



Republic of the Philippines
OFFICE OF THE OMBUDSMAN
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 JOSHUA T. JABRICA
 Executive Assistant IV
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 9/20/17

PANTALEON D. ALVAREZ

Complainant,

-versus-

OMB-C-C-17-0148

FOR: Violation of Section 3(h)
 of Republic Act No. 3019

ANTONIO R. FLOIRENDO, JR.

Representative, 2nd District of Davao del Norte
 House of Representatives

Respondent.

X ----- X

RESOLUTION

This resolves¹ the Complaint-Affidavit² of complainant Pantaleon D. Alvarez against respondent Antonio R. Floirendo, Jr., Representative of the 2nd District of Davao del Norte, for Section 3(h) of Republic Act No. 3019³ (RA 3019).

The facts are as follows:

On July 11, 1969, Tagum Agricultural Development Company, Inc. (TADECO) and the Bureau of Corrections (BuCor) entered into a Joint Venture Agreement wherein BuCor gave TADECO the right to use and develop as banana plantation 3,000 hectares of land located within the Davao Penal Colony. On September 26, 1979, the parties executed a Consolidated Joint Venture Agreement (CJVA) which, among others, extended TADECO's rights to the land for 25 years.

¹ Assigned to undersigned on April 6, 2017.
² Records, pp. 3-272 inclusive of annexes.
³ The Anti-graft and Corrupt Practices Act.

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for JESUS G. SALVADOR
 Administrative Officer V

SEP 20 2017

Subsequently, in an Agreement⁴ dated May 21, 2003, the September 26, 1979 CJVA was renewed by the parties for another 25 years. Based on the new contract, BuCor shall receive from TADECO a guaranteed annual production share of ₱26,541,809.00 as well as profit shares, both of which shall automatically increase by 10% every five years,⁵ in return for TADECO's use of 5,308.36 hectares of land owned by the BuCor.

At the time the May 21, 2003 Agreement was entered into by TADECO and BuCor, respondent, then serving his 2001-2004 term as Representative of the 2nd District of Davao del Norte, directly owned 75,000 shares⁶ of TADECO with a subscription cost of ₱7,500,000.00. Respondent likewise owned 537,950 shares, with a subscription cost of ₱53,795,000.00, of Anflo Management and Investment Corporation (ANFLOCOR),⁷ which corporation in turn owns 4,730,000 shares of TADECO amounting to a subscription cost of ₱473,000,000.00. ANFLOCOR is likewise the listed parent company⁸ of TADECO.

Complainant asserts that respondent, as then Member of the House of Representatives, is prohibited by Article VI, Section 14 of the 1987 Constitution⁹ from owning interest in TADECO at the time it entered into a contract with BuCor. By breaching the constitutional provision, respondent allegedly violated Sec. 3(h) of RA 3019, which prohibits a public officer from "[d]irectly or indirectly having financial or pecuniary interest in any business, contract or transaction x x x in which he is prohibited by the Constitution or by any law from having any interest."

⁴ Records, pp. 12-19.

⁵ Id., p. 14-15.

⁶ 2004 General Information Sheet of TADECO, Id., p. 72.

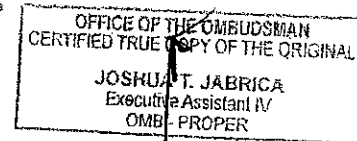
⁷ 2004 General Information Sheet of ANFLOCOR, Id., p. 181.

⁸ Id., p. 68.

⁹ Section 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.

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By Order¹⁰ of April 7, 2017, respondent was directed to submit his counter-affidavit.

Respondent, in his May 10, 2017 Counter-Affidavit,¹¹ alleges that aside from his being a public officer in 2003, the other elements of Sec. 3(h) of RA 3019 were not established by the complaint as he “did not have any direct or indirect financial or pecuniary interest in the 2003 [Agreement] that would fall within the ambit of the prohibition under Art. VI, Sec. 14 of the Constitution, or any other law.”¹²

Respondent was “neither involved nor had any participation whatsoever in the negotiation of the [2003 Agreement],” “was not a member of the Board of Directors of TADECO or an officer thereof from year 2000 until the end of [his] term of office as a member of the House of Representatives in 2007” and did not receive “any financial benefits from [his] relatives.”¹³

While respondent “held 75,000 shares of TADECO (equivalent to .89% of its outstanding capital stock) at the time of the execution of the 2003 [Agreement], the same was not prohibited by the Constitution or by any other law.”¹⁴ The deliberations of the Constitutional Commission show that “not every interest, however miniscule, indirect or incidental, is covered by Section 14, Article VI [of the 1987 Constitution].”¹⁵ The deliberation of the Senate on RA 3019 likewise “reveals that it was not the intent of the law to encompass insubstantial shareholdings.”¹⁶ He adds that in accordance with a

¹⁰ Id., 273-274.

¹¹ Id., pp. 279-290.

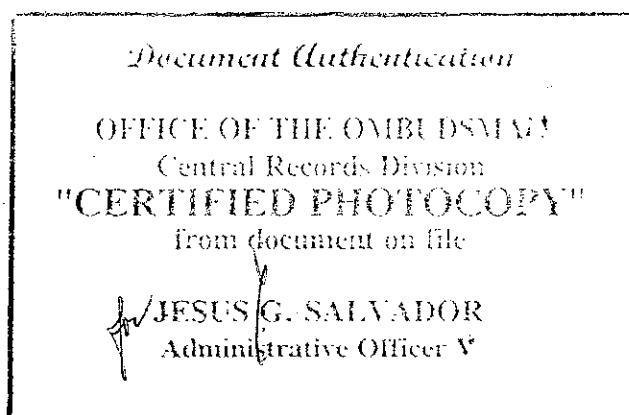
¹² Id., p. 281, paragraph 10.

¹³ Id., p. 281, paragraph 11.

¹⁴ Id., p. 281, paragraph 12.

¹⁵ Id., p. 283, Paragraph 14.

¹⁶ Id., p. 283, paragraph 15.



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Department of Justice (DOJ) Circular),¹⁷ RA 3019 “does not penalize mere stockholding in a private corporation that has an existing contract with the government. There must be a showing of a conflict of interest, i.e., a showing that the private interest of a public official or employee conflicts or tends to conflict with the performance of his official duties.”¹⁸ Respondent explains that he has no such conflict of interest as “[TADECO and BuCor] entered into the [2003 Agreement] without any act or intervention from Congress.”¹⁹

Respondent is not even required, under Republic Act No. 6713²⁰ (RA 6713), to divest his interest in TADECO for lack of conflict of interest, as he is not a member of its board or a substantial stockholder²¹ thereof. Under RA 6713, there is only conflict of interest when “a public official or employee is a member of the board, an officer or a substantial stockholder of a private corporation or owner or has a substantial interest in a business and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.”²²

Respondent’s shares in ANFLOCOR is immaterial to the charge against him as “ANFLOCOR is not a party to the 2003 [Agreement],” “ANFLOCOR and TADECO are two corporations that have separate and distinct juridical personalities” and “ANFLOCOR and TADECO have personalities separate and distinct from their respective stockholders, directors and officers.”²³ ✓

¹⁷ Respondent failed to cite the specific DOJ circular which is the basis of his allegation or attached a copy thereof.

¹⁸ Id., p. 285, paragraph 17.

¹⁹ Id., p. 286, paragraph 25.

²⁰ Code of Conduct and Ethical Standards for Public Officials and Employees.

²¹ Respondent alleges that under Sec. 3(f) of RA 6713, substantial stockholder “means any person who owns, directly or indirectly, shares of stock sufficient to elect a director of a corporation.” As his shares in TADECO is not enough to elect a director, he cannot be considered as a substantial stockholder of TADECO.

²² RA 6713, Section 3(i).

²³ Id., p. 288, paragraph 33.

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Respondent thus moves for the dismissal of the present criminal complaint.

In his June 14, 2017 Reply,²⁴ complainant insists that respondent, as shareholder of TADECO, “was naturally and closely interested in the profits of the latter”²⁵ and as such, “had a clear and direct pecuniary interest in the execution of the [2003 Agreement].”²⁶

Complainant likewise takes offense with respondent’s interpretation of Article VI, Section 14 of the 1987 Constitution, arguing that it “is improper because the use of statutory construction is necessary only in cases where the statute concerned is unclear and ambiguous.”²⁷ He maintains that “the framers [of the 1987 Constitution] did not intend to qualify the extent of the interest held by the member of the legislature for [the] prohibition to come into effect. The mere fact that a member of the legislature has an interest in any contract granted by the government already constitutes a violation of this prohibition.”²⁸

On respondent’s argument that there was no conflict of interest on his part, complainant counters that there are two modes of committing a violation of Sec. 3(h) of RA 3019, the first is “when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction” and the second is “when he is prohibited from having such an interest by the constitution or by law.”²⁹ Since respondent is being charged under the second mode, “it need not be shown that a conflict of interest exists with regard to the public official nor is it needed that the public officer intervenes

²⁴ Id., pp. 295-340, inclusive of annexes.

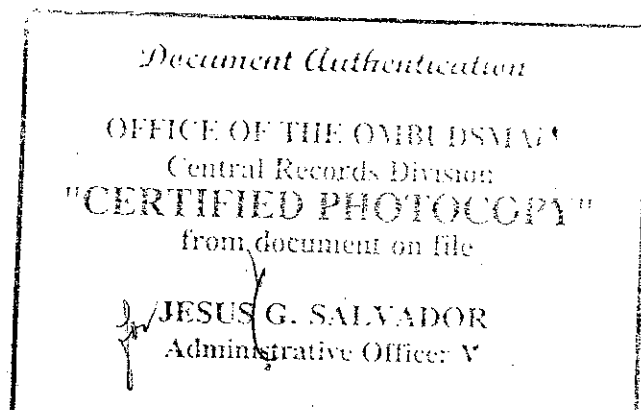
²⁵ Id., p. 296, paragraph 5.

²⁶ Id., p. 296, paragraph 3.

²⁷ Id., p. 297, paragraph 11.

²⁸ Id., p. 299, paragraph 17.

²⁹ Id., p. 302, paragraph 29.



in his official capacity” as the “existence of a conflict of interest is not an element of the crime charged against [r]espondent.”³⁰

As to respondent’s allegation that RA 6713 did not require him to divest his shares in TADECO, complainant argues that respondent was charged with violating RA 3019 and not RA 6713, and thus “there is no merit and/or relevance in discussing [RA 6713] in this particular case.”³¹

In his July 13, 2017 Rejoinder,³² respondent asserts that constitutional construction is required “[e]specially in a case so novel as this, [as] reliance must not be based solely in the ‘letter that killeth’ but also in ‘the spirit that giveth life.’”³³ Otherwise, every “legislator having very little interest in a business having contract with the government can be held liable under Section 3(h) of [RA 3019].”³⁴

The main issue is whether respondent, who during his 2001-2004 term as Representative of Davao del Norte owned shares in TADECO which entered into a contract in 2003 with BuCor, breached Article VI, Section 14 of the 1987 Constitution thus violating Section 3(h) of Republic Act No. 3019.

Under Sec. 3(h) of RA 3019, the person liable is any public officer who “[d]irectly or indirectly [has] financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.”³⁵

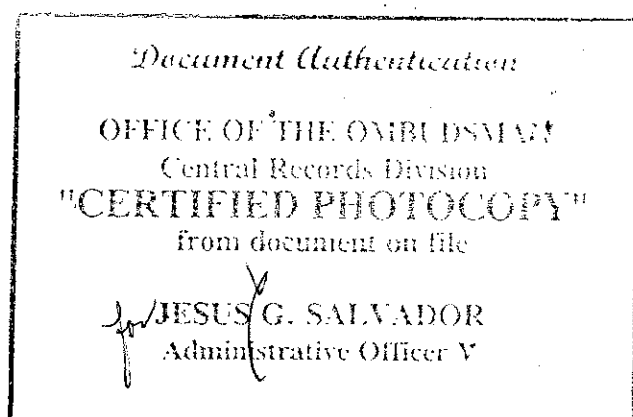
³⁰ Id., p. 302, paragraph 30.

³¹ Id., p. 303, paragraph 34.

³² Id., pp. 344-345.

³³ Id., p. 344, paragraph 2.

³⁴ Id., p. 344, paragraph 3.



According to *Domingo v. Sandiganbayan*,³⁵ “there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate [Sec. 3(h) of RA 3019]. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.”

The essential elements, therefore, of the offense under the second mode of Sec. 3(h) of RA 3019 are as follows: 1) The accused is a public officer, 2) he has a direct or indirect financial or pecuniary interest in any business, contract or transaction, and 3) he is prohibited from having such interest by the Constitution or by law.

There is no dispute that at the time the 2003 Agreement between TADECO and BuCor was entered into, respondent was a public officer as he was then serving his 2001-2004 term as Representative of the 2nd District of Davao del Norte. He also had a direct and indirect financial interest in said contract, owning at the time 75,000 shares of TADECO worth ₱7,500,000. It is also worth noting that most of the stocks of TADECO are owned by, or through ANFLOCOR under the control of, respondent and his family.

As to the third element, respondent is accused of having breached Article VI, Section 14 of the 1987 Constitution, which prohibits a Senator or a Member of the House of Representatives from “directly or indirectly [having financial interest] in any contract with, or in any franchise or special privilege granted by the government, or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office.”

³⁵ G.R. No. 149175, G.R. No. 149406, October 25, 2005.

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A plain reading of the constitutional provision shows that respondent *probably* breached it: On May 21, 2003 or during his 2001-2004 term as Representative of the 2nd District of Davao del Norte, TADECO, a company wherein he has a direct and indirect financial interest as he and his family owned most of TADECO'S shares of stocks, entered into a contract with BuCor, an agency of the government.

Respondent insists that he was not involved in the negotiation of the 2003 Agreement and neither was it entered into with any intervention from Congress. Otherwise speaking, he is pleading lack of conflict of interest. The argument, however, is unavailing as he is charged under the *second* mode of Sec. 3(h) of RA 3019 in which mere prohibition by the Constitution or by law of financial interest in a contract suffices. That he did not intervene or act in his official capacity in the negotiation leading to the forging of the contract is immaterial.

Respondent also insists that RA 6713 did not even require him to divest his shares in TADECO. Respondent, however, must comply not only with the requirements of RA 6713, a general law for all public officials and employees, but more critically, specific laws that apply to his position as Member of the House of Representative. Thus, while RA 6713 may have allowed him to retain ownership of TADECO shares at the time of the 2003 Agreement, it doesn't necessarily mean that he had complied with Article VI, Section 14 of the 1987 Constitution, which imposes a stricter prohibition on him as Member of the House of Representatives.

As to his claim that "not every interest, however miniscule, indirect or incidental, is covered by Section 14, Article VI [of the 1987 Constitution]," a reading of the excerpts from the deliberations of the Constitutional Commission cited by respondent in his Counter-Affidavit shows that it refers to sectoral or party-list representatives and ~~whether their membership~~

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in their organizations violates the Constitution. It has no application at all to the present complaint.

Finally, respondent claims that in interpreting Article VI, Section 14, of the 1987 Constitution, this Office should not rely merely on the words thereof but to the "spirit that giveth life," as otherwise every legislator who owns a small interest in a business having a contract with the government can be held liable under Sec. 3(h) of RA 3019.

Before interpreting a constitutional provision, it is important to determine first whether it contains any ambiguity, otherwise its literal meaning should be applied. As *Chavez v. Judicial and Bar Council, et al.*³⁶ teaches:

One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. As much as possible, the words of the Constitution should be understood in the sense they have in common use. What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. *Verba legis non est recedendum* - from the words of a statute there should be no departure.

The *raison d' être* for the rule is essentially two-fold: First, because it is assumed that the words in which constitutional provisions are couched express the objective sought to be attained; and second, because the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should ever be present as an important condition for the rule of law to prevail. (Underscoring supplied; citations omitted.)

Article VI, Section 14 of the 1987 Constitution is very clear; a Member of the House of Representatives is not allowed to have a direct or indirect financial interest in any contract with the government. Had the

³⁶ G.R. No. 202242, July 17, 2012.

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intention been to exclude ownership of small value of stocks in a corporation, the framers of the Constitution could have stated it.

While this Office understands that indeed such an interpretation of the Constitution will open members of the House of Representatives, otherwise owning small number of stocks of a corporation having a contract with the government, to possible indictment for Sec. 3(h) of RA 3019, the duty of this Office is to apply the law. To do otherwise is to supplant the wisdom of the people who approved the Constitution with its own.

All in all, this Office finds that the complaint offered sufficient evidence showing that respondent probably committed a violation of Section 3(h) of RA 3019 and thus there is probable cause to indict respondent for the offense.

WHEREFORE, finding probable cause for Section 3(h) of Republic Act No. 3019 against respondent **ANTONIO R. FLOIRENDO, JR.**, let the corresponding Information be filed with the Sandiganbayan.


SO ORDERED.

September 4, 2017. Quezon City, Philippines.

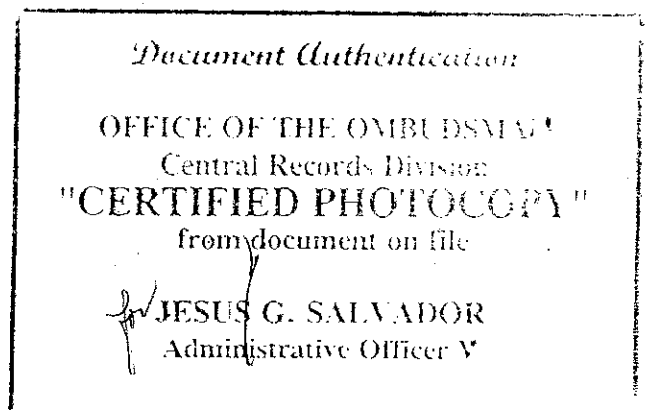

VOLTAIRE B. AFRICA

Graft Investigation and Prosecution Officer II

REVIEWED BY:


NELLIE P. BOQUEN-GOLEZ
Director, PIAB-D

8 Sept 2017



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RECOMMENDING APPROVAL:

J. Mehta 11 Sept. 2017
MARILOU B. ANCHETA-MEJICA
Assistant Ombudsman, PAMO II

APPROVED/DISAPPROVED:³⁷



Conchita Carpio Morales
CONCHITA CARPIO MORALES
Ombudsman 18 Sept/17

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³⁷ Dispositive portion states:

WHEREFORE, finding probable cause for Section 3(h) of Republic Act No. 3019 against respondent ANTONIO R. FLOIRENDO, JR., let the corresponding information be filed with the Sandiganbayan.