

**MALACAÑANG
MANILA**

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 97

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE ON VIGOR D. MENDOZA II, BOARD MEMBER, LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

This resolves the complaint filed with the Presidential Commission Against Graft and Corruption ("PCAGC" or "Commission") on November 3, 1998, by one Isagani C. Reyes, charging Vigor D. Mendoza II, a board member of the Land Transportation Franchising and Regulatory Board (LTFRB) and at that time its Officer-in-Charge, with violation of Section 3(a), Republic Act (R.A.) No. 3019, as amended, and Section 4(c), R.A. No. 6713, for issuing a memorandum dated October 29, 1998, under his sole signature, ordering the respective heads of the Technical and Legal Divisions, LTFRB, to receive all PUB applications for Certificate of Public Convenience (CPC) for routes entering Metro Manila and to set for hearing all pending cases, contrary to the Board's existing moratorium policy thereon.

Finding sufficient basis to commence an administrative investigation against respondent, the PCAGC issued an order dated November 11, 1998, requiring him to file his answer/counter-affidavit.

On December 29, 1998, respondent filed his counter-affidavit averring the following:

1. The Memorandum in question is merely an internal office order directed to the Board's Legal and Technical Evaluation Divisions. It merely formalizes a practice which is already being done even before he sat in office.

2. There has been no amendment to the moratorium policy. It is very much in place and effective. The questioned memorandum merely levels the playing field and establishes equality in the treatment of applications. (P. 25, Records)

3. After over a month in office, he noticed that some applications for provincial bus routes entering Metro Manila have been treated differently. There were some that were refused acceptance, others were accepted but hearing was suspended, while others were heard and eventually decided. All these were done despite the effectivity of the moratorium policy. (*Ibid.*)



4. In order to establish transparency in the handling of these cases and to afford all applicants the basic right of due process and equal protection, he issued the questioned Memorandum. (*Ibid.*)

5. Considering that the Board has in effect amended its policy by accepting, hearing and at times granting CPCs for certain cases, the Memorandum merely formalizes this practice. (*Ibid.*)

6. In summary, being an internal office order, it was sell within respondent's authority, as OIC, to issue the questioned Memorandum. It was not violative of any LTFRB or DOTC policy or circular as it never opened any provincial route nor did it lift the moratorium policy in Metro Manila. It merely formalized an ongoing practice and enforced the constitutional rights of the applicants, whether big or small operators, to due process and equal protection which can never be subservient to any circular. It is not irregular nor illegal as the practice of the Chairperson signing Office Orders by themselves have long been in place and unquestioned. (P. 26, Records)

7. The questioned office order cannot be said to be advantageous to anyone as no one was given a CPC by virtue of the order. It only gave everybody the opportunity to be heard on the issue of the applicability of moratorium policy to their respective cases. Once the explanation is unjustified, however, the proceeding of the case are suspended. (*Ibid.*)

In its report, styled "Resolution", the PCAGC stated as follows:

"The only issue in this case is whether or not the act of respondent in issuing the memorandum in question, referred to as Memo hereafter, violated RA No. 3019, as amended and RA No. 6713.

"Excepted from the coverage thereof were (a) applications for extensions of validity for valid and subsisting CPCs; (b) applications for approval of the sales and transfers of valid and subsisting CPCs; (c) applications for CPCs on bus routes in Metro Manila other than EDSA or any portion thereof determined by the DOTC, LTFRB and the MMDA as still deficient in transport services and not traffic congested or adversely affected by ongoing traffic rationalization policies, projects and measures. (P. 6, Records)

"Subsequently, in its . . . (MC) No. 97-009 dated August 6, 1998, the LTFRB reimposed the aforecited moratorium 'on the acceptance, processing and resolution of all applications, including those pending, for certificates of public convenience for the operation of buses in Metro Manila and on provincial routes whether entering Metro Manila or terminating outside the periphery of the metropolis, given the fact that those issued CPCs terminating outside Metro Manila have been entering Metro Manila as far as Cubao and other points inside Metro Manila and



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also the difficulty of monitoring their operations to insure compliance with the terms and conditions of their franchises.' It was also provided therein that the exceptions under MC-No. 95-013 shall remain. (Pp. 7 and 8, Records).

"The two (2) issuances involving policy matter were signed by Board Chairman Dante M. Lantin and Board Member Nabor C. Gaviola (MC No. 95-013) and by all three Board Members (MC No. 97-009), the Board being a collegial body.

"As respondent admitted in his counter-affidavit, there has been no amendment to the moratorium policy of the Board under Memorandum Circular Nos. 95-013 and 97-009 and '(It) is very much in place and effective'.

"Notwithstanding said admission, respondent still issued the memorandum in question under his sole signature.

"A closer look at said memorandum disclosed that whether it is an internal office order or otherwise, its net effect is a policy change effectively lifting the moratorium policy since the Board can now accept applications for CPCs routes entering Metro Manila and hold hearings for the pending applications for CPCs for said routes.

"Sec. 3 (a) of R. A. No. 3019, as amended, otherwise known as the Anti-Graft and Corruption Practices Act, provides as follows:

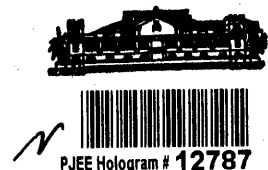
'Sec. 3. Corrupt practices of public officers. - x x x, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

'(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority x x x.'

"Likewise, it is provided in Sec. 4 (c) of R. A. No. 6713, otherwise known as the 'Code of Conduct and Ethical Standards for Public Officials and Employees', to wit

'Sec. 4. Norms of Conduct of Public Officials and Employees. - (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties'

'x x x



'(c) Justness and sincerity - Public officials and employees x x x shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. x x x.'

"Now, we shall peruse respondent's justifications for issuing said memorandum.

"1. It merely formalizes an ongoing practice of the board which refused to accept some applications, accepted others but hearing was suspended, while others were heard and eventually decided despite the effectivity of the moratorium.

"To support the foregoing, respondent cited the cases of Crow Transport Services, Inc., vs. BLTB, et al. which were granted CPCs on January 13, 1998 and April 2, 1998, respectively, when the moratorium was in effect.) Pp. 34-49, Records)

"However, a reading of the Decision of the Crow case revealed that one of the considerations thereof is the recommendation of the DOTC, through Undersecretary Primitivo C. Cal, to give said application and other pending applications similarly situated favorable action. (Underscoring supplied) This shows that the action thereof was in line with the allowable exceptions under Memorandum Circular No. 95-013 rather than a disregard or effective amendment of the moratorium policy as respondent alleged.

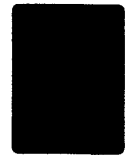
"2. As OIC, it was within respondent's authority to issue the memorandum in question.

"The Copies of Board issuances that respondent annexed in his counter-affidavit in support thereof (Pp. 30-32, Records), involved routine procedures of established policies unlike the memorandum in question in subject of which is in conflict with an existing moratorium policy.

"3. To establish transparency in the handling of these cases and afford all applicants the basic right of due process and equal protection clause.

"The moratorium policy as provided in Memorandum circular Nos. 95-013 and 97-009 is clear on its coverage and exceptions. If respondent saw the need for transparency and due process, what he should have done was to issue a memorandum enjoining strict adherence to the provisions of the two memorandum circulars, if it was really his intention to keep effective the moratorium policy.

"4. It was not a violation of any LTFRB or DOTC policy as it never opened any provincial route nor did it lift he moratorium policy.



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"This is an idle, if not irresponsible, statement of respondent because it is so bereft of truth. His memorandum, which was a direct order to the heads of the Board's Technical Evaluation and Legal Divisions, effectively lifted the existing moratorium policy by opening bus routes to Metro Manila through acceptance of applications for CPC and holding of hearings therefor.

"5. It cannot be said to be advantageous to anyone as no one was given a CPC by virtue of the order.

"Respondent's reason is beside the point. His precipitate action in issuing the memorandum in question paves the way for a climate favorable to the commission of graft to creep in as numerous bus operators fight it out over the lucrative but congested Metro Manila route, thereby compounding the already chaotic traffic situation thereat.

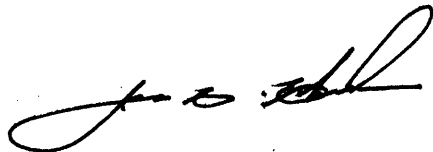
"It is clear from the foregoing that respondent's justifications were far from plausible, much less credible, and that this act of issuing under his sole signature the memorandum dated October 29, 1998, which effectively amended an existing policy of the LTFRB, a collegial body, was irregular and unlawful, and constitutes grave misconduct in violation of Sec. 3 (a). R. A. No. 3019, as amended and Sec. 4 (c), R. A. No. 6713."

In the light of the foregoing considerations, the PCAGC recommended that the respondent be dismissed from the service.


After a careful review of the records of the case, I am inclined to agree with the recommendation of the PCAGC and the premises upon which it is based.

WHEREFORE, and as recommended by the Presidential Commission against Graft and Corruption, respondent VIGOR D. MENDOZA II, Board Member, Land Transportation Franchising and Regulatory Board, Department of Transportation and Communications, is hereby **DISMISSED** from service, effective upon his receipt of this order.

SO ORDERED. NOV 23 1000



By the President:


RONALDO B. ZAMORA
Executive Secretary

