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[G.R. No. 155027. February 28, 2006]

THE VETERANS FEDERATION OF THE PHILIPPINES represented by Esmeraldo R. Acorda, *petitioner, vs.* **Hon. ANGELO T. REYES in his capacity as Secretary of National Defense; and Hon. EDGARDO E. BATENGA in his capacity as Undersecretary for Civil Relations and Administration of the Department of National Defense,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; HIERARCHY OF COURTS; PETITION FOR *CERTIORARI* AND PROHIBITION FILED WITH THE COURT WHEN LOWER COURTS ALSO EXERCISE ORIGINAL JURISDICTION OVER THE SAME REQUIRES SPECIAL AND IMPORTANT REASON; RULE RELAXED IN CASE AT BAR.** — It is settled that the Regional Trial Court and the Court of Appeals also exercise original jurisdiction over petitions for *certiorari* and prohibition. As we have held in numerous occasions, however, such concurrence of original jurisdiction does not mean that the party seeking extraordinary writs has the absolute freedom to file his petition in the court of his choice. Thus, in *Commissioner of Internal Revenue v. Leal*, we held that: The hierarchy of courts in our judicial system determines the appropriate forum for these petitions. Thus, petitions for the issuance of the said writs against the first level (inferior) courts must be filed with the Regional Trial Court and those against the latter, with the Court of Appeals. A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only where there are special and important reasons therefor, specifically and sufficiently set forth in the petition. This is the established policy to prevent inordinate demands upon the Court's time and attention, which are better devoted to matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. x x x The petition itself, in this case, does not specifically and sufficiently set forth the special and important reasons why the Court should give due course to

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this petition in the first instance, hereby failing to fulfill the conditions set forth in *Commissioner of Internal Revenue v. Leal*. While we reiterate the policies set forth in *Leal* and allied cases and continue to abhor the propensity of a number of litigants to disregard the principle of hierarchy of courts in our judicial system, we, however, resolve to take judicial notice of the fact that the persons who stand to lose in a possible protracted litigation in this case are war veterans, many of whom have precious little time left to enjoy the benefits that can be conferred by petitioner corporation. This bickering for the power over petitioner corporation, an entity created to represent and defend the interests of Filipino veterans, should be resolved as soon as possible in order for it to once and for all direct its resources to its rightful beneficiaries all over the country. All these said, we hereby resolve to give due course to this petition.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; DEPARTMENT OF NATIONAL DEFENSE (DND); DEPARTMENT CIRCULAR NO. 4; POWER OF CONTROL AND SUPERVISION.** — This Court has defined the power of control as "the power of an officer to alter or modify or nullify or set aside what a subordinate has done in the performance of his duties and to substitute the judgment of the former to that of the latter." The power of supervision, on the other hand, means "overseeing, or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties." These definitions are synonymous with the definitions in the assailed Department Circular No. 04, while the other provisions of the assailed department circular are mere consequences of control and supervision as defined.

3. **POLITICAL LAW; CONSTITUTIONAL LAW; REGULATION OF PRIVATE CORPORATIONS BY SPECIAL LAWS, PROHIBITED; VETERANS FEDERATION OF THE PHILIPPINES (VFP), A PUBLIC CORPORATION.** — Our constitutions explicitly prohibit the *regulation* by special laws of private corporations, with the exception of government-owned or controlled corporations (GOCCs). Hence, it would be impermissible for the law to grant control of the VFP to a public official if it were neither a public corporation, an unincorporated governmental entity, nor a GOCC. Said constitutional provisions

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can even be read to prohibit the creation itself of the VFP if it were neither of the three mentioned above, but we cannot go into that in this case since there is no challenge to the creation of the VFP in the petition as to permit this Court from considering its nullity. Petitioner vigorously argues that the VFP is a private non-government organization. We are constrained, however, to rule that petitioner is in fact a public corporation.

4. **ID.; ADMINISTRATIVE LAW; PUBLIC OFFICE AND OFFICER; ELUCIDATED.** — In *Laurel v. Desierto*, we adopted the definition of Mechem of a public office, that it is "the right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public." In the same case, we went on to adopt Mechem's view that the delegation to the individual of some of the sovereign functions of government is "[t]he most important characteristic" in determining whether a position is a public office or not. Such portion of the sovereignty of the country, either legislative, executive or judicial, must attach to the office for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer. The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; – that some portion of the sovereignty of the country, either legislative, executive or judicial, attaches, for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer.

5. **ID.; ID.; ID.; SOCIAL JUSTICE AS A SOVEREIGN FUNCTION.** — As regards the promotion of social justice as a sovereign function, we held in *Agricultural Credit and Cooperative Financing Administration (ACCFA) v. Confederation of Unions in Government Corporations and Offices (CUGCO)*, that the compelling urgency with which the Constitution speaks of social justice does not leave any doubt that land reform is not an optional but a compulsory function of sovereignty. The same reason was used in our declaration that socialized housing is likewise a sovereign function.

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6. **ID.; ID.; ID.; ID.; ON FUNCTIONS OF THE VFP UNDER RA 2640, ELUCIDATED.**— [T]he functions of petitioner corporation enshrined in Section 4 of Rep. Act No. 2640 should most certainly fall within the category of sovereign functions. The protection of the interests of war veterans is not only meant to promote social justice, but is also intended to reward patriotism. All of the functions in Section 4 concern the well-being of war veterans, our countrymen who risked their lives and lost their limbs in fighting for and defending our nation. It would be injustice of catastrophic proportions to say that it is beyond sovereignty's power to reward the people who defended her. Like the holding of the National Centennial Celebrations, the functions of the VFP are executive functions, designed to implement not just the provisions of Rep. Act No. 2640, but also, and more importantly, the Constitutional mandate for the State to provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans.

7. **ID.; ID.; ID.; ABSENCE OF BUDGETARY APPROPRIATIONS DOES NOT PROVE NATURE OF THE VFP AS PRIVATE.** — The fact that no budgetary appropriations have been released to the VFP does not prove that it is a private corporation. The DBM indeed did not see it fit to propose budgetary appropriations to the VFP, having itself believed that the VFP is a private corporation. If the DBM, however, is mistaken as to its conclusion regarding the nature of VFP's incorporation, its previous assertions will not prevent future budgetary appropriations to the VFP. The erroneous application of the law by public officers does not bar a subsequent correct application of the law.

8. **ID.; ID.; ID.; FUNDS IN THE HANDS OF VFP FROM WHATEVER SOURCE ARE PUBLIC FUNDS AND CAN BE USED FOR PUBLIC PURPOSES; ELABORATED.** — [F]unds in the hands of the VFP from whatever source are public funds, and can be used only for public purposes. This is mandated by Rep. Act No. 2640: It is important to note here that the membership dues collected from the individual members of VFP's affiliate organizations do not become public funds while they are still funds of the affiliate organizations. A close reading of Section 1 of Rep. Act No. 2640 reveals that what has been created as a

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body corporate is not the individual membership of the affiliate organizations, but merely the aggregation of the heads of the affiliate organizations. Thus, only the money remitted by the affiliate organizations to the VFP partake in the public nature of the VFP funds. In *Republic v. COCOFED*, we held that the Coconut Levy Funds are public funds. The same is true with regard to the VFP funds. No less public is the use for the VFP funds, as such use is limited to the purposes of the VFP which we have ruled to be sovereign functions. Likewise, the law governing VFP funds (Rep. Act No. 2640) recognizes the public character of the funds as shown in the enumerated provisions above. We also observed in the same *COCOFED* case that "(e)ven if the money is allocated for a special purpose and raised by special means, it is still public in character." 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. Affiliate organizations of the VFP cannot complain of their contributions becoming public funds upon the receipt by the VFP, since they are presumed aware of the provisions of Rep. Act No. 2640 which not only specifies the exclusive purposes for which VFP funds can be used, but also provides for the regulation of such funds by the national government through the Secretary of National Defense. There is nothing wrong, whether legally or morally, from raising revenues through non-traditional methods. Having ruled that VFP funds from whatever source are public funds, we can safely conclude that the Supreme Council's compensation, taken as they are from VFP funds under the term "operating expenses" in Section 6 of Rep. Act No. 2640, are derived from public funds. The particular nomenclature of the compensation taken from VFP funds is not even of relevance here.

9. **ID.; ID.; ID.; CIVILIAN NATURE OF VFP NOT RENDERED INVALID WHEN PLACED UNDER CONTROL AND SUPERVISION OF THE SECRETARY OF NATIONAL DEFENSE.** — Neither is the civilian nature of VFP relevant in this case. The Constitution does not contain any prohibition, express or implied, against the grant of control and/or supervision to the Secretary of National Defense over a civilian organization.

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The Office of the Secretary of National Defense is itself a civilian office, its occupant being an alter ego of the civilian Commander-in-Chief. This set-up is the manifestation of the constitutional principle that civilian authority is, at all times, supreme over the military. There being no such constitutional prohibition, the creation of a civilian public organization by Rep. Act No. 2640 is not rendered invalid by its being placed under the control and supervision of the Secretary of National Defense.

10. **ID.; ID.; ID.; ADMINISTRATIVE CODE; REPEAL OR ENORMOUS MODIFICATION BY IMPLICATION, NOT FAVORED.** — The Administrative Code, by giving definitions of the various entities covered by it, acknowledges that its enumeration is not exclusive. The Administrative Code could not be said to have repealed nor enormously modified Rep. Act No. 2640 by implication, as such repeal or enormous modification by implication is not favored in statutory construction.

11. **ID.; ID.; ID.; OPINION OF THE DEPARTMENT OF BUDGET MANAGEMENT (DBM) THAT THE VFP IS A NON-GOVERNMENT ORGANIZATION, OVERCOME BY PREVIOUS EXPLANATIONS AND BY THE SIMILARLY PERSUASIVE OPINION OF THE DND.** — *Petitioner offers as evidence the DBM opinion that the VFP is a non-government organization in its certification that the VFP "has not been a direct recipient of any funds released by the DBM."* Indeed, DBM's appraisal is considered persuasive. Respondents misread the *PLDT v. City of Davao* case in asserting that only quasi-judicial agencies' determination can be considered persuasive. What the *PLDT* case points out is that, for an administrative agency's opinion to be persuasive, the administrative agency involved (whether it has quasi-judicial powers or not) must be an expert in the field they are giving their opinion on. The DBM is indeed an expert on determining what the various government agencies and corporations are. This determination is necessary for the DBM to fulfill its mandate. The persuasiveness of the DBM opinion has, however, been overcome by all the previous explanations we have laid so far. It has also been eclipsed by another similarly persuasive opinion, that of the Department of National Defense embodied in Department Circular No. 04. The DND is clearly more of an expert with respect to the determination of the entities under it, and its Administrative Rules and Regulations are entitled to great respect and have in their favor

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the presumption of legality. The DBM opinion furthermore suffers from its lack of explanation and justification in the "certification of non-receipt" where said opinion was given. The DBM has not furnished, in said certification or elsewhere, an explanation for its opinion that VFP is a non-government organization.

12. **ID.; ID.; DND CIRCULAR NO. 4 IN RELATION TO RA NO. 2640 ON POWER OF CONTROL AND SUPERVISION OVER THE VFP; VALIDITY, UPHELD.** — [T]he provisions of the assailed Department Circular No. 04 did not supplant nor modify the provisions of Republic Act No. 2640, thus not violating the settled rule that "all such (administrative) issuances must not override, but must remain consistent and in harmony with the law they seek to apply or implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law." Section 3.2 of the assailed department circular, which authorizes the Secretary of National Defense to "x x x personally or through a designated representative, require the submission of reports, documents and other papers regarding any or all of the Federation's business functions, x x x." as well as Section 3.3 which allows the Secretary of DND 'to x x x [F]rom time to time issue guidelines, directives and other orders governing vital government activities including, but not limited to, the conduct of elections, the acquisition, management and dispositions of properties, the accounting of funds, financial interests, stocks and bonds, corporate investments, *etc.* and such other transactions which may affect the interests of the veterans.' are merely consequences of both the power of control and supervision granted by Rep. Act No. 2640. The power to alter or modify or nullify or set aside what a subordinate has done in the performance of his duties, or to see to it that subordinate officers perform their duties in accordance with law, necessarily requires the ability of the superior officer to monitor, as closely as it desires, the acts of the subordinate. The same is true with respect to Sections 4 and 5 of the assailed Department Circular No. 04, which requires the preservation of the records of the Federation and the submission to the Secretary of National Defense of annual and periodic reports. Petitioner then objects to the implementation of Sec. 3.4 of the assailed Department Circular, which provides that – 3.4 Financial transactions of the Federation shall follow the provisions of the government auditing code (PD 1445) *i.e.* government funds

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shall be spent or used for public purposes; trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received; fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the federation; disbursements or dispositions of government funds or property shall invariably bear the approval of the proper officials. Since we have also previously determined that VFP funds are public funds, there is likewise no reason to declare this provision invalid. Section 3.4 is correct in requiring the VFP funds to be used for public purposes, but only insofar the term "public purposes" is construed to mean "public purposes enumerated in Rep. Act No. 2640." Having in their possession public funds, the officers of the VFP, especially its fiscal officers, must indeed share in the fiscal responsibility to the greatest extent. As to petitioner's allegation that VFP was intended as a self-governing autonomous body with a Supreme Council as governing authority, we find that the provisions of Rep. Act No. 2640 concerning the control and supervision of the Secretary of National Defense clearly withholds from the VFP complete autonomy. To say, however, that such provisions render the VFP inutile is an exaggeration. An office is not rendered inutile by the fact that it is placed under the control of a higher office. These subordinate offices, such as the executive offices under the control of the President, exercise discretion at the first instance. While their acts can be altered or even set aside by the superior, these acts are effective and are deemed the acts of the superior until they are modified. Surely, we cannot say that the offices of all the Department Secretaries are worthless positions. In sum, the assailed DND Department Circular No. 04 does not supplant nor modify and is, on the contrary, perfectly in consonance with Rep. Act No. 2640. Petitioner VFP is a public corporation. As such, it can be placed under the control and supervision of the Secretary of National Defense, who consequently has the power to conduct an extensive management audit of petitioner corporation.

13. **ID.; ID.; ADMINISTRATIVE RULES AND REGULATIONS; PUBLICATION; RULE AND EXCEPTION; APPLICATION IN CASE AT BAR.** — We have put forth both the rule and the exception on the publication of administrative rules and regulations in the case of *Tañada v. Tuvera*: x x x Administrative

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rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation. Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules on guidelines to be followed by their subordinates in the performance of their duties. Even assuming that the assailed circular was not published, its validity is not affected by such non-publication for the reason that its provisions fall under two of the exceptions enumerated in *Tañada*. Department Circular No. 04 is an internal regulation. As we have ruled, they are meant to regulate a public corporation under the control of DND, and not the public in general. As likewise discussed above, what has been created as a body corporate by Rep. Act No. 2640 is not the individual membership of the affiliate organizations of the VFP, but merely the aggregation of the heads of the affiliate organizations. Consequently, the individual members of the affiliate organizations, who are not public officers, are beyond the regulation of the circular. Sections 2, 3 and 6 of the assailed circular are additionally merely interpretative in nature. They add nothing to the law. They do not affect the substantial rights of any person, whether party to the case at bar or not. In Sections 2 and 3, control and supervision are defined, mentioning actions that *can* be performed as consequences of such control and supervision, but without specifying the particular actions that *shall* be rendered to control and supervise the VFP. Section 6, in the same vein, merely state what the drafters of the circular perceived to be consequences of being an attached agency to a regular department of the government, enumerating sanctions and remedies provided by law that *may* be availed of whenever desired.

APPEARANCES OF COUNSEL

Virgilio M. Pablo and *Francisco B. Jose, Jr.* for petitioner.
The Solicitor General for respondents.

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DECISION

CHICO-NAZARIO, *J.*:

This is a Petition for *Certiorari* with Prohibition under Rule 65 of the 1997 Rules of Civil Procedure, with a prayer to declare as void Department Circular No. 04 of the Department of National Defense (DND), dated 10 June 2002.

Petitioner in this case is the Veterans Federation of the Philippines (VFP), a corporate body organized under Republic Act No. 2640, dated 18 June 1960, as amended, and duly registered with the Securities and Exchange Commission. Respondent Angelo T. Reyes was the Secretary of National Defense (DND Secretary) who issued the assailed Department Circular No. 04, dated 10 June 2002. Respondent Edgardo E. Batenga was the DND Undersecretary for Civil Relations and Administration who was tasked by the respondent DND Secretary to conduct an extensive management audit of the records of petitioner.

The factual and procedural antecedents of this case are as follows:

Petitioner VFP was created under Rep. Act No. 2640,[1] a statute approved on 18 June 1960.

On 15 April 2002, petitioner's incumbent president received a letter dated 13 April 2002 which reads:

Col. Emmanuel V. De Ocampo (Ret.)
President
Veterans Federation of the Philippines
Makati, Metro Manila

Dear Col. De Ocampo:

Please be informed that during the preparation of my briefing before the Cabinet and the President last March 9, 2002, we came across

[1] REPUBLIC ACT No. 2640: AN ACT TO CREATE A PUBLIC CORPORATION TO BE KNOWN AS THE VETERANS FEDERATION OF THE PHILIPPINES, DEFINING ITS POWERS, AND FOR OTHER PURPOSES.

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some legal bases which tended to show that there is an organizational and management relationship between Veterans Federation of the Philippines and the Philippine Veterans Bank which for many years have been inadvertently overlooked.

I refer to Republic Act 2640 creating the body corporate known as the VFP and Republic Act 3518 creating the Phil. Vets [sic] Bank.

1. RA 2640 dated 18 June 60 Section 1 ... "hereby created a body corporate, under the control and supervision of the Secretary of National Defense."

2. RA 2640 Section 12 ... "On or before the last day of the month following the end of each fiscal year, the Federation shall make and transmit to the President of the Philippines or to the Secretary of National Defense, a report of its proceedings for the past year, including a full, complete and itemized report of receipts and expenditures of whatever kind."

3. Republic Act 3518 dated 18 June 1963 (An Act Creating the Philippine Veterans Bank, and for Other Purposes) provides in Section 6 that ... "the affairs and business of the Philippine Veterans Bank shall be directed and its property managed, controlled and preserved, unless otherwise provided in this Act, by a Board of Directors consisting of eleven (11) members to be composed of three *ex oficio* members to wit: the Philippine Veterans Administrator, the President of the Veteran's Federation of the Philippines and the Secretary of National Defense x x x.

It is therefore in the context of clarification and rectification of what should have been done by the DND (Department of National Defense) for and about the VFP and PVB that I am requesting appropriate information and report about these two corporate bodies.

Therefore it may become necessary that a conference with your staffs in these two bodies be set.

Thank you and anticipating your action on this request.

Very truly yours,

(SGD) ANGELO T. REYES
[DND] Secretary

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On 10 June 2002, respondent DND Secretary issued the assailed DND Department Circular No. 04 entitled, "Further Implementing the Provisions of Sections 1[2] and 2[3] of Republic Act No. 2640," the full text of which appears as follows:

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[2] Sec. 1. The following persons, to wit: Emilio Aguinaldo, of *Associacion de los Veteranos de la Revolucion*; Margarito Torralba of the AFP Retired Veterans Association (AFREVA); Lorenzo B. Cabrera of the Confederation of the Filipino Veterans (CONVETS); Teodoro V. Kalaw of the Defenders of Bataan and Corregidor; Fausto S. Alberto of the ECLGA Veterans Association; Enrique C. Rimando of the FAIT Veterans Legion; Francisco L. Gonzales of the Filipino Disabled Veterans Association; Basilia M. Baja of the Gold Star Mothers and United War Widows and Orphans Association of the Philippines; Simeon C. Medalla of the Hunters ROTC Association; Antonio F. Garcia of the Magsaysay Veterans Legion; Dionisio V. Ojeda Guaof the PEFTOK Veterans Association; Primitivo Lovina of the Philippine National Guard Veterans Legion; Jose V. Andrada of the Philippine Naval Veterans Legion; Jaime Piopongco of the Philippine Veterans Legion; Sofia L. Prudenciado of the Philippine Association of War Widows, Parents, and Orphans; Eugenio B. Recto of the United Disabled Veterans Association of the Philippines; and Gaudencio Antonino of the USAFIP NL and their associates and successors are hereby created a body corporate, under the control and supervision of the Secretary of National Defense, under the name, style and title of "Veterans Federation of the Philippines," hereinafter referred to as the Federation. The principal office of the Federation shall be in the City of Manila, Philippines.

[3] Sec. 2. The said Federation shall have perpetual succession, with power to sue and be sued; to hold such real and personal property as shall be necessary for its purposes, and to receive real and personal property by gift, devise or bequest; to invest its funds for the exclusive benefit of the veterans of the Philippines; to extend, within its capabilities, all necessary assistance, and operate such enterprises as may further the material or moral well-being of veterans; to adopt a seal, and to alter or destroy the same at pleasure; to have offices and conduct its business and affairs in the City of Manila and/or provinces, cities, municipalities and barrios of the Philippines and to amend said laws, regulations and rules; to establish and operate branches of its office anywhere in the Philippines; to publish a magazine and/or other publications; and generally, to do all such acts and things as may be necessary to carry into effect the provisions of this Act and to promote the purposes of said Federation.

Any action or decision of the Federation or of the Supreme Council shall be subject to the approval of the Secretary of National Defense.

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Department of National Defense
Department Circular No. 04

Subject: Further Implementing the Provisions of Sections 1 & 2 of Republic Act No. 2640

Authority: Republic Act No. 2640
Executive Order No. 292 dated July 25, 1987

Section 1

These rules shall govern and apply to the management and operations of the Veterans Federation of the Philippines (VFP) within the context provided by EO 292 s-1987.

Section 2 – DEFINITION OF TERMS – for the purpose of these rules, the terms, phrases or words used herein shall, unless the context indicates otherwise, mean or be understood as follows:

Supervision and Control – it shall include authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of a duty; restrain the commission of acts; approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs.

Power of Control – power to alter, modify, nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former to that of the latter.

Supervision – means overseeing or the power of an officer to see to it that their subordinate officers perform their duties; it does not allow the superior to annul the acts of the subordinate.

Administrative Process – embraces matter concerning the procedure in the disposition of both routine and contested matters, and the matter in which determinations are made, enforced or reviewed.

Government Agency – as defined under PD 1445, a government agency or agency of government or "agency" refers to any department, bureau or office of the national government, or any of its branches or instrumentalities, of any political subdivision, as well as any government owned or controlled corporation, including its subsidiaries, or other self-governing board or commission of the government.

Government Owned and Controlled Corporation (GOCC) – refer to any agency organized as a stock or non-stock corporation, vested

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with functions relating to public needs whether governmental or proprietary in nature, and owned by the government directly or through its instrumentalities wholly or, where applicable as in the case of stock corporations, to the extent of at least 50% of its capital stock.

Fund – sum of money or other resources set aside for the purpose of carrying out specific activities or attaining certain objectives in accordance with special regulations, restrictions or limitations and constitutes an independent, fiscal and accounting entity.

Government Fund – includes public monies of every sort and other resources pertaining to any agency of the government.

Veteran – any person who rendered military service in the land, sea or air forces of the Philippines during the revolution against Spain, the Philippine American War, World War II, including Filipino citizens who served in Allied Forces in the Philippine territory and foreign nationals who served in Philippine forces; the Korean campaign, the Vietnam campaign, the Anti-dissidence campaign, or other wars or military campaigns; or who rendered military service in the Armed Forces of the Philippines and has been honorably discharged or separated after at least six (6) years total cumulative active service or sooner separated due to the death or disability arising from a wound or injury received or sickness or disease incurred in line of duty while in the active service.

Section 3 – Relationship Between the DND and the VFP

3.1 Sec. 1 of RA 3140 provides "... the following persons (heads of various veterans associations and organizations in the Philippines) and their associates and successors are hereby created a body corporate, under the control and supervision of the Secretary of National Defense, under the name, style and title of "Veterans Federation of the Philippines ..."

The Secretary of National Defense shall be charged with the duty of supervising the veterans and allied program under the jurisdiction of the Department. It shall also have the responsibility of overseeing and ensuring the judicious and effective implementation of veterans assistance, benefits, and utilization of VFP assets.

3.2 To effectively supervise and control the corporate affairs of the Federation and to safeguard the interests and welfare of the veterans who are also wards of the State entrusted under the protection of the DND, the Secretary may personally or through a designated

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representative, require the submission of reports, documents and other papers regarding any or all of the Federation's business transactions particularly those relating to the VFP functions under Section 2 of RA 2640.

The Secretary or his representative may attend conferences of the supreme council of the VFP and such other activities he may deem relevant.

3.3 The Secretary shall from time to time issue guidelines, directives and other orders governing vital government activities including, but not limited to, the conduct of elections; the acquisition, management and dispositions of properties, the accounting of funds, financial interests, stocks and bonds, corporate investments, *etc.* and such other transactions which may affect the interests of the veterans.

3.4 Financial transactions of the Federation shall follow the provisions of the government auditing code (PD 1445) *i.e.* government funds shall be spent or used for public purposes; trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received; fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the federation; disbursements or dispositions of government funds or property shall invariably bear the approval of the proper officials.

Section 4 – Records of the FEDERATION

As a corporate body and in accordance with appropriate laws, it shall keep and carefully preserve records of all business transactions, minutes of meetings of stockholders/members of the board of directors reflecting all details about such activity.

All such records and minutes shall be open to directors, trustees, stockholders, and other members for inspection and copies of which may be requested.

As a body corporate, it shall submit the following: annual report; proceedings of council meetings; report of operations together with financial statement of its assets and liabilities and fund balance per year; statement of revenues and expenses per year; statement of cash flows per year as certified by the accountant; and other documents/reports as may be necessary or required by the SND.

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Section 5 – Submission of Annual and Periodic Report

As mandated under appropriate laws, the following reports shall be submitted to the SND, to wit:

a. Annual Report to be submitted not later than every January 31 of the following year. Said report shall consist of the following:

   1. Financial Report of the Federation, signed by the Treasurer General and Auditor General;

   2. Roster of Members of the Supreme Council;

   3. Roster of Members of the Executive Board and National Officers; and

   4. Current listing of officers and management of VFP.

b. Report on the proceedings of each Supreme Council Meeting to be submitted not later than one month after the meeting;

c. Report of the VFP President as may be required by SND or as may be found necessary by the President of the Federation;

d. Resolutions passed by the Executive Board and the Supreme Council for confirmation to be submitted not later than one month after the approval of the resolution;

e. After Operation/Activity Reports to be submitted not later than one month after such operation or activity;

Section 6 – Penal Sanctions

As an attached agency to a regular department of the government, the VFP and all its instrumentalities, officials and personnel shall be subject to the penal provisions of such laws, rules and regulations applicable to the attached agencies of the government.

In a letter dated 6 August 2002 addressed to the President of petitioner, respondent DND Secretary reiterated his instructions in his earlier letter of 13 April 2002.

Thereafter, petitioner's President received a letter dated 23 August 2002 from respondent Undersecretary, informing him that Department Order No. 129 dated 23 August 2002 directed "the conduct of a Management Audit of the Veterans Federation

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of the Philippines."[4] The letter went on to state that respondent DND Secretary "believes that the mandate given by said law can be meaningfully exercised if this department can better appreciate the functions, responsibilities and situation on the ground and this can be done by undertaking a thorough study of the organization."[5]

Respondent Undersecretary also requested both for a briefing and for documents on personnel, ongoing projects and petitioner's financial condition. The letter ended by stating that, after the briefing, the support staff of the Audit Committee would begin their work to meet the one-month target within which to submit a report.

A letter dated 28 August 2003 informed petitioner's President that the Management Audit Group headed by the Undersecretary would be paying petitioner a visit on 30 August 2002 for an update on VFP's different affiliates and the financial statement of the Federation.

Subsequently, the Secretary General of the VFP sent an undated letter to respondent DND Secretary, with notice to respondent Undersecretary for Civil Relations and Administration, complaining about the alleged broadness of the scope of the management audit and requesting the suspension thereof until such time that specific areas of the audit shall have been agreed upon.

The request was, however, denied by the Undersecretary in a letter dated 4 September 2002 on the ground that a specific timeframe had been set for the activity.

Petitioner thus filed this Petition for *Certiorari* with Prohibition under Rule 65 of the 1997 Rules of Civil Procedure, praying for the following reliefs:

1. For this Court to issue a temporary restraining order and a writ of preliminary prohibitory and mandatory injunction to enjoin respondent Secretary and all those acting under his discretion

[4] *Rollo*, p. 53.

[5] *Id.*

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and authority from: (a) implementing DND Department Circular No. 04; and (b) continuing with the ongoing management audit of petitioner's books of account;

2. After hearing the issues on notice –

   a. Declare DND Department Circular No. 04 as null and void for being *ultra vires*;

   b. Convert the writ of prohibition, preliminary prohibitory and mandatory injunction into a permanent one.[6]

GIVING DUE COURSE TO THE PETITION

Petitioner asserts that, although cases which question the constitutionality or validity of administrative issuances are ordinarily filed with the lower courts, the urgency and substantive importance of the question on hand and the public interest attendant to the subject matter of the petition justify its being filed with this Court directly as an original action.[7]

It is settled that the Regional Trial Court and the Court of Appeals also exercise original jurisdiction over petitions for *certiorari* and prohibition. As we have held in numerous occasions, however, such concurrence of original jurisdiction does not mean that the party seeking extraordinary writs has the absolute freedom to file his petition in the court of his choice.[8] Thus, in *Commissioner of Internal Revenue v. Leal*,[9] we held that:

Such concurrence of original jurisdiction among the Regional Trial Court, the Court of Appeals and this Court, however, does not mean that the party seeking any of the extraordinary writs has the absolute freedom to file his petition in the court of his choice. The hierarchy

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[6] *Id.*, p. 31.

[7] *Id.*, p. 74.

[8] *Commissioner of Internal Revenue v. Leal,* 440 Phil. 477, 484 (2002); *People v. Court of Appeals*, 361 Phil. 492, 497 (1999); *Pearson v. Intermediate Appellate Court,* 356 Phil. 341, 355 (1998); *People v. Cuaresma*, G.R. No. 67787, 18 April 1989, 172 SCRA 415, 424.

[9] *Id.*, pp. 484-485.

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of courts in our judicial system determines the appropriate forum for these petitions. Thus, petitions for the issuance of the said writs against the first level (inferior) courts must be filed with the Regional Trial Court and those against the latter, with the Court of Appeals. A direct invocation of this Court's original jurisdiction to issue these writs should be allowed only where there are special and important reasons therefor, specifically and sufficiently set forth in the petition. This is the established policy to prevent inordinate demands upon the Court's time and attention, which are better devoted to matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. Thus, it was proper for petitioner to institute the special civil action for *certiorari* with the Court of Appeals assailing the RTC order denying his motion to dismiss based on lack of jurisdiction.

The petition itself, in this case, does not specifically and sufficiently set forth the special and important reasons why the Court should give due course to this petition in the first instance, hereby failing to fulfill the conditions set forth in *Commissioner of Internal Revenue v. Leal*.[10] While we reiterate the policies set forth in *Leal* and allied cases and continue to abhor the propensity of a number of litigants to disregard the principle of hierarchy of courts in our judicial system, we, however, resolve to take judicial notice of the fact that the persons who stand to lose in a possible protracted litigation in this case are war veterans, many of whom have precious little time left to enjoy the benefits that can be conferred by petitioner corporation. This bickering for the power over petitioner corporation, an entity created to represent and defend the interests of Filipino veterans, should be resolved as soon as possible in order for it to once and for all direct its resources to its rightful beneficiaries all over the country. All these said, we hereby resolve to give due course to this petition.

ISSUES

Petitioner mainly alleges that the rules and guidelines laid down in the assailed Department Circular No. 04 expanded the scope of "control and supervision" beyond what has been

[10] *Id.*

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laid down in Rep. Act No. 2640.[11] Petitioner further submits the following issues to this Court:

1. Was the challenged department circular passed in the valid exercise of the respondent Secretary's "control and supervision"?

2. Could the challenged department circular validly lay standards classifying the VFP, an essentially civilian organization, within the ambit of statutes only applying to government entities?

3. Does the department circular, which grants respondent direct management control on the VFP, unduly encroach on the prerogatives of VFP's governing body?

At the heart of all these issues and all of petitioner's prayers and assertions in this case is petitioner's claim that it is a private non-government corporation.

CENTRAL ISSUE:
IS THE VFP A PRIVATE CORPORATION?

Petitioner claims that it is not a public nor a governmental entity but a private organization, and advances this claim to prove that the issuance of DND Department Circular No. 04 is an invalid exercise of respondent Secretary's control and supervision.[12]

This Court has defined the power of control as "the power of an officer to alter or modify or nullify or set aside what a subordinate has done in the performance of his duties and to substitute the judgment of the former to that of the latter."[13] The power of supervision, on the other hand, means "overseeing, or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties."[14] These definitions are synonymous with the definitions in the assailed Department

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[11] *Rollo*, p. 84.

[12] *Id.*, p. 85.

[13] *Mondano v. Silvosa*, 97 Phil. 143, 148 (1955).

[14] *Id.*

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Circular No. 04, while the other provisions of the assailed department circular are mere consequences of control and supervision as defined.

Thus, in order for petitioner's premise to be able to support its conclusion, petitioners should be deemed to imply either of the following: (1) that it is unconstitutional/impermissible for the law (Rep. Act No. 2640) to grant control and/or supervision to the Secretary of National Defense over a private organization, or (2) that the control and/or supervision that can be granted to the Secretary of National Defense over a private organization is limited, and is not as strong as they are defined above.

The following provision of the 1935 Constitution, the organic act controlling at the time of the creation of the VFP in 1960, is relevant:

> Section 7. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned and controlled by the Government or any subdivision or instrumentality thereof.[15]

On the other hand, its counterparts in the 1973 and 1987 constitutions are the following:

> Section 4. The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the government or any subdivision or instrumentality thereof.[16]

> Sec. 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned and controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.[17]

From the foregoing, it is crystal clear that our constitutions explicitly prohibit the *regulation* by special laws of private

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[15] CONSTITUTION (1935), Art. XIII, Sec. 7.

[16] CONSTITUTION (1973), Art. XIV, Sec. 4.

[17] CONSTITUTION, Art. XII, Sec. 16.

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corporations, with the exception of government-owned or controlled corporations (GOCCs). Hence, it would be impermissible for the law to grant control of the VFP to a public official if it were neither a public corporation, an unincorporated governmental entity, nor a GOCC.[18] Said constitutional provisions can even be read to prohibit the creation itself of the VFP if it were neither of the three mentioned above, but we cannot go into that in this case since there is no challenge to the creation of the VFP in the petition as to permit this Court from considering its nullity.

Petitioner vigorously argues that the VFP is a private non-government organization, pressing on the following contentions:

1. The VFP does not possess the elements which would qualify it as a public office, particularly the possession/delegation of a portion of sovereign power of government to be exercised for the benefit of the public;

2. VFP funds are not public funds because –

a) No budgetary appropriations or government funds have been released to the VFP directly or indirectly from the Department of Budget and Management (DBM);

b) VFP funds come from membership dues;

c) The lease rentals raised from the use of government lands reserved for the VFP are private in character and do not belong to the government. Said rentals are fruits of VFP's labor and efforts in managing and administering the lands for VFP purposes and objectives. A close analogy would be any Filipino citizen settling on government land and who tills the land for his livelihood and sustenance. The fruits of his labor belong to him and not to the owner of the land. Such fruits are not public funds.

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[18] "Control" being the "power of an officer to alter or modify or nullify or set aside what a subordinate has done in the performance of his duties and to substitute the judgment of the former to that of the latter" should not be confused with the "control" in the term "government-owned or controlled corporation" (GOCC). *Cf.* E.O. No. 292 (Administrative Code) Introductory Provisions, Section 2(13) where "control" is considered to be the ownership of "at least fifty-one (51) per cent of its capital stock."

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3. Although the juridical personality of the VFP emanates from a statutory charter, the VFP retains its essential character as a private, civilian federation of veterans voluntarily formed by the veterans themselves to attain a unity of effort, purpose and objectives, *e.g.* –

a. The members of the VFP are individual members and retirees from the public and military service;

b. Membership in the VFP is voluntary, not compulsory;

c. The VFP is governed, not by the Civil Service Law, the Articles of War nor the GSIS Law, but by the Labor Code and the SSS Law;

d. The VFP has its own Constitution and By-Laws and is governed by a Supreme Council who are elected from and by the members themselves;

4. The Administrative Code of 1987 does not provide that the VFP is an attached agency, nor does it provide that it is an entity under the control and supervision of the DND in the context of the provisions of said code.

5. The DBM declared that the VFP is a non-government organization and issued a certificate that the VFP has not been a direct recipient of any funds released by the DBM.

These arguments of petitioner notwithstanding, we are constrained to rule that petitioner is in fact a public corporation. Before responding to petitioner's allegations one by one, here are the more evident reasons why the VFP is a public corporation:

(1) Rep. Act No. 2640 is entitled "*An Act to Create a Public Corporation* to be Known as the Veterans Federation of the Philippines, Defining its Powers, and for Other Purposes."

(2) Any action or decision of the Federation or of the Supreme Council shall be subject to the approval of the Secretary of Defense.[19]

(3) The VFP is required to submit annual reports of its proceedings for the past year, including a full, complete and itemized report of receipts and expenditures of whatever kind,

[19] REPUBLIC ACT No. 2640, Section 2, par. 2.

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to the President of the Philippines or to the Secretary of National Defense.[20]

(4) Under Executive Order No. 37 dated 2 December 1992, the VFP was listed as among the government-owned and controlled corporations that will not be privatized.

(5) In *Ang Bagong Bayani – OFW Labor Party v. COMELEC*,[21] this Court held in a minute resolution that the VFP [Veterans Federation Party] is an adjunct of the government, as it is merely an incarnation of the Veterans Federation of the Philippines.

And now to answer petitioner's reasons for insisting that it is a private corporation:

1. Petitioner claims that the VFP does not possess the elements which would qualify it as a public office, particularly the possession/delegation of a portion of sovereign power of government to be exercised for the benefit of the public;

In *Laurel v. Desierto*,[22] we adopted the definition of Mechem of a public office, that it is "the right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public."

In the same case, we went on to adopt Mechem's view that the delegation to the individual of some of the sovereign functions of government is "[t]he most important characteristic" in determining whether a position is a public office or not.[23] Such portion of the sovereignty of the country, either legislative, executive or judicial, must attach to the office for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer.

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[20] REPUBLIC ACT No. 2640, Section 2.

[21] G.R. No. 147589, 10 April 2002.

[22] 430 Phil. 658, 672 (2002).

[23] *Id.*

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The most important characteristic which distinguishes an office from an employment or contract is that the creation and conferring of an office involves a delegation to the individual of some of the sovereign functions of government, to be exercised by him for the benefit of the public; – that some portion of the sovereignty of the country, either legislative, executive or judicial, attaches, for the time being, to be exercised for the public benefit. Unless the powers conferred are of this nature, the individual is not a public officer.[24] The issue, therefore, is whether the VFA's officers have been delegated some portion of the sovereignty of the country, to be exercised for the public benefit.

In several cases, we have dealt with the issue of whether certain specific activities can be classified as sovereign functions. These cases, which deal with activities not immediately apparent to be sovereign functions, upheld the public sovereign nature of operations needed either to promote social justice[25] or to stimulate patriotic sentiments and love of country.[26]

As regards the promotion of social justice as a sovereign function, we held in *Agricultural Credit and Cooperative Financing Administration (ACCFA) v. Confederation of Unions in Government Corporations and Offices (CUGCO)*,[27] that the compelling urgency with which the Constitution speaks of social justice does not leave any doubt that land reform is not an optional but a compulsory function of sovereignty. The same reason was used in our declaration that socialized housing is likewise a sovereign function.[28] Highly significant here is the observation of former Chief Justice Querube Makalintal:

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[24] *Id.*

[25] *Agricultural Credit and Cooperative Financing Administration (ACCFA) v. Confederation of Unions in Government Corporations and Offices (CUGCO)*, 141 Phil. 334, 349 (1969); *People's Homesite and Housing Corporation v. Court of Industrial Relations*, G.R. No. L-31890, 29 May 1987, 150 SCRA 296, 310.

[26] *Laurel v. Desierto*, *supra* note 22, p. 678.

[27] *Supra* note 25.

[28] *People's Homesite and Housing Corporation v. Court of Industrial Relations*, *supra* note 25.

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The growing complexities of modern society, however, have rendered this traditional classification of the functions of government [into constituent and ministrant functions] quite unrealistic, not to say obsolete. ***The areas which used to be left to private enterprise and initiative*** and which the government was called upon to enter optionally, and only "because it was better equipped to administer for the public welfare than is any private individual or group of individuals," ***continue to lose their well-defined boundaries and to be absorbed within activities that the government must undertake in its sovereign capacity*** if it is to meet the increasing social challenges of the times. Here[,] as almost everywhere else[,] the tendency is undoubtedly towards a greater socialization of economic forces. Here, of course, this development was envisioned, indeed adopted as a national policy, by the Constitution itself in its declaration of principle concerning the promotion of social justice.[29] (Emphasis and italics supplied.)

It was, on the other hand, the fact that the National Centennial Celebrations was calculated to arouse and stimulate patriotic sentiments and love of country that it was considered as a sovereign function in *Laurel v. Desierto*.[30] In *Laurel*, the Court then took its cue from a similar case in the United States involving a Fourth of July fireworks display. The holding of the Centennial Celebrations was held to be an executive function, as it was intended to enforce Article XIV of the Constitution which provides for the conservation, promotion and popularization of the nation's historical and cultural heritage and resources, and artistic relations.

In the case at bar, the functions of petitioner corporation enshrined in Section 4 of Rep. Act No. 2640[31] should most certainly fall within the category of sovereign functions. The

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[29] *Agricultural Credit and Cooperative Financing Administration (ACCFA) v. Confederation of Unions in Government Corporations and Offices (CUGCO)*, *supra* note 25, p. 349.

[30] *Laurel v. Desierto*, *supra* note 22.

[31] Sec. 4. The purposes of the Federation shall be to uphold and defend the democratic way of life as envisioned in the Constitution of the Republic of the Philippines; to represent and to defend the interests of all Filipino

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protection of the interests of war veterans is not only meant to promote social justice, but is also intended to reward patriotism. All of the functions in Section 4 concern the well-being of war veterans, our countrymen who risked their lives and lost their limbs in fighting for and defending our nation. It would be injustice of catastrophic proportions to say that it is beyond sovereignty's power to reward the people who defended her.

Like the holding of the National Centennial Celebrations, the functions of the VFP are executive functions, designed to implement not just the provisions of Rep. Act No. 2640, but also, and more importantly, the Constitutional mandate for the State to provide immediate and adequate care, benefits and other forms of assistance to war veterans and veterans of military campaigns, their surviving spouses and orphans.[32]

2. Petitioner claims that VFP funds are not public funds.

Petitioner claims that its funds are not public funds because no budgetary appropriations or government funds have been released to the VFP directly or indirectly from the DBM, and because VFP funds come from membership dues and lease rentals earned from administering government lands reserved for the VFP.

The fact that no budgetary appropriations have been released to the VFP does not prove that it is a private corporation. The DBM indeed did not see it fit to propose budgetary appropriations to the VFP, having itself believed that the VFP is a private corporation.[33] If the DBM, however, is mistaken as to its

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veterans; to coordinate the efforts of all different veterans of the Philippines in behalf of the interests of respective members; to promote mutual help among former comrades-in-arms; to perpetuate their common experiences in war; to undertake acts of charity and relief work; to preserve peace and order; to foster love of country and things Filipino and inculcate individual civic consciousness. In general, the Federation shall exist solely for purposes of a benevolent character, and not for pecuniary profit of its members.

[32] CONSTITUTION, Art. XVI, Sec. 7.

[33] Department of Budget and Management's certification of non-receipt in favor of Petitioner Corporation, Annex O of the Petition.

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conclusion regarding the nature of VFP's incorporation, its previous assertions will not prevent future budgetary appropriations to the VFP. The erroneous application of the law by public officers does not bar a subsequent correct application of the law.[34]

Nevertheless, funds in the hands of the VFP from whatever source are public funds, and can be used only for public purposes. This is mandated by the following provisions of Rep. Act No. 2640:

(1) Section 2 provides that the VFP can only "invest its funds for the *exclusive benefit* of the Veterans of the Philippines";

(2) Section 2 likewise provides that "(a)ny action or decision of the Federation or of the Supreme Council shall be subject to the approval of the Secretary of National Defense." Hence, all activities of the VFP to which the Supreme Council can apply its funds are subject to the approval of the Secretary of National Defense;

(3) Section 4 provides that "the Federation shall exist *solely for the purposes of a benevolent character, and not for the pecuniary benefit of its members*";

(4) Section 6 provides that all funds of the VFP in excess of operating expenses are "reserved for disbursement, as the Supreme Council may authorize, *for the purposes stated in Section two of this Act*";

(5) Section 10 provides that "(a)ny donation or contribution which from time to time may be made to the Federation by the Government of the Philippines or any of its subdivisions, branches, offices, agencies or instrumentalities shall be expended by the Supreme Council only for the purposes mentioned in this Act."; and finally,

(6) Section 12 requires the submission of annual reports of VFP proceedings for the past year, including a full, complete and itemized report of receipts and expenditures of whatever kind, to the President of the Philippines or to the Secretary of National Defense.

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[34] *Manila Jockey Club v. Court of Appeals*, 360 Phil. 367, 383 (1998).

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It is important to note here that the membership dues collected from the individual members of VFP's affiliate organizations do not become public funds while they are still funds of the affiliate organizations. A close reading of Section 1[35] of Rep. Act No. 2640 reveals that what has been created as a body corporate is not the individual membership of the affiliate organizations, but merely the aggregation of the heads of the affiliate organizations. Thus, only the money remitted by the affiliate organizations to the VFP partake in the public nature of the VFP funds.

In *Republic v. COCOFED*,[36] we held that the Coconut Levy Funds are public funds because, *inter alia*, (1) they were meant to be for the benefit of the coconut industry, one of the major industries supporting the national economy, and its farmers; and (2) the very laws governing coconut levies recognize their public character. The same is true with regard to the VFP funds. No less public is the use for the VFP funds, as such use is limited to the purposes of the VFP which we have ruled to be

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[35] Sec. 1. The following persons, to wit: Emilio Aguinaldo, of *Associacion de los Veteranos de la Revolucion;* Margarito Torralba of the AFP Retired Veterans Association (AFREVA); Lorenzo B. Cabrera of the Confederation of the Filipino Veterans (CONVETS); Teodoro V. Kalaw of the Defenders of Bataan and Corregidor; Fausto S. Alberto of the ECLGA Veterans Association; Enrique C. Rimando of the FAIT Veterans Legion; Francisco L. Gonzales of the Filipino Disabled Veterans Association; Basilia M. Baja of the Gold Star Mothers and United War Widows and Orphans Association of the Philippines; Simeon C. Medalla of the Hunters ROTC Association; Antonio F. Garcia of the Magsaysay Veterans Legion; Dionisio V. Ojeda Guaof the PEFTOK Veterans Association; Primitivo Lovina of the Philippine National Guard Veterans Legion; Jose V. Andrada of the Philippine Naval Veterans Legion; Jaime Piopongco of the Philippine Veterans Legion; Sofia L. Prudenciado of the Philippine Association of War Widows, Parents, and Orphans; Eugenio B. Recto of the United Disabled Veterans Association of the Philippines; and Gaudencio Antonino of the USAFIP NL and their associates and successors are hereby created a body corporate, under the control and supervision of the Secretary of National Defense, under the name, style and title of "Veterans Federation of the Philippines," hereinafter referred to as the Federation. The principal office of the Federation shall be in the City of Manila, Philippines.

[36] 423 Phil. 735, 762-763 (2001).

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sovereign functions. Likewise, the law governing VFP funds (Rep. Act No. 2640) recognizes the public character of the funds as shown in the enumerated provisions above.

We also observed in the same *COCOFED* case that "(e)ven if the money is allocated for a special purpose and raised by special means, it is still public in character."[37] 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. Affiliate organizations of the VFP cannot complain of their contributions becoming public funds upon the receipt by the VFP, since they are presumed aware of the provisions of Rep. Act No. 2640 which not only specifies the exclusive purposes for which VFP funds can be used, but also provides for the regulation of such funds by the national government through the Secretary of National Defense. There is nothing wrong, whether legally or morally, from raising revenues through non-traditional methods. As remarked by Justice Florentino Feliciano in his concurring opinion in *Kilosbayan, Incorporated v. Guingona, Jr.*[38] where he explained that the funds raised by the On-line Lottery System were also public in nature, thus:

> x x x [T]he 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.

Petitioner additionally harps on the inapplicability of the case of *Laurel v. Desierto*[39] which was cited by respondents. Petitioner claims that among the reasons National Centennial Commission Chair Salvador Laurel was considered a public

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[37] *Id.*

[38] G.R. No. 113375, 5 May 1994, 232 SCRA 110, 156.

[39] *Supra* note 22.

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officer was the fact that his compensation was derived from public funds. Having ruled that VFP funds from whatever source are public funds, we can safely conclude that the Supreme Council's compensation, taken as they are from VFP funds under the term "operating expenses" in Section 6 of Rep. Act No. 2640, are derived from public funds. The particular nomenclature of the compensation taken from VFP funds is not even of relevance here. As we said in *Laurel* concerning compensation as an element of public office:

> Under particular circumstances, "compensation" has been held to include allowance for personal expenses, commissions, expenses, fees, an honorarium, mileage or traveling expenses, payments for services, restitution or a balancing of accounts, salary, and wages.[40]

3. Petitioner argues that it is a civilian federation where membership is voluntary.

Petitioner claims that the Secretary of National Defense "historically did not indulge in the direct or 'micromanagement' of the VFP precisely because it is essentially a civilian organization where membership is voluntary."[41] This reliance of petitioner on what has "historically" been done is erroneous, since laws are not repealed by disuse, custom, or practice to the contrary.[42] Furthermore, as earlier stated, the erroneous application of the law by public officers does not bar a subsequent correct application of the law.[43]

Neither is the civilian nature of VFP relevant in this case. The Constitution does not contain any prohibition, express or implied, against the grant of control and/or supervision to the Secretary of National Defense over a civilian organization. The Office of the Secretary of National Defense is itself a civilian

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[40] *Id.*, citing 15 C.J.S. Compensation, p. 654.

[41] *Rollo*, p. 76.

[42] *Cf.* CIVIL CODE, Article 7, par. 1: "Laws are repealed only by subsequent ones, and their violation or nonobservance shall not be excused by disuse, custom, or practice to the contrary."

[43] *Manila Jockey Club v. Court of Appeals*, *supra* note 34.

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office, its occupant being an alter ego of the civilian Commander-in-Chief. This set-up is the manifestation of the constitutional principle that civilian authority is, at all times, supreme over the military.[44] There being no such constitutional prohibition, the creation of a civilian public organization by Rep. Act No. 2640 is not rendered invalid by its being placed under the control and supervision of the Secretary of National Defense.

Petitioner's stand that the VFP is a private corporation because membership thereto is voluntary is likewise erroneous. As stated above, the membership of the VFP is not the individual membership of the affiliate organizations, but merely the aggregation of the heads of such affiliate organizations. These heads forming the VFP then elect the Supreme Council and the other officers,[45] of this public corporation.

4. Petitioner claims that the Administrative Code of 1987 does not provide that the VFP is an attached agency, and nor does it provide that it is an entity under the control and supervision of the DND in the context of the provisions of said code.

The Administrative Code, by giving definitions of the various entities covered by it, acknowledges that its enumeration is not exclusive. The Administrative Code could not be said to have repealed nor enormously modified Rep. Act No. 2640 by implication, as such repeal or enormous modification by implication is not favored in statutory construction.[46]

5. Petitioner offers as evidence the DBM opinion that the VFP is a non-government organization in its certification that the VFP "has not been a direct recipient of any funds released by the DBM."

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[44] CONSTITUTION, Art. 2, Sec. 3.

[45] REPUBLIC ACT No. 2640, Sec. 7.

[46] See *United States v. Palacio*, 33 Phil. 208, 216 (1916); *Lichauco v. Apostol*, 44 Phil. 138, 149 (1922).

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Respondents claim that the supposed declaration of the DBM that petitioner is a non-government organization is not persuasive, since DBM is not a quasi-judicial agency. They aver that what we have said of the Bureau of Local Government Finance (BLGF) in *Philippine Long Distance Telephone Company (PLDT) v. City of Davao*[47] can be applied to DBM:

> In any case, it is contended, the ruling of the Bureau of Local Government Finance (BLGF) that petitioner's exemption from local taxes has been restored is a contemporaneous construction of Section 23 [of R.A. No. 7925] and, as such, is entitled to great weight.
>
> The ruling of the BLGF has been considered in this case. But unlike the Court of Tax Appeals, which is a special court created for the purpose of reviewing tax cases, the BLGF was created merely to provide consultative services and technical assistance to local governments and the general public on local taxation and other related matters. Thus, the rule that the "Court will not set aside conclusions rendered by the CTA, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority" cannot apply in the case of the BLGF.

On this score, though, we disagree with respondents and hold that the DBM's appraisal is considered persuasive. Respondents misread the *PLDT* case in asserting that only quasi-judicial agencies' determination can be considered persuasive. What the *PLDT* case points out is that, for an administrative agency's opinion to be persuasive, the administrative agency involved (whether it has quasi-judicial powers or not) must be an expert in the field they are giving their opinion on.

The DBM is indeed an expert on determining what the various government agencies and corporations are. This determination is necessary for the DBM to fulfill its mandate:

> Sec. 2. Mandate. - The Department shall be responsible for the formulation and implementation of the National Budget with the goal of attaining our national socio-economic plans and objectives.

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[47] 447 Phil. 571, 587-588 (2003).

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The Department shall be responsible for the efficient and sound utilization of government funds and revenues to effectively achieve our country's development objectives.[48]

The persuasiveness of the DBM opinion has, however, been overcome by all the previous explanations we have laid so far. It has also been eclipsed by another similarly persuasive opinion, that of the Department of National Defense embodied in Department Circular No. 04. The DND is clearly more of an expert with respect to the determination of the entities under it, and its Administrative Rules and Regulations are entitled to great respect and have in their favor the presumption of legality.[49]

The DBM opinion furthermore suffers from its lack of explanation and justification in the "certification of non-receipt" where said opinion was given. The DBM has not furnished, in said certification or elsewhere, an explanation for its opinion that VFP is a non-government organization.

THE FATE OF DEPARTMENT CIRCULAR NO. 04

Our ruling that petitioner is a public corporation is determinative of whether or not we should grant petitioner's prayer to declare Department Circular No. 04 void.

Petitioner assails Department Circular No. 04 on the ground that it expanded the scope of control and supervision beyond what has been laid down in Rep. Act No. 2640. Petitioner alleges that "(t)he equation of the meaning of 'control' and 'supervision' of the Administrative Code of 1987 as the same 'control and supervision' under Rep. Act No. 2640, takes out the context of the original legislative intent from the peculiar surrounding circumstances and conditions that brought about the creation of the VFP."[50] Petitioner claims that the VFP "was intended as a self-governing autonomous body with a Supreme Council

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[48] Executive Order No. 292, ADMINISTRATIVE CODE of 1987, Title XVII, Chapter 1, Sec. 2.

[49] *Gonzales v. Land Bank of the Phils.*, G.R. No. 76759, 22 March 1990, 183 SCRA 520, 526.

[50] *Rollo*, p. 81.

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as governing authority," and that the assailed circular "pre-empts VFP's original self-governance and autonomy (in) representing veterans organizations, and substitutes government discretion and decisions to that of the veterans' own determination."[51] Petitioner says that the circular's provisions practically render the Supreme Council inutile, despite its being the statutory governing body of the VFP.[52]

As previously mentioned, this Court has defined the power of control as "the power of an officer to alter or modify or nullify or set aside what a subordinate has done in the performance of his duties and to substitute the judgment of the former to that of the latter."[53] The power of supervision, on the other hand, means "overseeing, or the power or authority of an officer to see that subordinate officers perform their duties."[54] Under the Administrative Code of 1987:[55]

> Supervision and control shall include the authority to act directly whenever a specific function is entrusted by law or regulation to a subordinate; direct the performance of duty; restrain the commission of acts; review, approve, reverse or modify acts and decisions of subordinate officials or units; determine priorities in the execution of plans and programs; and prescribe standards, guidelines, plans and programs. x x x

The definition of the power of control and supervision under Section 2 of the assailed Department Circular are synonymous with the foregoing definitions. Consequently, and considering that petitioner is a public corporation, the provisions of the assailed Department Circular No. 04 did not supplant nor modify the provisions of Republic Act No. 2640, thus not violating the settled rule that "all such (administrative) issuances must not override, but must remain consistent and in harmony with the

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[51] *Id.*, pp. 81-82.

[52] *Id.*, p. 89.

[53] *Mondano v. Silvosa, supra* note 13.

[54] *Id.*

[55] E.O. No. 292, Book 4, Chapter 7, Section 38 (1).

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law they seek to apply or implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law."[56]

Section 3.2 of the assailed department circular, which authorizes the Secretary of National Defense to "x x x personally or through a designated representative, require the submission of reports, documents and other papers regarding any or all of the Federation's business functions, x x x."

as well as Section 3.3 which allows the Secretary of DND to

> x x x [F]rom time to time issue guidelines, directives and other orders governing vital government activities including, but not limited to, the conduct of elections, the acquisition, management and dispositions of properties, the accounting of funds, financial interests, stocks and bonds, corporate investments, *etc.* and such other transactions which may affect the interests of the veterans.

are merely consequences of both the power of control and supervision granted by Rep. Act No. 2640. The power to alter or modify or nullify or set aside what a subordinate has done in the performance of his duties, or to see to it that subordinate officers perform their duties in accordance with law, necessarily requires the ability of the superior officer to monitor, as closely as it desires, the acts of the subordinate.

The same is true with respect to Sections 4 and 5 of the assailed Department Circular No. 04, which requires the preservation of the records of the Federation and the submission to the Secretary of National Defense of annual and periodic reports.

Petitioner likewise claims that the assailed DND Department Circular No. 04 was never published, and hence void.[57] Respondents deny such non-publication.[58]

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[56] *Commissioner of Internal Revenue v. Court of Appeals,* 310 Phil. 392, 397 (1995).

[57] *Rollo*, p. 244.

[58] Respondents' Comment, 18 November 2003.

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We have put forth both the rule and the exception on the publication of administrative rules and regulations in the case of *Tañada v. Tuvera*:[59]

> x x x Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.
>
> Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules on guidelines to be followed by their subordinates in the performance of their duties.

Even assuming that the assailed circular was not published, its validity is not affected by such non-publication for the reason that its provisions fall under two of the exceptions enumerated in *Tañada*.

Department Circular No. 04 is an internal regulation. As we have ruled, they are meant to regulate a public corporation under the control of DND, and not the public in general. As likewise discussed above, what has been created as a body corporate by Rep. Act No. 2640 is not the individual membership of the affiliate organizations of the VFP, but merely the aggregation of the heads of the affiliate organizations. Consequently, the individual members of the affiliate organizations, who are not public officers, are beyond the regulation of the circular.

Sections 2, 3 and 6 of the assailed circular are additionally merely interpretative in nature. They add nothing to the law. They do not affect the substantial rights of any person, whether party to the case at bar or not. In Sections 2 and 3, control and supervision are defined, mentioning actions that *can* be performed as consequences of such control and supervision, but without specifying the particular actions that *shall* be rendered to control and supervise the VFP. Section 6, in the same vein, merely state what the drafters of the circular perceived to be consequences of being an attached agency to a regular department

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[59] G.R. No. 63915, 29 December 1986, 146 SCRA 446, 454.

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of the government, enumerating sanctions and remedies provided by law that *may* be availed of whenever desired.

Petitioner then objects to the implementation of Sec. 3.4 of the assailed Department Circular, which provides that –

> 3.4 Financial transactions of the Federation shall follow the provisions of the government auditing code (PD 1445) *i.e.* government funds shall be spent or used for public purposes; trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received; fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the federation; disbursements or dispositions of government funds or property shall invariably bear the approval of the proper officials.

Since we have also previously determined that VFP funds are public funds, there is likewise no reason to declare this provision invalid. Section 3.4 is correct in requiring the VFP funds to be used for public purposes, but only insofar the term "public purposes" is construed to mean "public purposes enumerated in Rep. Act No. 2640."

Having in their possession public funds, the officers of the VFP, especially its fiscal officers, must indeed share in the fiscal responsibility to the greatest extent.

As to petitioner's allegation that VFP was intended as a self-governing autonomous body with a Supreme Council as governing authority, we find that the provisions of Rep. Act No. 2640 concerning the control and supervision of the Secretary of National Defense clearly withholds from the VFP complete autonomy. To say, however, that such provisions render the VFP inutile is an exaggeration. An office is not rendered inutile by the fact that it is placed under the control of a higher office. These subordinate offices, such as the executive offices under the control of the President, exercise discretion at the first instance. While their acts can be altered or even set aside by the superior, these acts are effective and are deemed the acts of the superior until they are modified. Surely, we cannot say that the offices of all the Department Secretaries are worthless positions.

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In sum, the assailed DND Department Circular No. 04 does not supplant nor modify and is, on the contrary, perfectly in consonance with Rep. Act No. 2640. Petitioner VFP is a public corporation. As such, it can be placed under the control and supervision of the Secretary of National Defense, who consequently has the power to conduct an extensive management audit of petitioner corporation.

WHEREFORE, the Petition is hereby *DISMISSED* for lack of merit. The validity of the Department of National Defense Department Circular No. 04 is *AFFIRMED*.

SO ORDERED.

Panganiban, C.J., Puno, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, and *Garcia, JJ.,* concur.

Quisumbing, J., no part, former USND.

THIRD DIVISION

[G.R. No. 159654. February 28, 2006]

NICANOR T. SANTOS DEVELOPMENT CORPORATION, *petitioner, vs.* **HON. SECRETARY, DEPARTMENT OF AGRARIAN REFORM, DAR ADJUDICATION BOARD & MUNICIPAL AGRARIAN REFORM OFFICE (ANDREA F. DALMACIO), TUBA, BENGUET,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; COURTS; JURISDICTION; PARTY TO INVOKE JURISDICTION OF THE COURTS OF JUSTICE MUST HAVE EXHAUSTED ALL MEANS OF ADMINISTRATIVE REDRESS; CASE AT BAR.** — As a