasis supplied.

[46] Id. at 297.

[47] *Pulido v. People*, G.R. No. 220149, July 27, 2021, citing *Hagad v. Gozo-Dadole*, 321 Phil. 604, 614 (1995).

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point. In fact, it is mandated under PD 1869. However, it is the nature of such socio-civic project that will determine its validity.

Neither is there merit in Genuino's contention that the turnover of PVS has been the subject of a *Sangguniang Barangay* meeting, as the same is not a mode of acquiring ownership under the law.

It is a basic principle in civil law that there are only seven modes of acquiring ownership over a property. These are:

A. *Original mode* (not owned before by somebody else)

1. Occupation
2. Creation or work (*e.g.*, intellectual creation)[48]

B. *Derivative mode* (owned before by somebody else)

3. Succession
4. Donation
5. Acquisitive prescription
6. Law (*e.g.*, expropriation)
7. Tradition (as a result of certain contracts such as sale, barter, assignment, etc.)[49]

Evidently, being the subject in a *Sangguniang Barangay* meeting, or any meeting for that matter, is not a mode of acquiring ownership recognized by the law. As correctly held by the COA, there must be a positive act from the previous owner before the new owner can acquire dominion over the property. Otherwise, the property remains private, until the local government of Los Baños, Laguna, acquires the property through the modes recognized by law.

Moving forward, in the landmark case of *Pascual v. Secretary of Public Works*[50] *(Pascual)*, the Court laid down the test of validity of a public expenditure, thus:

It is a general rule that *the legislature is without power to appropriate public revenue for anything but a public purpose* x x x **It is the essential**

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[48] *Acap v. Court of Appeals*, 321 Phil. 381, 390 (1995).

[49] Id.

[50] 110 Phil. 331 (1960).

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character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. *Incidental* advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does *not* justify their aid by the use of public money.[51] (Emphasis supplied)

In *Pascual*, this Court nullified the appropriation of public funds for the construction of a feeder road located inside a privately-owned subdivision. It was held that "[i]nasmuch as the land on which the projected feeder roads were to be constructed belonged then to respondent Zulueta, **the result is that said appropriation sought a private purpose**, and hence, was null and void."[52]

This principle is restated in *Planters Products, Inc. v. Fertiphil Corporation*[53] *(Planters)*, where the Court explained:

The power to tax can be resorted to only for a constitutionally valid public purpose. By the same token, taxes may not be levied for purely private purposes, for building up of private fortunes, or for the redress of private wrongs. They cannot be levied for the improvement of private property, or for the benefit, and promotion of private enterprises, except where the aid is incident to the public benefit.[54]

To further highlight the principle, We cite here the pertinent discussion in *Albon v. Fernando*[55] *(Albon)*, where the Court nullified appropriations made to a privately-owned subdivision for the widening, repair, and improvement of its sidewalks, to wit:

Therefore, the use of LGU funds for the widening and improvement of privately-owned sidewalks is unlawful as it directly contravenes Section 335 of RA 7160. This conclusion finds further support from the language of Section 17 of RA 7160 which mandates LGUs to efficiently

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[51] Id. at 340.

[52] Id. at 341-342. Emphasis supplied.

[53] 572 Phil. 270 (2008).

[54] Id. at 280.

[55] 526 Phil. 630 (2006).

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and effectively provide basic services and facilities. The law speaks of infrastructure facilities intended primarily to service the needs of the residents of the LGU and "which are *funded out of municipal funds*." It particularly refers to "*municipal* roads and bridges" and "similar facilities."[56]

Again in *Young v. City of Manila*[57] *(Young)*, where the Court likewise ruled against the use of public funds for the purpose of filling the low-lying streets of Antipolo Subdivision, a privately-owned subdivision, thus:

> We are therefore of the opinion and so hold that the plaintiff cannot compel the defendant city of Manila to purchase from him the street areas described in his complaint. Neither can he be compelled to donate said land and transfer his title to the City so that the latter may build and maintain the streets. **But as long as the plaintiff retains the title and ownership of said street areas, he is under obligation to pay the land taxes thereon as well as to reimburse to the City the expenses of filling the same.**[58] (Emphasis supplied)

At this juncture, it is quite easy to see the common denominator among *Pascual*, *Albon*, and *Young*: the use of public funds for improvements made to a privately-owned subdivision is against the law.

Figueroa asserts that the project "funded in 'one village' will not necessarily benefit only that village exclusively. Rather, all surrounding areas either benefit from or suffer from infrastructures meant to address flooding x x x."[59] Further, he claims that "it would not be a stretch to say that the flood control measures may not just benefit residents of a specified subdivision[,] but the entire periphery constituting an even wider public scope. x x x While not all were helped, that part of the public constituting the residents of said village were still helped."[60]

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[56] Id. at 639. Citations omitted.

[57] 73 Phil. 537 (1941).

[58] Id. at 542-543.

[59] *Rollo* (G.R. No. 244540), p. 322.

[60] Id. at 298.

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A construction project located inside a privately-owned subdivision is planned with the benefit of that subdivision as the primary consideration. Any benefit to the outer community, while welcome, is normally incidental only. This is the ordinary course of things and not the other way around, as petitioners would seem to want us to believe.

While it may be true that a larger community will be benefited by the project, such benefit is merely incidental to the primary purpose of the project, which is the improvement of PVHA. This is evident in the statements of Figueroa himself, when he recognized that the project will "not necessarily benefit only that village exclusively." To Our mind, this statement acknowledges that the primary benefit is for PVHA.

Neither are we unaware of R.A. 9904,[61] also known as the *Magna Carta* for Homeowners' Associations, several provisions of which seem to enlarge the principle of "public purpose" and validate the questioned public expenditure in favor of projects inside privately-owned subdivisions. The Court does not dispute that, to some extent, a public purpose is fulfilled by the grant of the financial assistance for the implementation of PVHA's flood control project. Indeed, this is in line with the aim of R.A. 9904 for the State to "endeavor to make available resources and assistance that will help [homeowners' associations] fulfill their roles in serving the needs and interests of their communities x x x."[62] In fact, in *Planters*, the Court has already expressed that the concept of "public purpose" is an evolving one, to wit:

> The term "public purpose" is not defined. It is an elastic concept that can be hammered to fit modern standards. Jurisprudence states that "public purpose" should be given a broad interpretation. It does not only pertain to those purposes which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services, but also includes those purposes designed to promote social

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[61] Entitled "AN ACT PROVIDING FOR A MAGNA CARTA FOR HOMEOWNERS AND HOMEOWNERS' ASSOCIATIONS, AND FOR OTHER PURPOSES." Approved: January 7, 2010.

[62] Id. at Section 2.

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justice. Thus, public money may now be used for the relocation of illegal settlers, low-cost housing and urban or agrarian reform.[63]

However, We must not forget that *Pascual* has already laid down a standard in determining the validity of a public expenditure. With that, We cannot sustain such amplification of the principle as justification for the expenditure of public funds. While the concept of "public purpose," taken alone, may be given such extended, flexible, and evolving meaning, the same cannot be said when disbursement of public funds is involved. In the latter scenario, the Court must adhere to the view laid down in *Pascual, i.e.*, that "[i]ncidental advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does not justify their aid by the use of public money."[64] Again, expenditure of public funds requires that the purpose be mainly for the public, with any benefit to private enterprises be merely incidental, and not the other way around. This narrow view laid in *Pascual* is put in place precisely to serve as guard against the squander of state resources, and to avoid the likely abuse that may follow from easing up the otherwise strict guidelines in the expenditure of valuable state funds.

There is nothing in the records showing that petitioners have fully justified the expense of PAGCOR's funds for a public purpose. It behooved upon petitioners to so establish that the flood control project within the private subdivision in question served a public purpose. For that matter, the Court now rules that in all events, it becomes the burden of the public official concerned to prove that state funds are being spent for a public purpose.

We stress that *Planters* now categorically qualifies that the concept of public purpose is an evolving one, as to soften *Pascual's* strict interpretation thereof.

To reiterate, if the payment of the financial grant is allowed, and the project constructed using public funds, there is no denying

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[63] Supra note 48, at 296.

[64] Supra note 46, at 340. Italics omitted.

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that PVHA will be the main beneficiary. Said private property will be the primary recipient of the improvement, and any benefit to the larger community and the public in general shall, at most, be speculative and merely incidental. This cannot be allowed for being in direct contravention with the mandate of PD 1445.

Petitioners are personally liable under the disallowed transaction.

Figueroa denies liability by arguing that the power to approve the transaction belonged to the PAGCOR Board and not to him; thus, he could not have approved it. He likewise contends that his function as a second alternate signatory of the check and check vouchers was purely ministerial. Therefore, according to him, he cannot be held liable for these reasons.

Meanwhile, as to his alleged non-liability, Genuino claims good faith on his part and the entire Board of Directors. Moreover, he contends that the approval of the payment was a collegial act of the entire Board, and not his alone; thus, to hold only him liable is tantamount to "evident discrimination and selective persecution."[65]

Petitioners are mistaken.

Figueroa tries to avoid liability by diminishing the importance of his participation as signatory of the checks and check vouchers. He attempts to impress upon this Court that since there was nothing patently alarming on the face of the documents, his only participation was the insignificant and mechanical act of physically affixing his signature on the checks and check vouchers. Surely, We cannot subscribe to this argument.

That Figueroa "simply signed the check and check voucher"[66] is of no moment, for by affixing his signature therein, Figueroa authorized the release of funds. Surely, the COA is correct in its assessment that had it not been for Figueroa's signature, the

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[65] *Rollo* (G.R. No. 230818), p. 18. Emphasis and italics omitted.

[66] *Rollo* (G.R. No. 244540), p. 18.

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funds would have never been disbursed.[67] Therefore, it is incorrect for Figueroa to say that he "simply signed" the check and check vouchers. Verily, the act of affixing one's signature is neither meaningless nor simply mechanical; it signifies that the signatory has read, agreed, and understood the document he has signed.

Figueroa goes on to say further that not only was he a mere signatory, but a second alternate signatory whose only duty was to sign in the absence of the first alternate signatory and the principal signatory. However, it is undeniable that Figueroa still signed the check and check vouchers, and his signature authorized the release of the funds. That Figueroa was a mere second alternate signatory does not lessen the authority and discretion given to him. Figueroa could have simply refused to sign the check and check vouchers had he exercised basic prudence after determining that the financial grant was for a privately-owned subdivision. Obviously, he failed to do this.

We cannot also ignore the fact that Figueroa — as the SVP — was designated to be the second alternate signatory. This circumstance negates Figueroa's assertion that he was not duty-bound to exercise discretion and prudence. Surely, if the duty to be delegated was to simply sign documents, anybody else could have been appointed, even a lowly rank-and-file employee. But this is not the case. Figueroa was specifically chosen because he was the SVP — a ranking official who is presumed, and expected, to have the ability, acumen, and aptitude to examine and scrutinize documents for signature.

These pronouncements are equally true for Genuino. As correctly argued by the COA, Genuino, as Chairman of the Board, "is expected to possess legal knowledge in the requirements and implications in granting such financial assistance."[68] Neither can he use good faith as a defense, as intent is not material in this controversy.

As to the amount of petitioners' liability, Sec. 103 of PD 1445 provides:

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[67] Id. at 373.

[68] *Rollo* (G.R. No. 230818), p. 36.

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Section 103. *General liability for unlawful expenditures*. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Meanwhile, Section 43, Chapter 5, Book VI of the 1987 Administrative Code[69] states:

Section 43. *Liability for Illegal Expenditures*. – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

x x x x

In addition, Section 38, Chapter 9, Book I of the 1987 Administrative Code states:

Section 38. *Liability of Superior Officers*. – (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

(2) Any public officer who, without just case, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Guided by the foregoing provisions, the Court in *Torreta v. Commission on Audit*[70] *(Torreta)* laid down the guidelines in the refund of amounts disallowed by the COA, to wit:

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[69] Executive Order No. 292, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987.'" Approved: July 25, 1987.

[70] G.R. No. 242925, November 10, 2020.

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1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.

d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.

The Court recognizes that the guidelines in *Torreta* were crafted specifically for refunds arising from government contracts for the procurement of goods and services involving the use or expenditures of public funds. The present case, however, is slightly different, as it involves not the procurement of goods and services, but a financial grant to a private entity. This notwithstanding, as both cases involve the wrongful expenditure of public funds, We see no reason why the guidelines in *Torreta* may not be applied in the present case.

Based on paragraph 2b of guidelines, We hold that petitioners may be properly held liable for the disallowed transaction.

First, petitioners are both approving officers. In arguing otherwise, Figueroa states:

34. **Respondent itself already stated petitioner was merely an alternate signatory to the same. The power to approve or authorize**

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transactions involving public funds is defined by law and that power clearly belongs to the board of directors.

35. The aforecited P.D. 1869 is explicit in the granting of authority to PAGCOR's board of directors, to wit:

> SEC. 7. Powers, Functions and Duties of the Board of Directors. – The board shall have the following powers, functions and duties:
>
> a) To allocate, distribute, with the approval of the Office of the President of the Philippines, the earnings of the Corporation earmarked to **finance infrastructure and socio-civic projects**; ([E]mphasis supplied)[71]

Meanwhile, Genuino passes responsibility to the Board, saying that as chairman, the approval was not his act alone but that of the entire Board.

We cannot assent to these arguments. Petitioners try to play it too technical by making a hair-splitting distinction between the duties of the board and their actions.

To "approve," in its ordinary sense, means "to give formal or official sanction."[72] In Our view, petitioners committed these acts by signing the checks and check vouchers, and approving the payment. Again, We emphasize that the funds would not have been disbursed without petitioners' crucial participation.

Second, we find petitioners guilty of gross negligence. They simply cannot hide behind the fact that they lack legal education or training, and therefore should not be expected to determine the validity of the transactions that pass through their desk. Surely, Figueroa would not have been the SVP, and Genuino the CEO and Chairman of the Board, if they did not have the necessary qualifications. It is in light of this background that We find petitioners guilty of gross negligence for failing to exercise the required level of prudence for a person like them, which led to

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[71] *Rollo* (G.R. No. 244540), p. 17.

[72] Merriam-Webster. (2011). Approve. In *Merriam-Webster's Dictionary of Law* (2011 ed., p. 30).

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the signing and approval of the checks and check vouchers, and ultimately, the disbursement of the funds.

Thus, applying the rules laid down in *Torreta*, we hold petitioners liable for being approving officers in the transaction, and for having exhibited gross negligence.

As to the actual amount to be returned, the same may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit*, as instructed by paragraph 2c of the *Torreta* guidelines. Notably however, while PVHA is included in the Notice of Disallowance as the payee, it is not the ultimate recipient of the funds, but rather the laborers and workers PVHA will hire to construct the flood control project. Moreover, there are other persons named in the Notice of Disallowance who may, or may not, be held liable. Thus, the Court deems it proper to remand the present case to the COA for the determination of the amount to be returned by petitioners.

As a final note, We emphasize that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, not only on the basis of the doctrine of separation of powers, but also for their presumed expertise in the laws that they are entrusted to enforce.[73]

A stay order may not be issued in favor of Figueroa.

As to Figueroa's prayer for a stay order, We find no compelling basis to issue the same. Other than his statements, Figueroa failed to substantiate the "great injustice" and "irreparable harm" he alleges that may result if the stay order is not issued. While We certainly extend Our compassion to him, it is unfortunately not a basis for the issuance of the relief he seeks.

Further, there is no showing that the COA Decision and COA Resolution assailed in the present cases are already ripe for execution. To reiterate, Figueroa's exact liability is still undetermined, considering that there are other persons named in

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[73] *Abpi v. Commission on Audit*, G.R. No. 252367, July 14, 2020.

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the Notice of Disallowance who may or may not be held liable. Thus, for these reasons, We find no compelling reason to issue a stay order in favor of Figueroa.

In fine, We find no grave abuse of discretion on the part of the COA in issuing the assailed rulings.

Prospective application of this ruling.

Considering the novel pronouncements made by the Court in this Decision, We deem it necessary to emphasize that this opinion shall apply prospectively and shall not affect parties who had relied on, and acted upon, the force of former contrary views. This is rooted in justice and fairness, as explained in *People v. Jabinal*:[74]

> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, x x x. The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim *"legis interpretatio legis vim obtinet"* — the interpretation placed upon the written law by a competent court has the force of law. x x x [W]hen a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.

WHEREFORE, Decision is hereby rendered:

1. **GRANTING** the Motion for Reconsideration filed by respondent Commission on Audit in G.R. No. 230818; accordingly, Efraim C. Genuino's Petition for *Certiorari* is **DISMISSED**;

2. **DISMISSING** Rene C. Figueroa's Petition for *Certiorari* and **DENYING** the prayer for the issuance of a stay order in G.R. No. 244540; and

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[74] 154 Phil. 565-571 (1974).

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3. **AFFIRMING** Commission on Audit Decision Nos. 2017-271 dated September 6, 2017, and 2015-420 dated December 28, 2015; and Commission on Audit Resolution Nos. 2019-023 dated November 26, 2018, and 2017-073 dated March 21, 2017.

SO ORDERED.

Gesmundo, C.J., Inting, Zalameda, M. Lopez, J. Lopez, Dimaampao, Marquez, and *Singh, JJ.*, concur.

Leonen, J., concurs, see separate opinion.

Lazaro-Javier and Kho, Jr., JJ., see concurring and dissenting opinion .

Gaerlan, J., joins the concurring and dissenting opinion of *J. Kho, Jr.*

Caguioa, J., no part.

Rosario, J., on official leave.

APPEARANCES OF COUNSEL

Esguerra & Blanco Law Offices for petitioner in G.R. No. 230818.

Javier Santiago Torres & Panghulan Law Offices for petitioner in G.R. No. 244540.

The Solicitor General for respondent.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia's* ruling that all funds of the Philippine Amusement and Gaming Corporation (PAGCOR), regardless of source, are subject to the audit jurisdiction of the Commission on Audit.

Section 15 of Presidential Decree No. 1869, which expressly limits the audit of PAGCOR funds to the 5% franchise tax and 50% government's share of gross earnings, is no longer operative

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with the subsequent adoption of the 1987 Constitution. Article IX-D, Sections 2 and 3 of the Constitution provides for an extensive scope of audit by the Commission on Audit, covering all funds of the government and its agencies or instrumentalities.

I further concur with the *ponencia's* affirmance of the disallowance by the Commission on Audit of the PHP 2,000,000.00 financial assistance granted by PAGCOR for Pleasant Village Homeowners Association's flood control and drainage system project. Petitioners PAGCOR officers failed to discharge the burden of proof to show that the flood control project had beneficial effect to the public.

I

PAGCOR was created and organized in 1977 under Presidential Decree No. 1067-A[1] to *centralize and integrate all games of chance*.[2] It was authorized to establish and operate gambling casinos to generate additional revenues for the government;[3] and was conferred corporate powers.[4] PAGCOR was 60% owned

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1 Presidential Decree No. 1067-A (1977), Creating the Philippine Amusement and Gaming Corporation, Defining its Powers and Functions, Providing Funds Therefor, and for Other Purposes.

2 Presidential Decree No. 1067-A (1977), sec. 1.

3 Presidential Decree No. 1067-A (1977), sec. 1.

4 Presidential Decree No. 1067-A (1977), sec. 3 provides:
SECTION 3. *Corporate Powers*. — The Corporation shall have the power:
(a) to prescribe its by-laws;
(b) to adopt, alter and use a corporate seal;
(c) to make contracts and to sue and be sued;
(d) to own real or personal property and to sell, mortgage or otherwise dispose of the same;
(e) to employ such officers and personnel as may be necessary to carry on its business;
(f) to acquire, lease or maintain, whether on land, water, or air, personal property and such other equipment and facilities as may be necessary to carry out its purposes;
(g) to import, buy, sell, or otherwise trade or deal in merchandise, goods, wares and objects of all kinds and descriptions that may be necessary to carry out the purposes for which it has been created;
(h) to enter into, make, perform, and carry out contracts tracts of every kind and for any lawful purpose pertaining to the business of the corporation, or in

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by the government and 40% by entities acceptable to its Board of Directors.[5] The Board of Directors was composed of five *ex officio* members,[6] two of whom were to be appointed by the president.

In line with State policy, PAGCOR was granted a franchise to operate and maintain gambling casinos and other recreation or amusement places, through Presidential Decree No. 1067-B.[7] The

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any manner incident thereto, as principal agent or otherwise, with any person, firm, association, or corporation;

(i) to do anything and everything necessary, desirable, convenient, appropriate, suitable or proper for the accomplishment of any of the purposes or the attainment of any of the objects or the furtherance of any of the powers herein stated, either alone, or in association with other corporations, firms or individuals, and to do every other act or thing incidental or pertaining to, or growing out of, or connected with the aforesaid purposes, objects, or powers, or any part thereof;

(j) to borrow money from local, or foreign sources as may be necessary for its operation;

(k) to invest its funds as the corporation may deem proper and necessary in any activity related to its principal operations, including in any bonds or securities issued and guaranteed by the Government of the Philippines;

(l) to establish and maintain clubs, casinos, branches agencies or subsidiaries, or other units anywhere in the Philippines as may be needed by the Corporation and reorganize or abolish the same as it may deem proper;

(m) to perform such other functions as may be provided by law.

5 Presidential Decree No. 1067-A (1977), sec. 4.

6 Presidential Decree No. 1067-A (1977), sec. 5 provides:

SECTION 5. *Board of Directors*. — The Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors that shall be composed of five (5) *ex-officio* members, namely: (1) The Chairman of the National Development Corporation, who shall act as Chairman; (2) The Secretary of Public Works; (3) The Secretary of the Department of Social Welfare; and two other members to be appointed by the President of the Philippines.

The two appointive directors shall each serve for a term of two (2) years or until their successors shall have been appointed and qualified.

7 Presidential Decree No. 1067-B (1977), Granting the Philippine Amusement and Gaming Corporation a Franchise to Establish, Operate, and Maintain Gambling Casinos on Land or Water within the Territorial Jurisdiction of the Republic of the Philippines.

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franchise was for a period of 25 years, renewable for another 25 years.[8] PAGCOR was also authorized to enter into operator and/or management contracts[9] and to do other acts related to the operation of gambling casinos.[10]

The franchise was subject to a special condition pertaining to the allocation of 60% of PAGCOR's revenues to fund priority infrastructure and socio-civic projects within Metropolitan Manila.[11] PAGCOR was also granted tax exemptions in lieu of a franchise tax of 5% of the gross revenue or earnings derived by PAGCOR from its casino operation.[12] However, all of PAGCOR's income was subject to audit by the Commission on Audit.[13]

Presidential Decree Nos. 1067-C,[14] 1399,[15] and 1632,[16] further amended PAGCOR's charter and franchise. Then in 1983,

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[8] Presidential Decree No. 1067-B (1977), sec. 1.

[9] Presidential Decree No. 1067-B (1977), sec. 2(1).

[10] Presidential Decree No. 1067-B (1977), sec. 2(5).

[11] Presidential Decree No. 1067-B (1977), sec. 3 provides:

SECTION 3. *Special Condition of Franchise*. — Sixty (60%) percent of the aggregated gross earnings derived by the franchise holder from this Franchise shall be immediately set aside and allocated to fund the following infrastructure and socio-civic projects within the Metropolitan Manila Area:

(a) Flood Control.

(b) Sewerage and Sewage.

(c) Nutritional Programs.

(d) Population Control.

(e) "Tulungan ng Bayan" Centers.

(f) Beautification.

[12] Presidential Decree No. 1067-B (1977), sec. 4.

[13] Presidential Decree No. 1067-B (1977), sec. 5 provides:

SECTION 5. *Other Conditions*. —

xxx xxx xxx

(4) *Audit of income*. — The books of accounts of the franchise holder, as well as all financial records and other supporting documents, shall be subject to audit by the Commission on Audit or his duly authorized representative.

[14] Presidential Decree No. 1067-C (1977), Amending the Franchise of the Philippine Amusement and Gaming Corporation. Section 1 adds the following provision:

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Presidential Decree No. 1869[17] was enacted to consolidate all the foregoing Presidential Decrees; increase the private sector's ownership in PAGCOR from 40% to 45%,[18] and lower the government's share in gross earnings to 50%.[19]

To purportedly provide PAGCOR with "greater flexibility in [its] operation[,]"[20] governmental audit was expressly limited to the determination of the 50% government share and the 5% franchise tax. Section 15 of Presidential Decree No. 1869 states:

TITLE V
Government Audit

SECTION 15. *Auditor*. — The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. **The funds of the Corporation to be covered by the audit shall be limited to the**

This franchise shall become exclusive in character, subject only to the exception of existing franchises and games of chance heretofore permitted by law, upon the generation by the Franchise Holder of gross revenues amounting to ₱1.2 Billion and its contribution therefrom of the amount of ₱720 Million as the government's share. (Emphasis in the original)

15 Presidential Decree No. 1399 (1978), Amending Certain Sections of Presidential Decree No. 1067-A dated January 1, 1977 and Presidential Decree No. 1067-B dated January 1, 1977.

16 Presidential Decree No. 1632 (1979), Amending Sections Three and Four of Presidential Decree No. 1067-B dated January 1, 1977, as amended by Presidential Decree No. 1399 dated June 2, 1978.

17 Presidential Decree No. 1869 (1983), Consolidating and Amending Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632, Relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR).

18 Presidential Decree No. 1869 (1983), sec. 4.

19 Presidential Decree No. 1869 (1983), sec. 12.

20 Presidential Decree No. 1869 (1983), 5th Whereas Clause.

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5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share. (Emphasis supplied)

II

This limitation on audit under Section 15 of Presidential Decree No. 1869 **is repugnant to, hence, impliedly repealed by the Constitution**.[21]

Article IX-D, Sections 2 and 3 of the Constitution provides:

SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle **all** accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, **including government-owned or controlled corporations with original charters**, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

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[21] *See* Article XVIII, Section 3 of the Constitution, which provides:

Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances **not inconsistent** with this Constitution shall remain operative until amended, repealed, or revoked.

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SECTION 3. **No law shall be passed exempting** any entity of the Government or its subsidiary in any guise whatever, or **any investment of public funds**, from the jurisdiction of the Commission on Audit. (Emphasis supplied)

The Commission on Audit's power under the Constitution is broader and more extensive.[22] It covers *all* revenue and receipts of, and expenditures or uses of funds and property, owned, or held in trust by the government, including government-owned or controlled corporations with original charters.

A government-owned or controlled corporation is defined under the Administrative Code as:

> . . . any agency 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 (51) per cent of its capital stock: *Provided*, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.[23]

In *Oriondo v. Commission on Audit*,[24] "an entity is considered a government-owned or controlled corporation if all three (3) attributes are present: (1) the entity is organized as a stock or non-stock corporation; (2) its functions are public in character; and (3) it is owned or, at the very least, controlled by the government."[25]

PAGCOR is a government-owned or controlled corporation. Hence, all its funds must be subject to the jurisdiction of the Commission on Audit without limitation.

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[22] *Orocio v. Commission on Audit*, 287 Phil. 1045 [Per J. Davide, Jr., Third Division].

[23] ADM. CODE, Sec. 2(13), Executive Order No. 292 (1987).

[24] G.R. No. 211293, June 4, 2019 [Per J. Leonen, *En Banc*].

[25] *Id.*

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In *Feliciano v. Commission on Audit*,[26] it was held that "[t]he determining factor of COA's audit jurisdiction is *government ownership or control* of the corporation":[27]

> [T]he constitutional criterion on the exercise of COA's audit jurisdiction depends on the government's ownership or control of a corporation. The nature of the corporation, whether it is private, quasi-public, or public is immaterial.
>
> The Constitution vests in the COA audit jurisdiction over "government-owned and controlled corporations with original charters," as well as "government-owned or controlled corporations" without original charters. GOCCs with original charters are subject to COA pre-audit, while GOCCs without original charters are subject to COA post-audit. GOCCs without original charters refer to corporations created under the Corporation Code but are owned or controlled by the government. The nature or purpose of the corporation is not material in determining COA's audit jurisdiction. Neither is the manner of creation of a corporation, whether under a general or special law.[28]

Further, the revenues derived by PAGCOR from its operations of gambling casinos are public in nature or at the very least affected with public interest. PAGCOR was granted a franchise to operate casinos principally to raise funds to finance the government's infrastructure and socio-civic projects. Moreover, its operations involve gambling activity, which is so affected with public interest as to be within the police power of the State.[29]

In *Republic v. COCOFED*,[30] this Court held that the coconut levy funds are not only affected with public interest; they are, in fact, *prima facie* public funds. They are exacted pursuant to law not only to raise revenues for the support of the government, but also to advance the State policy of protecting the coconut industry and its farmers. This Court has also previously held special funds

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[26] 464 Phil. 439 (2004) [Per J. Carpio, *En Banc*].

[27] *Id.* at 462.

[28] *Id.* at 461–462.

[29] *Basco v. Philippine Amusement and Gaming Corp.*, 274 Phil. 323, 336 (1991) [Per J. Paras, *En Banc*].

[30] *Republic v. COCOFED*, 423 Phil. 735 (2001) [Per J. Panganiban, *En Banc*].

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like the sugar levy fund and the oil price stabilization fund[31] to be public in character and subject to audit by the Commission on Audit.

In his Concurring Opinion in *Kilosbayan, Inc. v. Guingona, Jr.*,[32] Justice Florentino P. Feliciano explained that the funds raised by the On-line Lottery System were also public in nature. In his words:

> In the case presently before the Court, the funds involved are clearly public in nature. The funds to be generated by the proposed lottery are to be raised from the population at large. Should the proposed operation be as successful as its proponents project, those funds will come from well-nigh every town and barrio of Luzon. The funds here involved are public in another very real sense: they will belong to the PCSO, a government owned or controlled corporation and an instrumentality of the government and are destined for utilization in social development projects which, at least in principle, are designed to benefit the general public. . . . The interest of a private citizen in seeing to it that public funds, from whatever source they may have been derived, go only to the uses directed and permitted by law is as real and personal and substantial as the interest of a private taxpayer in seeing to it that tax monies are not intercepted on their way to the public treasury or otherwise diverted from uses prescribed or allowed by law. It is also pertinent to note that the more successful the government is in raising revenues by non-traditional methods such as PAGCOR operations and privatization measures, the lesser will be the pressure upon the traditional sources of public revenues, i.e., the pocket books of individual taxpayers and importers.[33]

In *Fernando v. Commission on Audit*,[34] this Court held that the funds of the Executive Committee of the Metro Manila Film Festival that were sourced from non-tax revenues are considered public funds, and are subject to the Commission on Audit's jurisdiction. Thus:

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[31] *Caltex Philippines, Inc. v. Commission on Audit*, 284-A Phil. 233 (1992) [Per J. Davide, Jr., *En Banc*].

[32] 302 Phil. 107 (1994) [Per J. Davide, Jr., *En Banc*].

[33] J. Feliciano, Separate Concurring Opinion in *Kilosbayan, Inc. v. Guingona, Jr.*, 302 Phil. 107, 116–117 (1994) [Per J. Davide, Jr., *En Banc*].

[34] 844 Phil. 644 (2018) [Per J. Tijam, *En Banc*].

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As to the committee's funds coming from non-tax revenues, the fact that such funds come from purported private sources, do not convert the same to private funds. Such funds must be viewed with the public purpose for which it was solicited, which is the management of the MMFF. In *Confederation of Coconut Farmers Organizations of the Philippines, Inc. (CCFOP) v. His Excellency President Benigno Simeon C. Aquino III, et al.*, reiterating this Court's ruling in *Republic of the Philippines v. COCOFED*:

> Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even used to organize and finance State offices. In *COCOFED v. PCGG*, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship . . . with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly. The Court continued: ". . . It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability.["]

In *The Veterans Federation of the Phils., represented by Esmeraldo R. Acordo v. Hon. Reyes*, this Court also declared as public funds contributions from affiliate organizations of the VFP:

> . . . In the case at bar, some of the funds were raised by even more special means, as the contributions from affiliate organizations of the VFP can hardly be regarded as enforced contributions as to be considered taxes. They are more in the nature of donations which have always been recognized as a source of public funding.[35] (Citations omitted)

Being public funds, PAGCOR's revenues are subject to audit by the Commission on Audit.

Notably, PAGCOR's books of accounts and all financial records and supporting documents were initially subject to the

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[35] *Id.* at 694–695.

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Commission on Audit's jurisdiction.[36] It was only under Section 15 of Presidential Decree No. 1869 that a limitation on audit was introduced. **However, with the effectivity of the 1987 Constitution, this limiting clause is clearly no longer operative**.

Article XVIII, Section 3 of the Constitution, provides:

> Sec. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances **not inconsistent** with this Constitution shall remain operative until amended, repealed, or revoked. (Emphasis supplied)

To bolster the Commission on Audit's extensive jurisdiction, Section 3 of Article IX-D of the Constitution categorically proscribes any law exempting any governmental entity or any investment of public funds from audit.

In *Feliciano*, the second sentence of Section 20 of Presidential Decree No. 198, which stated: "*Auditing shall be performed by a certified public accountant not in the government service*[,]"[37] was nullified for being violative of Section 3, Article IX-D of the Constitution. This Court explained:

> PD 198 cannot prevail over the Constitution. No amount of clever legislation can exclude GOCCs like LWDs from COA's audit jurisdiction. **Section 3, Article [IX-D] of the Constitution outlaws any scheme or devise to escape COA's audit jurisdiction, thus**:
>
> . . . .
>
> The framers of the Constitution added Section 3, Article IX-D of the Constitution precisely to annul provisions of Presidential Decrees, like that of Section 20 of PD 198, that exempt GOCCs from COA audit. The following exchange in the deliberations of the Constitutional Commission elucidates this intent of the framers:
>
> MR. OPLE:
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> I propose to add a new section on line 9, page 2 of the amended committee report which reads: NO LAW SHALL BE PASSED

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[36] Presidential Decree No. 1067-B (1977), sec. 5.

[37] *Feliciano v. Commission on Audit*, 464 Phil. 439, 465 (2004) [Per J. Carpio, *En Banc*].

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EXEMPTING ANY ENTITY OF THE GOVERNMENT OR ITS SUBSIDIARY IN ANY GUISE WHATEVER, OR ANY INVESTMENTS OF PUBLIC FUNDS, FROM THE JURISDICTION OF THE COMMISSION ON AUDIT.

May I explain my reasons on record.

We know that a number of entities of the government took advantage of the absence of a legislature in the past to obtain presidential decrees exempting themselves from the jurisdiction of the Commission on Audit, one notable example of which is the Philippine National Oil Company which is really an empty shell. It is a holding corporation by itself, and strictly on its own account. Its funds were not very impressive in quantity but underneath that shell there were billions of pesos in a multiplicity of companies. The PNOC — the empty shell — under a presidential decree was covered by the jurisdiction of the Commission on Audit, but the billions of pesos invested in different corporations underneath it were exempted from the coverage of the Commission on Audit.

Another example is the United Coconut Planters Bank. The Commission on Audit has determined that the coconut levy is a form of taxation; and that, therefore, these funds attributed to the shares of 1,400,000 coconut farmers are, in effect, public funds. And that was, I think, the basis of the PCGG in undertaking that last major sequestration of up to 94 percent of all the shares in the United Coconut Planters Bank. The charter of the UCPB, through a presidential decree, exempted it from the jurisdiction of the Commission on Audit, it being a private organization.

So these are the fetuses of future abuse that we are slaying right here with this additional section.

. . . .

MR. MONSOD:

I think the Commissioner is trying to avoid the situation that happened in the past, because the same provision was in the 1973 Constitution and yet somehow a law or a decree was passed where certain institutions were exempted from audit. We are just reaffirming, emphasizing, the role of the Commission on Audit so that this problem will never arise in the future.

There is an irreconcilable conflict between the second sentence of Section 20 of PD 198 prohibiting COA auditors from auditing LWDs

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and Sections 2(1) and 3, Article IX-D of the Constitution vesting in COA the power to audit all GOCCs. We rule that the second sentence of Section 20 of PD 198 is unconstitutional since it violates Sections 2(1) and 3, Article IX-D of the Constitution.[38] (Emphasis supplied, citation omitted)

The limitation on audit in Section 15 of Presidential Decree No. 1869 is a curtailment of the Commission on Audit's power, which is inconsistent with Article IX-D, Sections 2(1) and 3, of the Constitution. Said "limitation on audit" in Section 15 of Presidential Decree No. 1869 has been abrogated by the 1987 Constitution.

III

In addition, heightened audit should be done on PAGCOR because of the constitutionally irregular provisions in its Charter that amounts to regulatory capture.

Other than its corporate powers,[39] PAGCOR was also given regulatory powers under Sections 8 and 9 of Presidential Decree No. 1869, thus:

TITLE III
Affiliation Provisions

SECTION 8. *Registration*. — All persons primarily engaged in gambling, together with their allied business, with contract or franchise from the Corporation, shall register and affiliate their businesses with the Corporation. The Corporation shall issue the corresponding certificates of affiliation upon compliance by the registering entity with the promulgated rules and regulations thereon.

SECTION 9. *Regulatory Power*. — The Corporation shall maintain a Registry of the affiliated entities, and shall exercise all the powers, authority and the responsibilities vested in the Securities and Exchange Commission over such affiliated entities mentioned under the preceding section, including but not limited to amendments of Articles of Incorporation and By-Laws, changes in corporate term, structure, capitalization and other matters concerning the operation of

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[38] *Id.* at 465–468.

[39] Presidential Decree No. 1869 (1983), sec. 3.

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the affiliating entities, the provisions of the Corporation Code of the Philippines to the contrary notwithstanding, except only with respect to original incorporation.

In 2007, PAGCOR's regulatory powers were expanded by granting it the authority to license gambling casinos.[40]

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[40] Republic Act No. 9487 (2007), sec. 1 provides:

SECTION 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869, otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:

(1) Section 10, Nature and Term of Franchise, is hereby amended to read as follows:

"SEC. 10. *Nature and Term of Franchise*. —

Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e., basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: *Provided*, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.

"The operation of slot machines and other gambling paraphernalia and equipment, shall not be allowed in establishments open or accessible to the general public unless the site of these operations are three-star hotels and resorts accredited by the Department of Tourism authorized by the corporation and by the local government unit concerned.

"The authority and power of the PAGCOR to authorize, license and regulate games of chance, games of cards and games of numbers shall not extend to: (1) games of chance authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies; (2) games of chance, games of cards and games of numbers authorized, licensed, regulated by, in, and under special laws such as Republic Act No. 7922; and (3) games of chance, games of cards and games of numbers like cockfighting, authorized, licensed and regulated by local government units. The conduct of such games of chance, games of cards and games of numbers covered by existing franchises, regulatory bodies or special laws, to the extent of the jurisdiction and powers granted under such franchises and special laws, shall be outside the licensing authority and regulatory powers of the PAGCOR."

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I reiterate my view that PAGCOR's dual roles of a gambling regulator and operator is unconstitutional. It presents a direct conflict of interest and ultimately results in PAGCOR being considerably influenced by the interests it regulates and not by the public interest.

PAGCOR's mandate of protecting and promoting public interest directly clashes with its revenue objectives as a franchise holder. Due to its conflicting roles, PAGCOR is hampered in its function of regulating gambling activity in a transparent, effective, accountable, and consistent manner. Being a primary regulator and regulated entity at the same time, PAGCOR's regulations and processes are prone to abuses and may come to be directed towards benefiting the regulated industry or activity rather than the public. PAGCOR ends up becoming the agent of the industry it is regulating.

IV

As regards the propriety of the disallowance, I concur with the *ponencia* in affirming the Commission on Audit's disallowance of the PHP 2,000,000.00 financial assistance granted by PAGCOR to the Pleasant Village Homeowners Association of Los Baños, Laguna for their flood control and drainage system project.

Section 4(2) of Presidential Decree No. 1445[41] enunciates the basic principle that every disbursement of public funds must be for a public purpose.

The *ponencia* applies the doctrine in the 1960 case of *Pascual v. Sec. of Public Works*[42] to determine "public purpose." In *Pascual*, this Court nullified the appropriation of PHP 85,000.00 for a projected feeder road under Republic Act No. 920, which ran through a private subdivision and on land owned by respondent Zulueta. This Court held that "[i]nasmuch as the land on which the projected feeder roads were to be constructed belonged then to respondent Zulueta, the result is that said appropriation sought

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[41] Presidential Decree No. 1445 (1978), Government Auditing Code of the Philippines.

[42] 110 Phil. 331 (1960) [Per J. Concepcion, *En Banc*].

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a private purpose, and, hence, was null and void."[43] It cited the ruling case law that:

> It is a general rule that the legislature is without power to appropriate public revenue for anything but a public purpose. . . . **It is the essential character of the direct object of the expenditure which must determine its validity** as justifying a tax, and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. ***Incidental* advantage to the public or to the state, which results from the promotion of private interests and the prosperity of private enterprises or business, does *not* justify their aid by the use of public money.**[44] (Emphasis supplied)

In other words, in *Pascual*, there is no public purpose without direct benefit to the public.

However, the concept of "public purpose" or "public use" has evolved into a broader notion of indirect public benefit or advantage.

> There can be no doubt that expropriation for such traditional purposes as the construction of roads, bridges, ports, waterworks, schools, electric and telecommunications systems, hydroelectric power plants, markets and slaughterhouses, parks, hospitals, government office buildings, and flood control or irrigation systems is valid. However, the concept of public use is not limited to traditional purposes. Here as elsewhere the idea that "public use" is strictly limited to clear cases of "use by the public" has been discarded.
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> . . . .
>
> In the Philippines, Chief Justice Enrique M. Fernando has aptly summarized the statutory and judicial trend as follows:
>
> > "The taking to be valid must be for public use. There was a time when it was felt that a literal meaning should be attached to such a requirement. Whatever project is undertaken must be for the public to enjoy, as in the case of streets or parks. Otherwise, expropriation is not allowable. It is not any more. As long as the

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[43] *Id.* at 341–342.

[44] *Id.* at 340.

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> purpose of the taking is public, then the power of eminent domain comes into play. As just noted, the constitution in at least two cases, to remove any doubt, determines what is public use. One is the expropriation of lands to be subdivided into small lots for resale at cost to individuals. The other is in the transfer, through the exercise of this power, of utilities and other private enterprise to the government. It is accurate to state then that at present whatever may be beneficially employed for the general welfare satisfies the requirement of public use."

The petitioners' contention that the promotion of tourism is not "public use" because private concessioners would be allowed to maintain various facilities such as restaurants, hotels, stores, etc. inside the tourist complex is impressed with even less merit. Private bus firms, taxicab fleets, roadside restaurants, and other private businesses using public streets and highways do not diminish in the least bit the public character of expropriations for roads and streets. The lease of store spaces in underpasses of streets built on expropriated land does not make the taking for a private purpose. Airports and piers catering exclusively to private airlines and shipping companies are still for public use. The expropriation of private land for slum clearance and urban development is for a public purpose even if the developed area is later sold to private homeowners, commercial firms, entertainment and service companies, and other private concerns.[45]

In *Sumulong v. Hon. Guerrero*,[46] low-cost housing is considered a public purpose even if it will benefit certain private individuals, explaining thus:

> Housing is a basic human need. Shortage in housing is a matter of state concern since it directly and significantly affects public health, safety, the environment and in sum, the general welfare. **The public character of housing measures does not change because units in housing projects cannot be occupied by all but only by those who satisfy prescribed qualifications.** A beginning has to be made, for it is not possible to provide housing for all who need it, all at once.[47]

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[45] *Heirs of Juancho Ardona v. Hon. Reyes*, 210 Phil. 187, 198, 200–201 (1983) [Per J. Gutierrez, Jr., *En Banc*].

[46] 238 Phil. 462 (1987) [Per J. Cortes, *En Banc*].

[47] *Id.* at 467–468.

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Also, in *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[48] appropriations for the implementation of the agrarian reform program, even if directly they benefit mainly private individuals, is considered to be for a public purpose. As held by this Court:

> The expropriation before us affects *all* private agricultural lands whenever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the land-glutted owner. Its purpose does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. Generations yet to come are as involved in this program as we are today, although hopefully only as beneficiaries of a richer and more fulfilling life we will guarantee to them tomorrow through our thoughtfulness today. And, finally, let it not be forgotten that it is no less than the Constitution itself that has ordained this revolution in the farms, calling for "a just distribution" among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at least to their deliverance.[49] (Emphasis in the original)

In *Binay v. Domingo*,[50] the Commission on Audit disallowed the disbursement of public funds for the implementation of the burial assistance program on the grounds that it benefits only a few individuals, hence, not for a public purpose. This Court, in reversing the Commission on Audit, held that the expenditure "is not unconstitutional merely because it incidentally benefits a limited number of persons . . . 'the drift is towards social welfare legislation geared towards state policies to provide adequate social services . . . , the promotion of the general welfare . . . social justice . . . as well as human dignity and respect for human rights.'"[51]

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[48] 256 Phil. 777 (1989) [Per J. Cruz, *En Banc*].

[49] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 256 Phil. 777 (1989) [Per J. Cruz, *En Banc*].

[50] 278 Phil. 515 (1991) [Per J. Paras, *En Banc*].

[51] *Binay v. Domingo*, 278 Phil. 515 (1991) [Per J. Paras, *En Banc*].

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Thus, *Pascual* is not controlling. Public expenditures benefitting private persons with beneficial effect to the public, i.e., "which tends to contribute to the general welfare and the prosperity of the whole community,"[52] serve a "public purpose."

However, the burden of proof rests on the government agency to prove the legality of its disbursement of public funds. Mere assertion that the expenditure serves a public purpose would be insufficient. Owing to the public purpose requirement, it is imperative for PAGCOR to prove that the flood control project within the private subdivision has beneficial effect to the public.

"Efficiency is achieved when tasks, which necessarily entail costs, are allocated on those who could best bear them."[53] The party that has resources—in this case PAGCOR—must carry the burden of proof.

Unfortunately, this burden of proof, petitioners PAGCOR officers failed to discharge.

ACCORDINGLY, I vote to **GRANT** the Commission on Audit's Motion for Reconsideration in G.R. No. 230818, and to **DISMISS** the Petition in G.R. No. 244540.

CONCURRENCE & DISSENT

LAZARO-JAVIER, *J.*:

I.

The case is closely related to *Genuino v. Commission on Audit*, G.R. No. 230818, in that they both involve Notice of Disallowance No. 2013-002 (10) dated February 20, 2013 disallowing the amount of PHP2,000,000.00 granted by Philippine Amusement and Gaming Corporation (PAGCOR) as financial assistance to

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[52] *Province of Camarines Sur v. Court of Appeals*, 294 Phil. 196, 202 (1993) [Per J. Quiason, First Division].

[53] *See* J. Leonen's Opinion in *Winebrenner & Iñigo Insurance Brokers, Inc. v. Commissioner of Internal Revenue*, 752 Phil. 375, 410 (2015) [Per J. Mendoza, Second Division].

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the Pleasant Village Subdivision *and* a common question of law of transcendental importance — the **continuing immunity** of PAGCOR funds from Commission on Audit's (COA) audit jurisdiction pursuant to Section 15 of Presidential Decree No. 1869 (PD 1869).[1]

I agree with the *ponencia* that we ought to revisit our ruling in *Genuino*, considering that PD 1869 predates the 1987 Constitution. As such, the former may no longer be operative *because all funds received by the PAGCOR, though not to be turned over to government, becomes public funds subject to audit by virtue of these constitutional provisions*.

I agree with the *ponencia*, not just because the ***Constitution*** was ratified more recently than PD 1869, but also because ***any law inconsistent with it shall be deemed repealed or void altogether***.

Indeed, there should be **no distinction as to the type of funds** subject to the COA's audit jurisdiction over PAGCOR, a government-owned and controlled corporation (GOCC).

According to the questioned provision:

SECTION 15. Auditor. – The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit

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[1] SECTION 15. Auditor. – The Commission on Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.

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or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.

As then Associate Justice (now Senior Associate Justice) Marvic Mario Victor F. Leonen so wisely pointed out during the deliberations, Section 15 of PD 1869 remained good law only until the ratification of the 1987 Constitution. Section 2, Article IX-D now mandates the COA to audit **all** government agencies, including GOCCs with original charters, *viz.*:[2]

SECTION 2. (1) The Commission on Audit shall have the **power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters**, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate

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[2] See *Feliciano v. Commission on Audit*, 464 Phil. 439, 452–453 [Per J. Carpio, *En Banc*].

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accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.[3] (Emphases and underlining supplied)

More, Sections 3 and 4, Article IX-D **did away with the immunity** of any instrumentality of the government from the COA's audit jurisdiction, thus:

SECTION 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or **any investment of public funds**, from the jurisdiction of the Commission on Audit.

SECTION 4. The Commission shall submit to the President and the Congress, within the time fixed by law, an annual report covering the financial condition and operation of the Government, its subdivisions, agencies, and instrumentalities, including government-owned or controlled corporations, and non-governmental entities subject to its audit, and recommend measures necessary to improve their effectiveness and efficiency. It shall submit such other reports as may be required by law.[4] (Emphases supplied)

Verily, COA is **now empowered**, nay, **duty-bound**, to **determine** whether government and even non-government entities to a certain extent comply with laws and regulations in disbursing government funds **and** to disallow illegal or irregular disbursements of government funds.

The Court's ruling in *Bayani Fernando v. COA*[5] is *apropos*:

The COA was envisioned by our Constitutional framers to be a dynamic, effective, efficient[,] and independent watchdog of the Government. **It granted the COA the authority to determine whether government entities comply with laws and regulations in disbursing**

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3 The 1987 Constitution, February 2, 1987.

4 *Id.*

5 844 Phil. 644 (2018) [Per J. Tijam, *En Banc*].

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government funds, and to disallow illegal or irregular disbursements of government funds.

In the case of *Funa v. Manila Economic and Cultural Office, et al.*, this Court enumerated and clarified the COA's jurisdiction over various governmental entities. In that case, this Court stated that the COA's audit jurisdiction extends to the following entities:

1. The government, or any of its subdivisions, agencies[,] and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions[,] and offices that have been granted fiscal autonomy under the Constitution; and
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.

COA's authority to examine and audit the accounts of government and, to a certain extent, non-governmental entities, is consistent with Section (Sec.) 29(1) of Presidential Decree (P.D.) No. 1445 otherwise known as the Auditing Code of the Philippines, which grants the COA visitorial authority over the following non-governmental entities:

1. Non-governmental entities "subsidized by the government";
2. Non-governmental entities "required to pay levy or government share";
3. Non-governmental entities that have "received counterpart funds from the government"; and
4. Non-governmental entities "partly funded by donations through the Government."

COA's audit jurisdiction is also laid down in Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987:

SECTION 11. General Jurisdiction. — (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis:

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(a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

x x x x

. . . [T]he fact that such funds come from purported private sources, do not convert the same to private funds. Such funds must be viewed with the public purpose for which it was solicited, . . . In *Confederation of Coconut Farmers Organizations of the Philippines, Inc. (CCFOP) v. His Excellency President Benigno Simeon C. Aquino III, et al.*, reiterating this Court's ruling in *Republic of the Philippines v. COCOFED*:

> Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even used to organize and finance State offices. In *COCOFED v. PCGG*, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship . . . with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly." The Court continued: ". . . It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability."

In *The Veterans Federation of the Phils. represented by Esmeraldo R. Acordo v. Hon. Reyes*, this Court also declared as public funds contributions from affiliate organizations of the VFP:

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> . . . In the case at bar, some of the funds were raised by even more special means, as the contributions from affiliate organizations of the VFP can hardly be regarded as enforced contributions as to be considered taxes. They are more in the nature of donations which have always been recognized as a source of public funding. (Emphasis supplied; citations omitted)

Unquestionably, PAGCOR is a GOCC organized and existing under PD 1869.[6] As such, **PAGCOR and all of its funds are subject to COA's audit jurisdiction**.

In any case, the **plain and patent inconsistency** between COA's **constitutional** jurisdiction and its **scrimped** jurisdiction as mentioned in Section 15 of PD 1869 **has long been resolved** by the **repealing clause** itself embodied in Section 3, Article 18 of the ***Constitution***:[7]

> **SECTION 3.** All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances **not inconsistent with this Constitution** shall remain operative until amended, repealed, or revoked.

The **clear import** of this provision is that **all existing** laws, executive orders, proclamations, letters of instructions, and other executive **issuances inconsistent** or **repugnant** to the ***Constitution*** are **repealed**.[8] Surely, we **cannot choose to continue** to close our eyes to this **plain and patent transgression** of our ***Constitution***.

It should be understood, therefore, that all of PAGCOR's funds, **without distinction**, should be subject to the COA's audit jurisdiction. PAGCOR and its officers cannot be allowed to hide behind the flimsy protection of an outdated audit rule that is clearly against the intention of the ***Constitution***.

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[6] See *Del Mar v. Phil. Amusement and Gaming Corp.*, 400 Phil. 307-388 (2000) [Per J. Puno, *En Banc*].

[7] SECTION 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

[8] *PCGG v. Sandiganbayan*, 562 Phil. 557 (2007) [Per J. Sandoval-Gutierrez, First Division].

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II.

To my mind, the issue of the constitutionality of Section 15 of PD 1869 has arisen from a direct attack proceeding. While on its face, petitioners' suit seeks to reverse the disallowance made by COA and the imposition of civil liabilities against them, their basis is COA's lack of audit jurisdiction pursuant to Section 15 of PD 1869. Thus, petitioners themselves have brought the issue to the fore. Further, it would be the height of unfairness to disallow COA from responding to assert its jurisdiction.

I agree with COA that raising a constitutional defense to petitioners' claim of lack of jurisdiction is not, without more, an impermissible collateral attack. This is not inappropriate. A direct attack that has for its sole purpose to determine COA's jurisdiction is not exactly a more efficient process to have this issue decided.

For one, all the arguments about this issue have already been brought forth by the parties in this case. More, the jurisdictional issue is intimately connected to petitioners' specific claim to reverse the disallowance and the liabilities imposed upon them. Hence, there is no danger of either delaying or confusing the issues about the disallowance and the ensuing liabilities.

To be sure, dealing here and now with the jurisdictional issue prevents multiplicity of suits and results in a full settlement of the issues that have come to fore. More important, this approach gives real context to the Court's role as the guardian of the ***Constitution***. If a statute is inconsistent with the ***Constitution***, the overriding effect of invalidity is to give the Court not only the power, but the duty, to regard the inconsistent statute, to the extent of the inconsistency, as being no longer of force or effect.

Finally, on this point, instead of immediately rebuffing collateral attacks on the constitutionality of statutes, due regard must be given to contextual factors in deciding whether to allow the collateral attack to proceed or to require a direct attack instead. Among these factors are:

(a) The remedies for direct attack that are available;

(b) Any efforts made by the defendant to challenge the provision;

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(c) Whether the underlying event was an isolated incident in order to create a test case;

(d) Whether the proceeding is a suitable, effective and fair way to investigate the constitutionality of the assailed law, looking at the shifting burdens of proof, the absence of notice to the Office of the Solicitor General, the nature of the issues, the probability of confusing and confounding these issues, and the absence of remedies to obtain disclosures;

(e) The potential penalty arising from the proceeding where the issue of validity is raised;

(f) The effect that the collateral attack will have on the objectives of the law and the regime it has established, including the probability of the unintended effect of encouraging breaches and disobedience of the law and the probable period of time to await the resolution of the case;

(g) The nature of the constitutional defect alleged. An argument that there is no jurisdiction at all to act or regulate would be one factor supporting collateral attack; and

(h) The effect and any unfairness and hardship that will fall on the defendant if she or he is not permitted to collaterally attack the law and have to abide by the law. The absence of hardship when combined with the lack of any efforts to even advise of any objections to assailed law is a factor that speaks against allowing a collateral attack.

III.

As for petitioner's liability for the disallowed amount, the public or private character of the project in question becomes relevant. To be sure, the Court has the power to review whether a particular project has a public character.[9] Public purpose or public use in the context of disbursing public funds means:

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[9] See *MORE Electric and Power Corporation v. Panay Electric Company, Inc.*, G.R. No. 248061, September 15, 2020 [Per J. Reyes, *En Banc*], citing *Lagcao v. Labra*, 483 Phil. 303 (2004) [Per J. Corona, *En Banc*].

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. . . means **any purpose or use directly available to the general public as a matter of right.** Thus, it has also been defined as "**an activity as will serve as benefit to [the] community as a body** and which at the same time is **directly related function of government**." However, the concept of **public use is not limited to traditional purposes**. Here as elsewhere, the idea that **"public use" is strictly limited to clear cases of "use by the public" has been discarded**. In fact, this Court has already categorically stated that **the term "public purpose" is not defined**, since it is **an elastic concept** that can be hammered to fit modern standards. It should be given a broad interpretation; therefore, it **does not only pertain to those purposes that which are traditionally viewed as essentially government functions, such as building roads and delivery of basic services**, but also **includes those purposes designed to promote social justice**. Thus, public money may now be used for the **relocation of illegal settlers, low-cost housing**[,] and **urban or agrarian reform**. In short, **public use is now equated with public interest**, and that it is **not unconstitutional merely because it incidentally benefits a limited number of persons**.[10] (Emphases supplied, citations omitted)

Public purpose or use has also been held to be synonymous with "public interest," "public benefit," "public welfare," and "public convenience."[11] Indeed, whatever may be beneficially employed for the general welfare satisfies the requirement of public use.[12]

In its more recent iteration, the concept of public use now includes the broader notion of **indirect public benefit or advantage**.[13] Thus, a project retains its public use character although only a few persons could actually benefit therefrom.[14] That a greater benefit is derived by a particular class or group of persons from a government

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[10] *Yap v. Commission on Audit*, 633 Phil. 174, 187–188 (2010) [Per J. Leonardo-de Castro, *En Banc*].

[11] *Reyes v. National Housing Authority*, 443 Phil. 603, 610–611 (2003) [Per J. Puno, Third Division].

[12] *Estate of Salud Jimenez v. Philippine Economic Zone Authority*, 402 Phil. 271, 291 (2001) [Per J. De Leon, Second Division].

[13] See *Manapat v. Court of Appeals*, 562 Phil. 31 (2007) [Per J. Nachura, Third Division].

[14] See *Filstream International Incorporated v. Court of Appeals, et al.*, 348 Phil. 756 (1998) [Per J. Francisco, Third Division]; See also, *Manosca v. Court of Appeals, et al.*, 322 Phil. 442 (1996) [Per J. Vitug, First Division].

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project, **does not diminish the essence and character of public use**.[15]

These principles squarely apply here. Verily, flood control initiatives have recognized benefits to the general welfare, *viz.*:

> Inadequate flood protection and control could certainly contribute to the creation [or] continuation of a slum or blighted area. Likewise, **adequate flood protection is certainly essential to the proper [development or] redevelopment of an area of a city — just as essential as adequate streets, drainage and the like**.[16] (Emphasis supplied)

That the flood control initiative is located within Pleasant Village Subdivision is of no moment. Generally, when floodwaters reach a critical mass, they are no longer susceptible to human control and direction. They will ravage every thoroughfare, residence and crevice that they can course through, **even beyond the confines of Pleasant Village Subdivision**. As such, the presence of a flood control system within Pleasant Village Subdivision **redounds not only to the benefit of its residents, but also to those of adjacent neighborhoods and localities**.

Further, the flood control initiative also ensures the sustainability of the ecosystems within and around Pleasant Village Subdivision because it addresses the substantial detrimental effects commonly associated with floods such as: (a) reduced tree and vegetative cover; (b) reduced soil fertility; (c) accumulation of wastes and water pollution; (d) deformed land topography; and (e) reduced viability of ecosystems, among others.[17] It is therefore indisputable that said flood control system serves a public purpose or use.

Consequently, the primordial reason for the disallowance, *i.e.*, that public funds were spent for a private purpose, disappears.

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[15] See *Jesus is Lord Christian School Foundation, Inc. v. Municipality (now City) of Pasig*, 503 Phil. 845 (2005) [Per J. Callejo Sr., Second Division]; citing *Manosca v. Court of Appeals,* supra.

[16] *Monroe Redevelopment Agency v. Faulk*, 287 So. 2d 578, 1973 La. App., November 13, 1973.

[17] See Israel, D. and Briones, R., Impacts of Natural Disasters on Agriculture, Food Security, Natural Resources and Environment in the Philippines, *Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas* No. 2012-36.

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As the *ponencia* states, "the socio-economic projects mentioned in PD 1869 may be allocated with public funds, provided that the requirement of public purpose is satisfied."[18] In fact, PD 1869 directs the PAGCOR to generate sources of revenue to fund infrastructure, and socio-civic projects such as flood control programs and other essential public services.[19] To pursue the directive, PAGCOR may perform "such other powers, functions and duties . . . as may be necessary for the accomplishment of its purposes and objectives,"[20] *i.e.*, through its Corporate Social Responsibility programs.

Nevertheless, safeguards must be adopted so that the constitutional requirement that government funds or property shall be spent or used solely for public purposes is given adequate protection. The idea behind these safeguards is to prevent the trivialization of this exception and the opportunity to siphon public funds to dubious and fly-by night organizations for allegedly community-based projects. While homeowners' associations have a peculiar standing given by the law itself in the communities they serve, this alone is not enough to categorize the public funding as one for a public purpose.

The nature of the organization itself must be scrutinized. Does it have a peculiar standing in the community as recognized and accorded by the law itself? The activity to be funded must also be allied with and relevant to traditional government functions. There must be on-sight and pre-activity coordination with and endorsement from concerned government agencies. This should address why it is this organization, and not the government agency tasked to do the job, that is implementing the activity? What has happened to the public trust mandate of this government agency? Has there been a failure of governance? The organization must itself register with COA for proper auditing measures, such as the identification of the key persons answerable for the disbursement of the public funds, the audit times and mechanisms, and all the

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[18] Draft Decision, p. 14.

[19] PD 1869, Section 1(b).

[20] PD 1869, Section 7(e).

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other requirements on accountability and transparency, including bidding and conflict of interest, must apply to the organization. In the process, to be able to avail of public funds, the organization and its personalities become public officers subject to the corrective and punitive mechanisms otherwise applicable to public officials and employees.

These factors have not been canvassed in the case at bar. This is because the approach of the *ponencia* is to deny the public purpose character of the public funding. This notwithstanding, I maintain that an examination of the foregoing factors is necessary. Such safeguards will ensure that future transactions of this same kind will not be compromised. With better accountability and transparency mechanisms are in place, this revitalized concept of public purpose vis-à-vis public funding is not abused to become a mode of thievery of the public coffers.

IV.

As for petitioner's liability for the disallowed amount, the Rules of Return laid down in *Madera v. Commission on Audit*[21] is inapplicable here.

As aptly pointed out by then Senior Associate Justice Estela M. Perlas-Bernabe during our deliberations in *Torreta v. Commission on Audit*,[22] the *Madera* Rules of Return were specifically borne from the context of disallowance cases involving employee incentives and benefits, hence, said rules find no application to government contracts for the procurement of goods and services. On this score, I am of the view that the *Madera* Rules of Return are likewise inapplicable to government grants of financial assistance to private entities, as here.

In any event, *Torreta* instructs that the errant approving and certifying officers may still be held liable under Sections 38 and 43 of the Administrative Code upon which the *Madera* Rules of Return were partly based, thus:

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[21] G.R. No. 244128, September 8, 2020 [Per J. Caguioa, *En Banc*].

[22] G.R. No. 242925, November 10, 2020 [Per J. Gaerlan, *En Banc*].

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Section 38. *Liability of Superior Officers*. – (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice[,] or gross negligence.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

x x x x

Section 43. *Liability for Illegal Expenditures.* – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

All told, I vote to partially **GRANT** the Motion for Reconsideration filed by the Commission on Audit insofar as it pertains to the Commission's authority to audit PAGCOR funds. I maintain however, that the assistance granted to Pleasant Village Subdivision for its flood control initiatives qualifies as an expenditure for a public purpose.

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CONCURRING AND DISSENTING OPINION

KHO, JR., *J.*:

I ***concur*** with the *ponencia* insofar as it overturns the Court's ruling in the original Decision dated June 15, 2021 in G.R. No. 230818, *Genuino v. COA* (2021 *Genuino* Decision),[1] and which in effect likewise overturns the earlier 2021 Decision of the Court in *Figueroa v. Commission on Audit*, G.R. Nos. 213212, 213497, and 213655 dated April 27, 2021 (2021 *Figueroa* Decision),[2] which held that the Commission on Audit (COA) has limited audit jurisdiction only to the five percent (5%) franchise tax and the Government's fifty percent (50%) share as stated in Section 15 of the Presidential Decree No. 1869 or "the PAGCOR Charter."

As discussed by the *ponencia*, Section 15 of the PAGCOR Charter has been repealed by the 1987 Constitution. Thus, I agree with the new doctrine enunciated in these cases that *"PAGCOR, being a government-owned or controlled corporation with its own original charter, and its funds regardless of source, come within the broad purview of Art. IX-D, Sec. 2 and Sec. 3 of the 1987 Constitution. In effect, the 'revenue and receipts of, and expenditures or uses of funds' which are held in trust by or pertaining to it, are subject to COA's audit jurisdiction, contrary to Sec. 15 of PD 1869, and the restrictions mentioned therein."*[3]

I likewise fully ***concur*** with the *ponencia* that the new doctrine of the Court on the audit jurisdiction of COA over all funds of PAGCOR, regardless of source, should be ***prospective in nature***, and citing *People v. Jabinal*,[4] it *"should not apply to parties who had relied on the old doctrine and acted on the faith thereof."*[5]

However, I respectfully register my ***dissent*** on the determination by the *ponencia* of the propriety of the disallowance and

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1 Penned by Associate Justice Edgardo L. Delos Santos.

2 Penned by Associate Justice Samuel H. Gaerlan.

3 See *ponencia*, p. 11.

4 *People v. Jabinal*, 154 Phil. 565 (1974) [Per J. Antonio, Second Division].

5 Id.

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petitioners' respective liabilities despite the pronouncement in these cases that the new doctrine on the expansive audit jurisdiction of COA shall be applied prospectively. ***Following the rules on retroactivity and prospectivity of judicial decisions, the reversal of the 2021 Genuino Decision should not be applied to the disbursements made in the cases herein***.

I expound below.

I.

Prior to the new doctrine espoused by the present *ponencia*, the Court in the 2021 *Genuino* Decision reasoned that COA only had limited audit jurisdiction over PAGCOR's funds (the old doctrine) based on the presumption of constitutionality as Section 15 of the PAGCOR Charter has not been "amended, repealed, or declared unconstitutional."[6] Accordingly, the Court stated that:

> PAGCOR was created pursuant to a special law and is, thus, governed primarily by its provisions. As a legislative act, P.D. No. 1869 and in particular, Section 15, enjoys the presumption of constitutionality. Courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution, but also because the Judiciary, in the determination of actual cases and controversies, must reflect the wisdom and justice of the people as expressed through their representatives in the Executive and Legislative departments of the Government. Hence, unless otherwise repealed by a subsequent law or adjudged unconstitutional by this Court, a law will always be presumed valid and the first and fundamental duty of the court is to apply the law. As it stands, since Section 15 of P.D. No. 1869 has yet to be amended, repealed, or declared unconstitutional, the Court is left with no recourse except as to apply the law as presently written, that is, any government audit over PAGCOR should be limited to its 5% franchise tax and 50% of its gross earnings pertaining to the Government as its share. Resultantly, any audit conducted by COA beyond the aforementioned is accomplished beyond the scope of its authority and functions.[7]

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[6] *Genuino v. COA*, G.R. No. 230818, June 15, 2021. The same ruling was made in the case of *Figueroa v. COA*, G.R. No. 213212, April 27, 2021.

[7] Id.

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While implied repeals are not favored, the Court has nonetheless held that the same may be done when it is manifest that the legislative authority so intended the repeal or ***when it is convincingly and unambiguously demonstrated that the subject laws or orders are clearly repugnant and patently inconsistent that the laws cannot co-exist***.[8]

As astutely observed by the *ponencia*, COA's jurisdiction and Section 15 of the PAGCOR Charter are inconsistent with each other. It should be emphasized that COA is constitutionally empowered to exercise its general auditing power to determine, prevent, and disallow illegal, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds.[9] This power is "among the constitutional mechanisms that give life to the check and balance system inherit in our form of government."[10] Hence, Section 2, Article IX-D of the 1987 Constitution gives COA a wide latitude to rule on the legality of the disbursement of government funds, *viz.*:

ARTICLE IX
Constitutional Commissions

x x x x

D. THE COMMISSION ON AUDIT

x x x x

Section 2. (1) The Commission on Audit shall have the **power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held, in trust by, or pertaining to**, the Government, or any of its subdivisions, agencies, or instrumentalities, **including government-owned or controlled corporations, with**

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[8] *The United Harbor Pilot's Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.*, 440 Phil. 188 (2002) [Per J. Sandoval-Gutierrez, *En Banc*].

[9] *Small Business Corporation v. COA*, G.R. No. 251178, April 27, 2021 [Per J. Perlas-Bernabe, *En Banc*].

[10] *Delos Santos v. COA*, 716 Phil. 322, 332 (2013) [Per J. Perlas-Bernabe, *En Banc*].

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original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such nongovernmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. x x x.

x x x x (Emphases and underscoring supplied)

A reading of the emphasized portions of Section 2, Article IX-D of the 1987 Constitution makes it clear that **COA *now has the power to examine and audit all funds pertaining to government-owned or controlled corporations with original charters***.

Thus, it would be improbable for this Court to conclude that Section 15 of the PAGCOR Charter could not have been impliedly repealed by the clear and categorical import of the 1987 Constitution.

II.

Finding that COA has the power to audit PAGCOR's funds without any limitation under its charter, the *ponencia* emphasized that "[it] shall apply prospectively and shall not affect parties who relied on, and acted upon, the force of former contrary views."[11] According to the *ponencia*, the prospective application of the present ruling is rooted in "justice and fairness."[12]

As stated earlier, I fully concur with the *ponencia* insofar as its findings with regard to COA's audit jurisdiction should be prospective in character.

In *Senarillos v. Hermosisima*,[13] the Court *En Banc*, speaking through Justice Jose Benedicto Luis L. Reyes, laid down the fundamental rule that interpretations of the law made by the Supreme Court constitute part of the law as of the date it was

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[11] See *ponencia*, p. 23.

[12] Id.

[13] 100 Phil. 501 (1956) [Per J. J.B.L. Reyes].

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originally passed since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[14]

However, this canonical rule on retroactivity of judicial rulings admits of an exception. In *People v. Jabinal*,[15] the Court, through Associate Justice Felix Q. Antonio, first laid down the rule that a new doctrine made by the Court shall be applied prospectively when an old doctrine is overruled and a different view is adopted, *viz.*:

> It will be noted that when appellant was appointed Secret Agent by the Provincial Governor in 1962, and Confidential Agent by the Provincial Commander in 1964, the prevailing doctrine on the matter was that laid down by Us in *People v. Macarandang* (1959) and *People v. Lucero* (1958). Our decision in *People v. Mapa* reversing the aforesaid doctrine came only in 1967. The sole question in this appeal is: Should appellant be acquitted on the basis of Our rulings in *Macarandang* and *Lucero*, or should his conviction stand in view of the complete reversal of the *Macarandang* and *Lucero* doctrine in *Mapa*? The Solicitor General is of the first view, and he accordingly recommends reversal of the appealed judgment.
>
> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system x x x." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim *"legis interpretatio legis vim obtinet"* — the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of

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[14] *Id.* See also *People v. Jabinal,* supra note 4; *Commissioner of Internal Revenue v. Republic Cement Corporation*, 233 Phil. 507 (1987) [Per J. Cortes, En Banc]; *Eagle Realty Corporation v. Republic*, 579 Phil. 355 (2008) [Per J. Nachura, Third Division]; *Republic v. Remman Enterprises*, 727 Phil. 608 (2014) [Per J. B. Reyes, First Division].

[15] 154 Phil. 565 (1974) [Per J. Antonio, Second Division].

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the jurisprudence, hence, of the law, of the land, at the time appellant was found in possession of the firearm in question and when he was arraigned by the trial court. It is true that the doctrine was overruled in the *Mapa* case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.

It follows, therefore, that considering that appellant was conferred his appointments as Secret Agent and Confidential Agent and authorized to possess a firearm pursuant to the prevailing doctrine enunciated in *Macarandang* and *Lucero*, under which no criminal liability would attach to his possession of said firearm in spite of the absence of a license and permit therefor, appellant must be absolved. Certainly, appellant may not be punished for an act which at the time it was done was held not to be punishable.[16]

The rationale behind the rule on prospectivity of judicial decisions was expounded by the Court *En Banc*, through Justice Florenz D. Regalado, in *Columbia Pictures, Inc. v. Court of Appeals*,[17] *viz.*:

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.

x x x x

Withal, even the proposition that the prospectivity of judicial decisions imports application thereof not only to future cases but also to cases still ongoing or not yet final when the decision was promulgated, should not

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[16] Id.

[17] 329 Phil. 875 (1996).

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be countenanced in the jural sphere on account of its inevitably unsettling repercussions. x x x.[18]

Based on the foregoing rulings by the Court, the rule on prospectivity of judicial decisions applies to cases where parties relied on a previous ruling of the Court. Thus, it appears from these Court decisions that the old doctrine — *that COA has limited jurisdiction over disbursements made by PAGCOR* — applies only to the period between the finality of the 2021 *Genuino* Decision and the finality of the present *ponencia*, and that the new doctrine — *that the audit jurisdiction of COA covers all funds of PAGCOR regardless of source* — applies to transactions made after the finality of the present *ponencia*. This is because the approving and certifying officers may rely on the 2021 *Genuino* Decision in good faith in making disbursements covering the period between the two *ponencias*.

The foregoing discussion, however, leads to the important question of what doctrine to apply to PAGCOR transactions done prior to the old doctrine enunciated in the 2021 Genuino Decision — that is, from the effectivity of the PAGCOR Charter to the finality of the 2021 Genuino Decision.

It appears that the *ponencia*, despite the rule on prospectivity of the new doctrine, applied the new doctrine for transactions affecting PAGCOR funds done prior to the finality of the old doctrine as enunciated in the 2021 *Genuino* Decision, considering that it recognized the audit jurisdiction of COA to the transactions made by petitioners.

This is where my thoughts diverge from that of the ponencia. Hence, my dissent.

I respectfully enter my dissent with the *ponencia*'s determination on the propriety of the disallowances herein and, accordingly, the determination of petitioners' respective liabilities. In applying the rules on retroactivity and prospectivity of judicial decisions, the *ponencia* should have affirmed the Court's findings in G.R. No. 230818 insofar as it did not go into petitioner's liability therein and granted the petition in G.R. No. 244540.

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[18] Id.

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In *Philippine International Trading Corporation v. COA*[19] *(PITC)*, the Court *En Banc*, speaking through Associate Justice Teresita J. Leonardo-de Castro, held that its prior ruling in relation to the interpretation of Executive Order No. 756 should ***retroactively apply*** considering that it did not reverse an old doctrine nor adopt a new one:

> Applying the foregoing disquisition to the present case, the Court disagrees with PITC's position that the Decision in G.R. No. 183517 should be applied prospectively.
>
> As the COA correctly argued, the Decision in G.R. No. 183517 neither reversed an old doctrine nor adopted a new one. The Court merely construed therein the meaning and application of Section 6 of Executive Order No. 756 by taking into consideration the rationale behind the provision, its interplay with pre-existing retirement laws, and the subsequent enactments and statutes that eventually repealed the same. **Prior to the Decision in G.R. No. 183517, there was no other ruling from this Court that explained the nature of the retirement benefits under Section 6 of Executive Order No. 756. Thus, the Court's interpretation of the aforesaid provision embodied in the Decision in G.R. No. 183517 retroacts to the date when Executive Order No. 756 was enacted**.[20] (Emphasis and underscoring supplied)

Applying *PITC* to this case, the 2021 *Genuino* Decision enunciating the old doctrine should be retroactively applied and remain in force when it comes to disbursements made prior to the said case. ***Similar to PITC, the 2021 Figueroa Decision and thereafter the 2021 Genuino Decision did not reverse an old doctrine nor did it adopt a new one. In fact, the 2021 Genuino Decision even reiterated the earlier 2021 Figueroa Decision which was the first case addressing the issue of COA's audit jurisdiction over disbursements made by PAGCOR prior to the present cases.*** Thus, to hold otherwise amounts to the Court punishing parties who relied on their long-standing belief in good faith that COA only had limited jurisdiction — based on

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[19] 821 Phil. 144 (2017).

[20] Id. at 156-157.

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the PAGCOR Charter — which was in fact reaffirmed by all the members of the Court *En Banc* in the 2021 *Genuino* Decision.[21]

Moreover, the present situation of petitioners is ***akin to the badges of good faith*** as discussed in *Madera v. COA*,[22] through Associate Justice Alfredo Benjamin S. Caguioa. In said case, the Court adopted Associate Justice Marvic M.V.F. Leonen's badges of good faith in determining an officer's liability. The badges of good faith are:

> (1) Certificate of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) **that there is no precedent disallowing a similar case in jurisprudence**;[[23]] (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, and (5) **with regard the question of law, that there is a reasonable textual interpretation on its legality**.[24] (Emphases supplied)

In view of the foregoing, the Court's reversal of the 2021 *Genuino* Decision in the present case ***should not be applied*** to the disbursements made in the cases herein. Hence, the Court should no longer look into the propriety of the disbursement as well as the corresponding liabilities of the approving and/or certifying officers and the recipients herein.

ACCORDINGLY, I vote to:

1. **PARTLY GRANT** the Motion for Reconsideration filed by respondent Commission on Audit in G.R. No. 230818 with regard to respondent's audit jurisdiction over PAGCOR;

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[21] Penned by Associate Justice Edgardo I. Delos Santos and concurred in by the members of the Court, except Associate Justice Alfredo Benjamin S. Caguioa who took no part.

[22] G.R. No. 244128, September 8, 2020 [Per J. Caguioa, *En Banc*].

[23] Prior to the *Figueroa* and 2021 *Genuino* Decisions, there was no case law which affirmed the disallowance made by COA.

[24] See Footnote 110 in *Madera v. COA,* supra. The present *ponencia* and the 2021 *Figueroa* and 2021 *Genuino* Decisions exhibit reasonable textual interpretation on the legality of the disbursements made by PAGCOR.

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2. **GRANT** petitioner Rene C. Figuroa's petition for *certiorari* in G.R. No. 244540; and

3. **SET ASIDE** the Commission on Audit Decision Nos. 2017-271 dated September 6, 2017, and 2015-420 dated December 28, 2015; and Commission on Audit Decision Nos. 2019-023 dated November 26, 2018, and 2017-073 dated March 21, 2017.