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with forfeiture of all benefits except accrued leave credits, with prejudice to re-employment in the government or any of its agencies and instrumentalities including government-owned or controlled corporations.

Rolly S. Ocampo, Sheriff III, Branch 53, Metropolitan Trial Court, Caloocan City is hereby found **GUILTY** of simple misconduct and conduct prejudicial to the best interest of service, and hereby **SUSPENDED** for **ONE (1) YEAR**.

Leonelle E. Mendoza, Clerk III, Branch 53, Metropolitan Trial Court, Caloocan City is hereby found **GUILTY** of simple negligence and hereby **FINED** in the amount equivalent to his **ONE (1) MONTH SALARY**.

Further, Rolly S. Ocampo and Leonelle E. Mendoza are **STERNLY WARNED** that commission of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

Carpio (Acting C.J.), Peralta, Perlas-Bernabe, Leonen, Jardeleza, Reyes, A. Jr., Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.*, concur.

Bersamin, C.J. and *Gesmundo, J.*, on official business.

Caguioa, J., on leave.

EN BANC

[G.R. No. 211999. August 20, 2019]

RICARDO E. ROTORAS, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

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SYLLABUS

1. POLITICAL LAW; STATUTES; REPUBLIC ACT NO. 8292 (THE HIGHER EDUCATION MODERNIZATION ACT OF 1997); STATE UNIVERSITIES OR COLLEGES; SPECIAL TRUST FUND; SHALL ONLY BE USED FOR INSTRUCTION, RESEARCH, EXTENSION OR SIMILAR PROGRAMS OR PROJECTS, AND IT CANNOT BE UTILIZED TO PAY ADDITIONAL HONORARIA TO MEMBERS OF THE GOVERNING BOARDS OF THE UNIVERSITIES OR COLLEGES. — Section 4 of Republic Act No. 8292 grants specific powers and duties to the governing boards of state universities and colleges. Among these is the power to fix tuition fees and other necessary school charges, and later disburse them x x x. Specifically, tuition fees and other necessary school charges collected by the state university or college constitute a special trust fund, which shall be disbursed by its governing board for instruction, research, extension, or other programs or projects. Here, it is undisputed that the additional honoraria to the members of the state universities and colleges' governing boards when they attend board meetings are to be sourced, not from appropriations, but from their special trust funds. x x x The use of state universities or colleges' special trust funds to pay additional honoraria to members of their governing boards has no legal basis. For appropriations, Section 4(b) of Republic Act No. 8292 provides that a governing board has the power to determine, on its own discretion, how to spend such sums to carry out the purpose and function of the state university or college. x x x In contrast, Section 4 (d) limits the use of the special trust fund for instruction, research, or extension. The "other programs/projects" referred to in Section 4(d) must be of the same nature as instruction, research, or extension. x x x Meetings of the state university and colleges' governing boards cannot be considered as instruction, research, extension, or any other similar project or program. x x x As enumerated in Section 4 of Republic Act No. 8292, a governing board's powers are not only with regard to academic programs, but extend to day-to-day administration, human resources management, income generation, and other matters, all of which are discussed during board meetings. Adopting petitioner's interpretation may lead to absurd scenarios where the entitlement of additional honoraria will be on a meeting-to-meeting basis, because it is yet to be

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determined whether a particular meeting's agenda includes policymaking involving the university or college's instruction, research, or extension programs and projects. Notably, x x x Section 3 of Republic Act No. 8292 already provides the specific entitlements of members of governing boards when they attend board meetings x x x.

2. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISALLOWED BENEFITS OR ALLOWANCES; DEFENSE OF GOOD FAITH; PRECLUDES THE REQUIREMENT TO RETURN DISALLOWED BENEFITS OR ALLOWANCES BASED ON THE PRINCIPLE THAT PUBLIC OFFICIALS ARE ENTITLED TO THE PRESUMPTION OF GOOD FAITH WHEN DISCHARGING THEIR OFFICIAL DUTIES. — The defense of good faith, which precludes the requirement to return disallowed benefits or allowances, is based on the principle that public officials are entitled to the presumption of good faith when discharging their official duties. Both the public officers who disbursed the benefits or allowances and those who received them will not be required to return the benefits or disallowances when it is shown that they acted in good faith in doing so. x x x On several occasions, this Court has allowed public officials and employees to keep disallowed benefits and allowances they had already received, such as: (1) when they had no knowledge that the payment did not have legal basis at the time they received them; (2) when the approving authority failed to exercise diligence or made mistakes but did not act with malice or in bad faith; (3) when the approving authority honestly believed that there was legal basis for the grant and the accepting employees honestly believed they were entitled to it; (4) when there was ambiguity in existing rules and regulations that have not yet been clarified; or (5) when they did not participate in the acts that led to the disbursement of such benefits or allowances. Meanwhile, officials and officers who disbursed the disallowed amounts are liable to refund: (1) when they patently disregarded existing rules in granting the benefits to be disbursed, amounting to gross negligence; (2) when there was clearly no legal basis for the benefits or allowances; (3) when the amount disbursed is so exorbitant that the approving officers were alerted to its validity and legality; or (4) when they knew that they had no authority over such disbursement.

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3. ID.; ID.; ID.; ID.; ID.; DISREGARDED WHEN, APPLYING THE RULE AGAINST UNJUST ENRICHMENT, PUBLIC OFFICERS ARE REQUIRED TO RETURN THE DISALLOWED BENEFITS, CONSIDERING THEM AS TRUSTEES OF FUNDS WHICH THEY SHOULD RETURN TO THE GOVERNMENT. — Nonetheless, there have been instances when, regardless of the alleged good or bad faith of the responsible officers and recipients, this Court ordered the refund of the amounts received. Applying the rule against unjust enrichment, it required public officers to return the disallowed benefits, considering them as trustees of funds which they should return to the government. x x x The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations. Furthermore, the rank and file's obligation to return shall be limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return — whether it be solidary or not—depends on the circumstances. x x x Since no legal basis for the grant of additional honoraria has been established, it would be an unjust enrichment to allow the members of the governing boards to retain what they had received. Instead, they should be considered trustees of the disallowed amounts, holding them for the benefit of the government, regardless of any good faith defenses they may raise. Respondent, therefore, correctly ordered the refund.

APPEARANCES OF COUNSEL

Lagamon and Associates Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The special trust fund of a state university or college shall only be used for instruction, research, extension, or similar

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programs or projects. The members of governing boards and officials who approved an allowance or benefit that has been disallowed are obliged to return what they have received. The defense of good faith is no longer available to them. Neither is the defense available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations.

This Court resolves a Petition for *Certiorari*[1] under Rule 64 of the Rules of Court, assailing the Decision[2] and Resolution[3] of the Commission on Audit, which affirmed the disallowances of grants of additional honoraria to members of governing boards of state universities and colleges.

Through various resolutions, the governing boards of 21 state universities and colleges[4] granted honoraria to board members in amounts ranging from ₱3,000.00 to ₱5,000.00 for attendance in board meetings. These honoraria were in addition to the ₱2,000.00 mandated by Department of Budget and Management Circular Nos. 2003-5 and 2003-6, and were sourced from these

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[1] *Rollo*, pp. 3-31.

[2] *Id*. at 51-57. The Decision dated November 3, 2011 in COA CP Case No. 2010-341 was signed by Commissioners Ma. Grace M. Pulido Tan, Juanito G. Espino, Jr., and Heidi L. Mendoza.

[3] *Id*. at 58. The Resolution was dated February 14, 2014.

[4] These state universities and colleges are: Mountain Province State Polytechnic College, Pampanga Agricultural College, Philippine Merchant Marine Academy, Mariano Marcos State University, Isabela State University, Cavite State University, Aklan State University, West Visayas State University, Western Visayas College of Science and Technology, Eastern Samar State University, Southern Leyte State University, Surigao del Sur Polytechnic State College, Southern Philippine Agri-Business Marine Aquatic School of Technology, Davao Oriental State College of Science and Technology, Bukidnon State College, Camiguin Polytechnic State College, Mindanao Polytechnic State College, Misamis Oriental State College of Agriculture and Technology, Northern Mindanao State College of Science and Technology, Northwestern Mindanao State College of Science and Technology, Leyte Normal University, Samar State University, Leyte State University, Eastern Visayas State University, University of Eastern Philippines, and the Naval Institute of Technology.

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state universities and colleges' income from tuition fees, otherwise called the special trust fund.[5]

Subsequently, various audit team leaders of the Commission on Audit's Regional Legal and Adjudication Offices issued audit observation memoranda. These resulted in Notices of Disallowance for the payments of the honoraria on the ground of lack of legal basis.[6]

Aggrieved, presidents of 11 of the affected state universities and colleges wrote the Philippine Association of State Universities and Colleges. On January 10, 2006, the association, through then President Eldigario D. Gonzales (Gonzales), wrote the Commission on Audit Chair on behalf of the 21 state universities and colleges, assailing the Notices of Disallowance.[7]

The matter was referred to the Commission's Legal and Adjudication Office-National, which then issued an October 8, 2007 Decision[8] denying the appeal. The dispositive portion of the Decision read:

> WHEREFORE, premises considered, the instant appeal is hereby DENIED for lack of merit. The NDs issued by the concerned RLAS Cluster Directors on the grant of additional honoraria to the members of SUC Governing Boards in their areas of jurisdiction, insofar as they pertain to the above-discussed issues, are hereby AFFIRMED.[9]

The Legal and Adjudication Office-National first noted that, instead of the Philippine Association of State Universities and Colleges writing the Commission Chair, the state universities and colleges should have requested their respective Regional Legal and Adjudication Sector Cluster Directors to reconsider the disallowances or appeal directly before the Legal and

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[5] *Rollo*, pp. 32 and 51-52.

[6] *Id*. at 51-52.

[7] *Id*. at 52.

[8] *Id*. at 32-44. The Decision was penned by Director IV Salvador P. Isiderio.

[9] *Id*. at 41.

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Adjudication Office. Nonetheless, it treated the association's letter as the state universities and colleges' appeal.[10]

The Legal and Adjudication Office-National observed that at the core of the state universities and colleges' arguments was an October 25, 2005 letter-opinion issued by Assistant Solicitor General Ma. Edita C. Dizon (Assistant Solicitor General Dizon) to the Special Counsel of Eastern Samar State University.[11] In this letter, Assistant Solicitor General Dizon said that there was no legal impediment to state universities and colleges giving governing board members additional honoraria, as the source of the funds was their income, not appropriations. Under Section 4(b)[12] of Republic Act No. 8292, a governing board may disburse any portion of the state university or college's income as it deems necessary.[13]

However, according to the Legal and Adjudication Office-National, the power of a state university or college's governing board under Section 4(b) must be read in relation with Section 4(d), which states:

> d) to fix the tuition fees and other necessary school charges, such as but not limited to matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.

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[10] *Id*. at 33.

[11] *Id*.

[12] Republic Act No. 8292 (1997), Sec. 4(b) states:

> SECTION 4. Powers and Duties of Governing Boards. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:
>
> . . . . . .
>
> b) to receive and appropriate all sums as may be provided, for the support of the university or college in the manner it may determine, in its discretion, to carry out the purposes and functions of the university or college[.]

[13] *Id*. at 34.

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Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: Provided, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.

Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.

If, for reasons beyond its control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may be authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college[.]

The Legal and Adjudication Office-National noted that a governing board's authority to disburse money from the special trust fund was qualified; that is, any income that the state university or college generates from tuition fees and other charges must only be used for instruction, research, extension, or other programs or projects. This does not include the payment of additional compensation in the form of honoraria, per diem, or others.[14]

According to the Legal and Adjudication Office-National, this was consistent with Commission on Audit Circular No. 2002-022 dated April 4, 2000, which states, among others, that "[i]n no case shall . . . the [special trust fund] be used for the payment of salaries and creation of new position" and that "[t]he [special trust fund] shall be used to augment the maintenance

[14] *Id.* at 35.

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and other operating expenses and capital outlays of the university and to pay authorized allowances and fringe benefits to teachers and students who render services to the school."[15]

Further, the Legal and Adjudication Office-National held that members of the governing boards were entitled to compensation in the form of per diem, not honorarium, under Department of Budget and Management Circular No. 2003-6. Based on this circular, board chairpersons were entitled to an amount equivalent to 25% of the monthly representation and transportation allowance of the state university or college president, for every meeting actually attended, but not to exceed four (4) paid meetings per month. Meanwhile, members of governing boards were entitled to an amount equivalent to 25% of the monthly representation and transportation allowance of the state university or college vice president, for every meeting actually attended, but not to exceed four (4) paid meetings per month.[16]

In its September 15, 2008 Resolution,[17] the Legal and Adjudication Office denied the subsequent motions for reconsideration filed by the Philippine Association of State Universities and Colleges and nine (9) state universities and colleges. Thus, the case was elevated to the Commission on Audit *En Banc*.

In its November 3, 2011 Decision,[18] the Commission on Audit *En Banc* affirmed the rulings of the Legal and Adjudication Office. The dispositive portion of its Decision No. 2011-079 read:

WHEREFORE, in view of all the foregoing, the instant petition for review/appeal has to be, as it is hereby, DENIED. Accordingly, LAO-National Decision No. 2008-102-B dated September 15, 2008 and the NDs issued by the then concerned COA RCDs-RLAOs are hereby AFFIRMED.[19]

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[15] *Id.*

[16] *Id.* at 37-38.

[17] *Id.* at 45-50. The Resolution was penned by Director III Roy L. Ursal.

[18] *Id.* at 51-57.

[19] *Id.* at 56.

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The Commission on Audit *En Banc* noted that Section 3(c) of Republic Act No. 8292, in relation of Rule 4, Section 17 of its Implementing Rules and Regulations, prohibited members of the governing boards from receiving compensation, only allowing them to be reimbursed for necessary expenses in limited circumstances.[20] It cited Section 3(c), which provides:

SECTION 3. The Governing Boards; Manner of Appointment. —

. . . . . .

c) Meetings; Quorum. — The Board of Regents/Trustees shall regularly convene at least once every quarter. The Chairman of the Board of Regents/Trustees may call a special meeting whenever necessary: Provided, That members are notified in writing at least three (3) days prior to said meeting.

A majority of all members holding office shall constitute a quorum for board meetings: Provided, that the Chairman of the CHED who is the chairman of the Board or the president of the university or college is among those present in the meeting. In the absence of the Chairman of the CHED, a commissioner of the CHED, duly designated by him, shall represent him in the meeting all the rights and responsibilities of a regular member: Provided, however, That in the said meeting, the president of the university or college as vice chairman shall be the presiding officer: Provided, further, That this proviso notwithstanding, the Chairman of the CHED is hereby authorized to designate a CHED Commissioner the regular Chair to the Board of a particular university or college, in which case said CHED Commissioner shall act as the presiding officer.

The members shall serve without compensation, but they shall be reimbursed for necessary expenses incurred in their attendance of meetings of the Board or in connection with their official business authorized by resolution of the Board.

Similarly, Rule 4, Section 17 of the Implementing Rules and Regulations of Republic Act No. 8292 stated:

SECTION 17. No Compensation for the Chairman, Vice-Chairman and Members of GBs. — The Chairman, Vice-Chairman and Members

[20] *Id*. at 53.

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of the GB of chartered SUCs shall not receive any regular compensation as such but they shall receive entitlements to actual allowances allowed by law, and reimbursement of necessary expenses incurred during or in conjunction with their attendance in the regular meetings or special sessions of the GB or in connection with their performance of official business duly authorized by the GB through a Resolution.

According to the Commission on Audit *En Banc*, the members of the governing boards were only entitled to receive compensation in the form of per diem and reimbursement of actual expenses, if any. They should not be entitled to any other benefit or allowance.[21]

The Commission on Audit *En Banc* also held that they were not entitled to payments from the special trust funds since their functions were not directly connected with the state university or college's instruction, research, extensions, and other programs or projects. Although they formulate policies that pertain to instruction, research, and extension projects, the Commission on Audit *En Banc* noted that this policymaking function should not be considered an academic activity similar to those performed by teachers and students.[22]

In any case, the Commission on Audit *En Banc* ruled that the special trust fund should not be used to pay compensation, per diems, or honoraria,[23] citing *Benguet State University v. Commission on Audit*.[24]

Finally, the Commission on Audit *En Banc* found that members of the governing boards who had received the honoraria should refund the amounts received. It found that the members' approval of the resolutions giving themselves the honoraria was self-serving. It also found that their failure to observe existing laws was tantamount to bad faith.[25]

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[21] *Id*.

[22] *Id*. at 54.

[23] *Id*. at 54-55.

[24] 551 Phil. 878 (2007) [Per *J*. Nachura, *En Banc*].

[25] *Rollo*, p. 55.

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In a February 14, 2014 Resolution,[26] the Commission on Audit *En Banc* denied the motions for reconsideration filed by the Philippine Association of State Universities and Colleges and the Bukidnon State University, through its President Victor M. Barroso (Barroso).

Thus, Ricardo E. Rotoras, as the president of the Philippine Association of Universities and Colleges, filed this Petition for *Certiorari*,[27] assailing the Decision and Resolution of the Commission on Audit.

Petitioner argues that the governing boards of the state universities and colleges are empowered by Republic Act No. 8292 to grant their members honoraria. Section 4(d), he points out, gives governing boards the authority to disburse funds from income generated by the state universities or colleges for programs or projects, notwithstanding any provision of existing laws, rules, or regulations.[28]

Petitioner also claims that the conduct of meetings, along with the payment of honoraria for the members' attendance, directly relates to instruction, research, extension, and other programs or projects. These meetings are supposedly integral and inseparable from the instruction, research, and extension programs of the state university or college, because it is during these meetings where the "programs are proposed, deliberated upon, refined, and eventually approved[.]"[29]

Moreover, petitioner points to Section 4 of Republic Act No. 8292, which, apart from granting governing boards specific powers and duties, likewise allows them to exercise all the powers of a corporation under the Corporation Code.[30] He cites Section 36(10) of the Corporation Code, which gives the power to extend benefits to directors or trustees:

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[26] *Id*. at 58.

[27] *Id*. at 3-31.

[28] *Id*. at 11-12.

[29] *Id*. at 14-15.

[30] *Id*. at 17-18 *citing* Batas Pambansa Blg. 68.

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10. To establish pension, retirement, and other plans for the benefit of its directors, trustees, officers and employees[.]

Finally, petitioner claims that respondent Commission on Audit gravely abused its discretion in finding that the members of the governing boards acted in bad faith when they received the additional honoraria. He claims that they relied on Section 4(d) of Republic Act No. 8292, as implemented by Commission on Higher Education Memorandum Order No. 03-01 and Commission on Audit Circular No. 2002-002. They also relied on two (2) letter-opinions from the Office of the Solicitor General, including the opinion from Assistant Solicitor General Dizon and another from Assistant Solicitor General Renan E. Ramos to Partido State University, both stating that there were legal bases for the grant of additional honoraria. Petitioner argues that the grant was not self-serving because the honoraria were not for personal purposes, but to reimburse the members for necessary expenses.[31]

In a June 3, 2014 Resolution,[32] this Court ordered respondent to comment on the Petition. In light of the letter-opinions issued by it, the Office of the Solicitor General was excused from commenting on respondent's behalf.[33]

In its Comment,[34] respondent claims that its November 3, 2011 Decision had already become final and executory after petitioner had belatedly moved for reconsideration. It points out that petitioner received a copy of the Decision on December 1, 2011, but only filed a Motion on February 2, 2012, beyond the 30-day period prescribed in the 2009 Revised Rules of Procedure of the Commission on Audit. Without the Motion, the Petition for *Certiorari* filed before this Court consequently went beyond the 30-day period in Rule 64, Section 3 of the Rules of Civil Procedure.[35]

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[31] *Id*. at 19-23.

[32] *Id*. at 67.

[33] *Id*. at 71-A and 85-87.

[34] *Id*. at 100-120.

[35] *Id*. at 106-108.

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Respondent further argues that it did not commit grave abuse of discretion in finding that the members of the governing boards were entitled only to per diem sourced from appropriations or savings in appropriations, and that their meetings were not directly related to instruction, research, extension or other programs or projects.[36]

Respondent notes that members of governing boards should receive per diem from the state university or college's appropriations, it being in the nature of Personal Service items under the General Appropriations Act. Respondent asserts that it disallowed the additional honoraria in this case because they were charged against the special trust funds.[37]

Respondent maintains that special trust funds must only be used for their specific purpose, namely, "instruction, research, extension, or other programs/projects of the university or college[.]"[38]

Finally, respondent claims that members of the governing boards did not receive the additional honoraria in good faith because they were the ones who approved it, notwithstanding their reliance on the legal opinions of the Office of the Solicitor General. Having acted in bad faith, they should be ordered to refund the amounts they had received.[39]

In its August 26, 2014 Resolution,[40] this Court required petitioner to reply to the Comment.

In his Reply,[41] while petitioner concedes that he filed his Motion for Reconsideration out of time, he claims that the November 3, 2011 Decision had not yet become final and executory because Barroso, the Bukidnon State University

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[36] *Id*. at 109-110.

[37] *Id*. at 111-112.

[38] *Id*. at 114.

[39] *Id*. at 115-119.

[40] *Id*. at 132.

[41] *Id*. at 146-160.

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president, timely filed his Motion. Since he and Barroso shared "common defenses and justifications[,]"[42] petitioner argues that he should benefit from Barroso's timely filing.[43]

Petitioner also contends that the phrase "other programs or projects" in Section 4(d) of Republic Act No. 8292 includes those which the governing boards may determine to carry out the purposes and functions of the state university or college. He then reiterates that the governing boards' meetings were not only of the same nature as instruction, research, and extension, but were also integral and inseparable from them.[44]

Likewise, petitioner emphasizes that the members of the governing boards acted in good faith when they passed resolutions granting themselves the additional honoraria, since these were reasonable and charged against the income of the state university or college.[45]

The issues for this Court's resolution are:

First, whether or not respondent Commission on Audit's November 3, 2011 Decision had become final and executory after petitioner Ricardo E. Rotoras' failure to file his Motion for Reconsideration on time;

Second, whether or not respondent correctly disallowed the additional honoraria for members of the governing boards of the state universities and colleges; and

Finally, whether or not the members of the governing boards of the state universities and colleges should be ordered to refund the amounts they had received.

I

Rule X, Sections 9 and 10 of the 2009 Revised Rules of Procedure of the Commission on Audit, as amended, provides:

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[42] *Id*. at 149.

[43] *Id*. at 148-149.

[44] *Id*. at 151-152.

[45] *Id*. at 156.

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SECTION 9. Finality of Decisions or Resolutions. — A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution.

The filing of a petition for *certiorari* shall not stay the execution of the judgment or final order sought to be reviewed, unless the Supreme Court shall direct otherwise upon such terms as it may deem just.

SECTION 10. Motion for Reconsideration. — A motion for reconsideration may be filed within thirty (30) days from notice of the decision or resolution, on the grounds that the evidence is insufficient to justify the decision; or that the said decision of the Commission is contrary to law. Only one (1) motion for reconsideration of a decision of the Commission shall be entertained.

In this case, petitioner filed his Motion for Reconsideration on February 2, 2012, 31 days after the January 2, 2012 deadline. Clearly, the Decision has become final and executory against it.[46]

That a motion for reconsideration was timely filed by another party is of no moment. Although respondent claims that he and Barroso share common defenses and justifications, as Barroso represents Bukidnon State University while he represents all the state universities and colleges affected by the disallowances,[47] nothing in his Reply presents proof of this allegation. While there are instances when a reversal of a judgment benefits both the appealing and non-appealing parties, the rights and liabilities of both must first be shown to be so interwoven and dependent as to be inseparable:

For whether or not an appeal by one or several parties in the case will affect the liability of those who did not appeal must depend upon the facts of each particular case. Ordinarily, a reversal of a judgment is binding only on the parties in the suit but does not control the interest of the parties who did not join or were not made parties to the appeal; but where the rights and liabilities of those who did

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[46] *Id*. at 148.

[47] *Id*. at 149-150.

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not appeal and those of the parties appealing are so interwoven and dependent on each other as to be inseparable, a reversal of the judgment as to one would operate as a reversal as to all.[48] (Citation omitted)

However, in its February 14, 2014 Resolution, respondent did not mention that petitioner's Motion for Reconsideration was filed out of time. It merely stated that both he and Barroso "failed to raise a new matter or show sufficient ground to justify a reconsideration of the assailed decision."[49] Evidently, respondent gave due course to petitioner's Motion notwithstanding the procedural infirmity, which it should have noticed at the time the Motion was filed. Thus, the issue of whether the November 3, 2011 Decision is final and executory against petitioner has been rendered moot.[50]

II

Only when the Commission on Audit commits grave abuse of discretion will this Court grant petitions for *certiorari* questioning its findings. In *Yap v. Commission on Audit*:[51]

We have previously declared that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. Thus, only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain a petition for certiorari under Rule 65 of the Rules of Court.

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[48] *The Director of Lands v. Hon. Reyes*, 161 Phil. 542, 547 (1976) [Per J. Antonio, *En Banc*].

[49] *Rollo*, p. 58.

[50] *Lumayna v. Commission on Audit*, 616 Phil. 929 (2009) [Per J. Del Castillo, *En Banc*].

[51] 633 Phil. 174 (2010) [Per J. Leonardo-De Castro, *En Banc*].

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There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.[52]

Section 4 of Republic Act No. 8292 grants specific powers and duties to the governing boards of state universities and colleges. Among these is the power to fix tuition fees and other necessary school charges, and later disburse them:

SECTION 4. Powers and Duties of Governing Boards. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:

. . . . . .

d) to fix the tuition fees and other necessary school charges, such as but not limited to matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.

Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: *Provided*, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.

Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.

If, for reasons beyond its control, the university or college, shall not be able to pursue any project for which funds have been

[52] *Id*. at 195-196.

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appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may be authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college[.]

Specifically, tuition fees and other necessary school charges collected by the state university or college constitute a special trust fund, which shall be disbursed by its governing board for instruction, research, extension, or other programs or projects.

Here, it is undisputed that the additional honoraria to the members of the state universities and colleges' governing boards when they attend board meetings are to be sourced, not from appropriations, but from their special trust funds.

Petitioner claims that the disbursement of additional honoraria falls within the limitation of "instruction, research, extension, or other programs/projects of the university or college" in Section 4(d). He argues that the work of the governing boards during these meetings are directly related to instruction, research, and extension:

> 51. It is the Petitioner's submission that the conduct of meetings, and the payment of honoraria for attendance at meetings to the members, of the [state university or college] Boards are directly related to instruction, research and extension, and, hence, within the ambit of "instruction, research and extension" or "other programs/projects" of the university or college. The spirit of the law is such that the term "programs/projects" embraces the conduct of meetings, and the payment of honoraria for attendance at meetings to the members, of the [state university or college] Boards as these are directly related to the university's or college's academic programs. Meetings of the [state university or college] Boards are conducted in pursuance of their primary objective which is to attain quality higher education.
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> 52. Not only are the meetings of [state university or college] Boards "of the same nature as instruction, research, and extension," they are integral and inseparable from the instruction, research and extension programs of the university or college. Programs for instruction, research or extension

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> are necessarily the workings of [state university or college] Boards. These programs are proposed, deliberated upon, refined, and eventually approved during the meetings of [state university or college] Boards. The effectiveness of their implementation is decided by [state university or college] Boards. In fact, hardly anything can be undertaken in instruction, research, and extension without the policies and guidelines that must necessarily emanate from the workings of [state university or college] Boards. Academic programs, as well as other programs in instruction, research, and extension are but the direct and necessary consequences of the administration and policy-making functions of [state university or college] Boards.[53]

On the other hand, respondent argues that the work of state universities and colleges' governing boards are not directly related to instruction, research, and extension:

> The word "directly" means the existence of an immediate connection or relation. Applying this definition in the instant case would mean that the [governing boards'] action must have an immediate connection with instructions, research, and other academic programs of the university. In the petition/appeal at hand, the policies formulated by the [governing boards] may pertain to instructions, research and other projects but the connection is not direct. The policy-making function of the [governing boards] is not considered an academic activity similar to those performed by teachers and students.
>
> In any event, the [special trust fund] may not be utilized to pay compensation, per diems or honoraria, not even an additional allowance. This issue was resolved by the Supreme Court in the case of *Benguet State University vs. COA*, G.R. No. 169637, June 8, 2007, . . .
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> . . . . . .
>
> Hence, payment of the additional per diem charged from the [special trust fund] is bereft of legal basis.[54]

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[53] *Rollo*, pp. 14-15.

[54] *Rollo*, pp. 54-55.

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Respondent is correct. The use of state universities or colleges' special trust funds to pay additional honoraria to members of their governing boards has no legal basis.

For appropriations, Section 4(b) of Republic Act No. 8292 provides that a governing board has the power to determine, on its own discretion, how to spend such sums to carry out the purpose and function of the state university or college. It states:

> SECTION 4. Powers and Duties of Governing Boards. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:
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> . . . .
>
> b) to receive and appropriate all sums as may be provided, for the support of the university or college in the manner it may determine, in its discretion, to carry out the purposes and functions of the university or college[.]

In contrast, Section 4(d) limits the use of the special trust fund for instruction, research, or extension. The "other programs/projects" referred to in Section 4(d) must be of the same nature as instruction, research, or extension. In *Benguet State University*:

> Under the principle of *ejusdem generis*, where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the statute which would repel such inference. The COA correctly ruled that the "other programs/projects" under R.A. No. 8292 and its Implementing Rules should be of the same nature as instruction, research, and extension. In BSU's case, the disbursements were for rice subsidy and health care allowances which are, in no way, intended for academic programs similar to instruction, research, or extension. Section 4 (d) cannot, therefore, be relied upon by BSU as the legal basis for the grant of the allowances.[55] (Citations omitted)

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[55] *Benguet State University v. Commission on Audit*, 551 Phil. 878, 886-887 (2007) [Per *J.* Nachura, *En Banc*].

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In that case, this Court upheld the Commission on Audit's disallowance of rice subsidy and healthcare allowance granted to the employees of petitioner Benguet State University, ruling that the phrase "other programs/projects" does not encompass all projects and programs of the university.

Meetings of the state university and colleges' governing boards cannot be considered as instruction, research, extension, or any other similar project or program.

Petitioner posits that the spirit of Section 4(d) of Republic Act No. 8292 "embraces the conduct of meetings of the [state university or college] Governing Boards as these are directly related to the academic programs of the university or college."[56] This is because, he adds, it is in these meetings where such programs are discussed and approved.[57]

However, this policymaking power extends to all matters, not contrary to law, which may be necessary to carry out the state university or college's purposes and functions.[58] As enumerated in Section 4 of Republic Act No. 8292, a governing board's powers are not only with regard to academic programs, but extend to day-to-day administration,[59] human resources

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[56] *Rollo*, p. 152.

[57] *Id*.

[58] Republic Act No. 8292 (1997), Sec. 4(a) states:

SECTION 4. Powers and Duties of Governing Boards. — . . .

a) to enact rules and regulations not contrary to law as may be necessary to carry out the purposes and functions of the university or college; . . .

[59] Republic Act No. 8292 (1997), Sec. 4(f) and (v) state:

SECTION 4. Powers and Duties of Governing Boards. — . . .

. . . .

f) to authorize the construction or repair of its buildings, machineries, equipment and other facilities and the purchase and acquisition of real and personal properties including necessary supplies, materials and equipment. Purchases and other transactions entered into by the university or college through the Board of Regents/Trustees shall be exempt from all taxes and duties; . . .

v) to establish policy guidelines and procedures for participative decision-making and transparency within the institution;

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management,[60] income generation,[61] and other matters, all of which are discussed during board meetings. Adopting petitioner's interpretation may lead to absurd scenarios where the entitlement of additional honoraria will be on a meeting-to-meeting basis, because it is yet to be determined whether a particular meeting's agenda includes policymaking involving the university or college's instruction, research, or extension programs and projects.

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[60] Republic Act No. 8292 (1997), Sec. 4(g), (h), and (x) state:

SECTION 4. Powers and Duties of Governing Boards. — . . .

. . . . . .

g) to appoint, upon the recommendation of the president of the university or college, vice presidents, deans, directors, heads of departments, faculty members and other officials and employees;

h) to fix and adjust salaries of faculty members and administrative officials and employees subject to the provisions of the revised compensation and classification system and other pertinent budget and compensation laws governing hours of service, and such other duties and conditions as it may deem proper; to grant them, at its discretion, leaves of absence under such regulations as it may promulgate, any provisions of existing law to the contrary notwithstanding; and to remove them for cause in accordance with the requirements of due process of law;

. . . . . .

x) to extend the term of the president of the college or university beyond the age of retirement but not later than the age of seventy (70), whose performance has been unanimously rated as outstanding and upon unanimous recommendation by the search committee for the president of the institution concerned.

[61] Republic Act No. 8292, Sec. 4(r) states:

SECTION 4. Powers and Duties of Governing Boards. — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:

. . . . . .

r) to enter into joint ventures with business and industry for the profitable development and management of the economic assets of the college or institution, the proceeds from which to be used for the development and strengthening of the college or university; . . .

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Notably, as respondent points out, Section 3[62] of Republic Act No. 8292 already provides the specific entitlements of members of governing boards when they attend board meetings:

Section 3, R.A. No. 8292 and its Implementing Guidelines mention specific entitlements to the members — to receive compensation in the form of per diem and to reimburse actual expenses, if any. To reiterate, Chairpersons of the Boards are entitled to receive per diems in an amount equivalent to 25% of the monthly Representation Allowance and Transportation Allowance (RATA) of the [state university or college] President for every meeting actually attended but not to exceed four (4) paid meetings in a month. On the other hand, Members of the Boards are entitled to receive per diems in amounts equivalent to 25% of the monthly [Representation Allowance and Transportation] of the [state university or college] Vice-President for every meeting actually attended but not to exceed four (4) paid meetings in a month. The Members are not entitled to any other benefit or allowance than that allowed by law. The plain wordings of the

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[62] Section 3(c) of Republic Act No. 8292 states:

SECTION 3. The Governing Boards; Manner of Appointment. —

. . . . . .

c) Meetings; Quorum. — The Board of Regents/Trustees shall regularly convene at least once every quarter. The Chairman of the Board of Regents/Trustees may call a special meeting whenever necessary: Provided, That members are notified in writing at least three (3) days prior to said meeting.

A majority of all members holding office shall constitute a quorum for board meetings: Provided, that the Chairman of the CHED who is the chairman of the Board or the president of the university or college is among those present in the meeting. In the absence of the Chairman of the CHED, a commissioner of the CHED, duly designated by him, shall represent him in the meeting all the rights and responsibilities of a regular member: Provided, however, That in the said meeting, the president of the university or college as vice chairman shall be the presiding officer: Provided, further, That this proviso notwithstanding, the Chairman of the CHED is hereby authorized to designate a CHED Commissioner the regular Chair to the Board of a particular university or college, in which case said CHED Commissioner shall act as the presiding officer.

The members shall serve without compensation, but they shall be reimbursed for necessary expenses incurred in their attendance of meetings of the Board or in connection with their official business authorized by resolution of the Board.

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law should not be interpreted to mean more than what was written pursuant to the legal maxim *expressio unius est exclusio alterious*.

. . . . . .

. . . As discussed in the assailed LAO-National Decision and Resolution, payment of per diems may be in the nature of personal services item in which case, payment thereof may only be sourced from an agency's appropriation; or it may be in the nature of MOOE item, in which case, payment thereof may come from an agency's income, like [special trust funds]. The per diem of the [governing boards] for their attendance in board meetings partakes of the nature of compensation categorized under personal services.[63]

There being no legal basis for the additional honoraria for members of the state universities and colleges' governing boards, respondent did not commit grave abuse of discretion in upholding the disallowances.

III

The defense of good faith, which precludes the requirement to return disallowed benefits or allowances, is based on the principle that public officials are entitled to the presumption of good faith when discharging their official duties. Both the public officers who disbursed the benefits or allowances and those who received them will not be required to return the benefits or disallowances when it is shown that they acted in good faith in doing so. In *Blaquera v. Alcala*:[64]

Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.

Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.

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[63] *Rollo*, pp. 53-54.

[64] 356 Phil. 678 (1998) [Per *J.* Purisima, *En Banc*].

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In upholding the constitutionality of AO 268 and AO 29, the Court reiterates the well-entrenched doctrine that "in interpreting statutes, that which will avoid a finding of unconstitutionality is to be preferred."

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.[65] (Citations omitted)

On several occasions, this Court has allowed public officials and employees to keep disallowed benefits and allowances they had already received, such as: (1) when they had no knowledge that the payment did not have legal basis at the time they received them;[66] (2) when the approving authority failed to exercise diligence or made mistakes but did not act with malice or in bad faith;[67] (3) when the approving authority honestly believed that there was legal basis for the grant and the accepting employees honestly believed they were entitled to it;[68] (4) when there was ambiguity in existing rules and regulations that have

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[65] *Id.* at 765-766.

[66] See *De Jesus v. Commission on Audit*, 451 Phil. 812 (2003) [Per J. Carpio, *En Banc*]; *Philippine International Trading Corporation v. Commission on Audit*, 461 Phil. 737 (2003) [Per J. Ynares-Santiago, *En Banc*]; *Philippine Ports Authority v. Commission on Audit*, 517 Phil. 677 (2006) [Per J. Azcuna, *En Banc*] and *Mendoza v. Commission on Audit*, 717 Phil. 491 (2013) [Per J. Leonen, *En Banc*].

[67] See *Home Development Mutual Fund v. Commission on Audit*, 483 Phil. 666 (2004) [Per J. Carpio, *En Banc*]; *Lumayna v. Commission on Audit*, 616 Phil. 929 (2009) [Per J. Del Castillo, *En Banc*].

[68] See *Kapisanan ng mga Manggagawa sa Government Service Insurance System v. Commission on Audit*, 480 Phil. 861 (2004) [Per J. Tinga, *En Banc*]; *Abanilla v. Commission on Audit*, 505 Phil. 202 (2005) [Per J. Sandoval-Gutierrez, *En Banc*]; *Technical Education and Skills Development Authority v. Commission on Audit*, 753 Phil. 434 (2015) [Per J. Bersamin, *En Banc*].

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not yet been clarified;[69] or (5) when they did not participate in the acts that led to the disbursement of such benefits or allowances.[70]

Meanwhile, officials and officers who disbursed the disallowed amounts are liable to refund: (1) when they patently disregarded existing rules in granting the benefits to be disbursed, amounting to gross negligence;[71] (2) when there was clearly no legal basis for the benefits or allowances;[72] (3) when the amount disbursed is so exorbitant that the approving officers were alerted to its validity and legality;[73] or (4) when they knew that they had no authority over such disbursement.[74]

In *Development Bank of the Philippines v. Commission on Audit*,[75] this Court synthesized the factors in determining good faith in responsible officers that would obviate the necessity of a refund:

Based on the foregoing cases, good faith may be appreciated in favor of the responsible officers under the ND provided they comply

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[69] See *Philippine Economic Zone Authority v. Commission on Audit*, 797 Phil. 117 (2016) [Per J. Peralta, *En Banc*].

[70] See *Silang v. Commission on Audit*, 769 Phil. 327 (2015) [Per J. Perlas-Bernabe, *En Banc*]; *National Transmission Corporation v. Commission on Audit*, 800 Phil. 618 (2016) [Per J. Mendoza, *En Banc*]; *Balayan Water District v. Commission on Audit*, G.R. No. 229780, January 22, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64911> [Per J. Reyes, Jr., *En Banc*].

[71] See *Casal v. Commission on Audit*, 538 Phil. 634 (2006) [Per J. Carpio-Morales, *En Banc*] and *Sambo v. Commission on Audit*, 811 Phil. 344 (2017) [Per J. Peralta, *En Banc*].

[72] See *Manila International Airport Authority v. Commission on Audit*, 681 Phil. 644 (2012) [Per J. Reyes, *En Banc*] and *Oriondo v. Commission on Audit*, G.R. No. 211293, June 4, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65254> [Per J. Leonen, *En Banc*].

[73] See *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288 (2015) [Per J. Leonen, *En Banc*].

[74] See *Silang v. Commission on Audit*, 769 Phil. 327 (2015) [Per J. Perlas-Bernabe, *En Banc*].

[75] G.R. No. 221706, March 13, 2018, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64059> [Per J. Gesmundo, *En Banc*].

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with the following requisites: (1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.[76]

Nonetheless, there have been instances when, regardless of the alleged good or bad faith of the responsible officers and recipients, this Court ordered the refund of the amounts received. Applying the rule against unjust enrichment, it required public officers to return the disallowed benefits, considering them as trustees of funds which they should return to the government. In *Government Service Insurance System v. Commission on Audit*:[77]

Furthermore, even if the substantive issues and arguments raised by the Movants Federico Pascual, *et al.* are considered, there is no justifiable ground to reverse the Court's Decision. While it is true, as claimed by the Movants Federico Pascual, *et al.*, that based on prevailing jurisprudence, disallowed benefits received in good faith need not be refunded, the case before us may be distinguished from all the cases cited by Movants Federico Pascual, *et al.* because the monies involved here are **retirement benefits**.

Retirement benefits belong to a different class of benefits. All the cases cited by the Movants Federico Pascual, *et al.* involved benefits such as cash gifts, representation allowances, rice subsidies, uniform allowances, *per diems*, transportation allowances, and the like. The foregoing allowances or fringe benefits are given **in addition** to one's salary, either to reimburse him for expenses he might have incurred in relation to his work, or as a form of supplementary compensation. On the other hand, retirement benefits are given to one who is separated from employment either voluntarily or compulsorily. Such benefits, subject to certain requisites imposed by law and/or contract, are given to the employee on the assumption that he can no longer work. They are also given as a form of reward for the services he had rendered. The purpose is not to enrich him but to help him during his non-productive years.

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[76] *Id*.

[77] 694 Phil. 518 (2012) [Per *J.* Leonardo-De Castro, *En Banc*].

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Our Decision dated October 11, 2011 does not preclude Movants Federico Pascual, *et al*. from receiving retirement benefits provided by existing retirement laws. What they are prohibited from getting are the additional benefits under the GSIS RFP, which we found to have emanated from a void and illegal board resolution. To allow the payees to retain the disallowed benefits would amount to their unjust enrichment to the prejudice of the GSIS, whose avowed purpose is to maintain its actuarial solvency to finance the retirement, disability, and life insurance benefits of its members.

This Court, elucidating on the concept of unjust enrichment in *University of the Philippines v. PHILAB Industries, Inc.*, said:

> Unjust enrichment is a term used to depict result or effect of failure to make remuneration of or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them; to be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconvey. Rather, it is a prerequisite for the enforcement of the doctrine of restitution.

The statutory basis for unjust enrichment is found in Article 22 of the Civil Code, which provides:

> Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

Under the foregoing provision, there is unjust enrichment when:

1. A person is unjustly benefited; and
2. Such benefit is derived at the expense of or with damages to another.

In *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation* we said:

> [T]here is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. . . .

In the same case, we added that "[t]here is no unjust enrichment when the person who will benefit has a valid claim to such benefit." Because the GSIS RFP, which we repeat, is contrary to law, thus

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void and of no effect, the enrichment of the payees is without just or legal ground. Therefore, the payees have no valid claim to the benefits they received under the GSIS RFP.

The payees received the disallowed benefits with the mistaken belief that they were entitled to the same under the GSIS RFP. Article 1456 of the Civil Code, which is applicable in this case, reads:

> If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

Construing the above provision, this Court, in *Aznar Brothers Realty Company v. Aying*, quoted established jurisprudence as follows:

> A deeper analysis of Article 1456 reveals that it is not a trust in the technical sense for in a typical trust, confidence is reposed in one person who is named a trustee for the benefit of another who is called the *cestui que trust*, respecting property which is held by the trustee for the benefit of the *cestui que trust*. A constructive trust, unlike an express trust, does not emanate from, or generate a fiduciary relation. While in an express trust, a beneficiary and a trustee are linked by confidential or fiduciary relations, in a constructive trust, there is neither a promise nor any fiduciary relation to speak of and the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary.
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> . . . . . .
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> . . . [I]mplied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which arc superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties. . . .

Policarpio v. Court of Appeals expounded on the doctrine of implied trust in relation to another provision of the Civil Code. We ruled in the said case that a constructive trust is substantially an appropriate remedy against unjust enrichment, as follows:

> And specifically applicable to the case at bar is the doctrine that [a] constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where although

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acquired originally without fraud, it is against equity that it should be retained by the person holding it.

Thus, the payees, who acquired the retirement benefits under the GSIS RFP, are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.[78] (Emphasis in the original, citations omitted)

The rule against unjust enrichment, along with the treatment of recipients of disallowed benefits as trustees in favor of government, was applied in the recent case of *Dubongco v. Commission on Audit*.[79] There, this Court declined to ascribe good or bad faith to the recipients of the disallowed collective negotiation agreement incentives. It found that since they had no valid claim to the benefits, they cannot be allowed to retain them, notwithstanding the absence of fraud in their receipt:

Every person who, through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him. Unjust enrichment refers to the result or effect of failure to make remuneration of, or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution. Thus, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. Conversely, there is no unjust enrichment when the person who will benefit has a valid claim to such benefit.

In this case, it must be emphasized that the grant of CNA Incentive was financed by the CARP Fund, contrary to the express mandate of

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[78] *Id.* at 524-528.

[79] G.R. No. 237813, March 5, 2019, <http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051> [Per *J.* J.C. Reyes, Jr., *En Banc*].

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PSLMC Resolution No. 4, Series of 2002, A.O. No. 135 and DBM Budget Circular No. 2006-01. This is not simply a case of a negotiating union lacking the authority to represent the employees in the CNA negotiations, or lack of knowledge that the CNA benefits given were not negotiable, or failure to comply with the requirement that payment of the CNA Incentive should be a one-time benefit after the end of the year. Here, the use of the CARP Fund has no basis as the three issuances governing the grant of CNA Incentive could not have been any clearer in that the CNA Incentive shall be sourced solely from savings from released MOOE allotments for the year under review. Consequently, the payees have no valid claim to the benefits they received.

Further, CNA Incentive are granted to government employees who have contributed either in productivity or cost-saving measures in an agency. In turn, CNA Incentive are based on the CNA entered into between the accredited employees' organization as the negotiating unit and the employer or management. Rule XII of the Amended Rules and Regulations Governing the Exercise of the Right of Government Employees to Organize provides:

> Rule XII
> COLLECTIVE NEGOTIATIONS
>
> SEC. 1. Subject of negotiation. — Terms and conditions of employment or improvements thereof, except those that are fixed by law, may be the subject of negotiation.
>
> SEC. 2. Negotiable matters. — The following concerns may be the subject of negotiation between the management and the accredited employees' organization:
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> . . . . . .
>
> (m) CNA incentive pursuant to PSLMC Resolution No. 4, s. 2002 and Resolution No. 2, s. 2003[.]
>
> . . . . . .
>
> SEC. 4. Effectivity of CNA. — The CNA shall take effect upon its signing by the parties and ratification by the majority of the rank-and-file employees in the negotiating unit.

Hence, it can be gleaned that unlike ordinary monetary benefits granted by the government, CNA Incentives require the participation of the employees who are the intended beneficiaries. The employees

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indirectly participate through the negotiation between the government agency and the employees' collective negotiation representative and directly, through the approval of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the prerequisites for the valid release of the CNA Incentive. They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE.

In addition, the obligation of the recipients to return the CNA Incentive financed by the CARP Fund finds support in Section 103 of the Presidential Decree No. 1445 or the Government Auditing Code of the Philippines, to wit:

> SEC. 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.

Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, *or where, although acquired originally without fraud*, it is against equity that it should be retained by the person holding it. In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.[80] (Emphasis in the original, citations omitted)

The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations. Furthermore, the rank and file's obligation to return shall be

[80] *Id*.

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limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return—whether it be solidary or not—depends on the circumstances.

Section 3 of Republic Act No. 8292 and its Implementing Rules and Regulations have already fixed the monetary entitlements of members of governing boards when they attend board meetings. Section 4(d) expressly states that state universities and colleges' special trust funds shall be used only for instruction, research, extension, and similar programs or projects. Consequently, the use of the special trust funds for the board members' honoraria is a plain violation of an explicit provision of law.[81]

As correctly characterized by respondent, the governing boards' act of approving additional honoraria for themselves is, at the very least, self-serving.[82] The law is unambiguous on the additional emoluments and their sources to which members of governing boards are entitled. Thus, the good faith doctrine is unavailing when they receive honoraria that they themselves approved.

Additionally, the governing boards' reliance on two (2) letter-opinions issued by the Office of the Solicitor General is of no moment. A review of these opinions shows their reliance on Commission on Higher Education Memorandum Order No. 3 and the Corporation Code in finding that the respective Commission on Audit Resident Auditors should not have disallowed the additional honoraria.[83]

While the Assistant Solicitor Generals acknowledged that the additional honoraria were to be disbursed from the state

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[81] *Sambo v. Commission on Audit*, 811 Phil. 344, 357 (2017) [Per J. Peralta, *En Banc*].

[82] *Rollo*, p. 54.

[83] *Id*. at 59-62 and 63-65.

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university or college's income and not from appropriations, they failed to mention that Republic Act No. 8292 specifies the purposes for which the special trust fund should be used. Moreover, their opinions were requested and rendered after respondent had already disallowed the additional honoraria. Thus, they cannot be taken as proof that the governing boards acted with due diligence when they passed their respective resolutions granting themselves the honoraria.

Since no legal basis for the grant of additional honoraria has been established, it would be an unjust enrichment to allow the members of the governing boards to retain what they had received. Instead, they should be considered trustees of the disallowed amounts, holding them for the benefit of the government, regardless of any good faith defenses they may raise. Respondent, therefore, correctly ordered the refund.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED**. The November 3, 2011 Decision and February 14, 2014 Resolution of the Commission on Audit in COA CP Case No. 2010-341 are **AFFIRMED**. The members of the governing boards of the state universities and colleges shall return the disallowed benefits. Their obligation to return shall not be solidary.

SO ORDERED.

Carpio (Acting C.J.), Peralta, Perlas-Bernabe, Reyes, A. Jr., Reyes, J. Jr., Hernando, Carandang, Lazaro-Javier, Inting, and *Zalameda, JJ.*, concur.

Bersamin, C.J. and *Gesmundo, J.*, on official business.

Caguioa, J., on leave.

Jardeleza, J., no part.