

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 92

**IMPOSING THE PENALTY OF SUSPENSION OF THREE (3) MONTHS ON
IMELDA A. BUENAFE, PRESIDENT, ABRA STATE INSTITUTE OF
SCIENCE AND TECHNOLOGY**

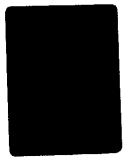
This resolves the letter-complaint dated August 25, 1995, of Erasto V. Ramos (“complainant”), charging Imelda A. Buenafe (“respondent”), President, Abra State Institute of Science and Technology (“ASIST”), with, among others, the following: (1) malicious and capricious filing of an administrative complaint against a faculty member; (2) allowing the ASIST administration to undertake the concreting of the ASIST main road contrary to the ruling of the Board of Trustees and implementing the same without COA clearance; (3) overpricing of cement and other construction materials in the concreting of the ASIST main road; (4) granting of unauthorized cash advances to a non-accountable officer for the procurement of athletic goods for the IRRA meet in Baguio City; (5) violation of COA rules and regulations by using daily an EDPITAF-EEC Land Rover from home to office without accomplishing the required trip tickets in violation of COA rules and regulations; and (6) committing an act of dishonesty by taking two (2) sacks of mangoes, allegedly to be used to bribe budget personnel.

On November 28, 1997, after proceedings duly held, the Presidential Commission Against Graft and Corruption (PCAGC) issued a resolution which, although absolving respondent from the majority of the charges leveled against her, nonetheless found her guilty of simple neglect of duty and recommended her suspension for a period of three (3) months for violating the following government rules and regulations:

1. Sec. 102 of the State Audit Code (P.D. 1455) for her failure to enforce compliance with the conditions set forth in E.O. 182, series of 1987, before undertaking the concreting of the ASIST main road by administration and which failure constitutes neglect of duty under Sec. 127 of the said Audit Code;
2. R.A. 7845 (General Appropriations Act of 1995) and COA Circular 75-6 (November 7, 1975) requiring the marking of all government vehicles with the words “FOR OFFICIAL USE ONLY”; and
3. COA Circular 75-6 for the improper use of the ASIST Land Rover for her travels to and from her hometown in Tayum, Abra and for her use of the same vehicle without the required trip tickets.



PJEE Hologram # 7956



After a careful review of the records of the case, this Office concurs with recommendation of the PCAGC, as well as on the findings upon which it is based. As regards the specific wrongdoing committed by respondent, we quote with approval the findings of the PCAGC, to wit:

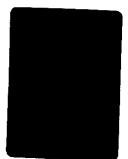
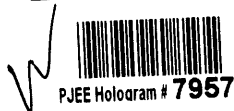
“In connection with the concreting of the ASIST main road, complainant alleges that the ASIST administration headed by respondent undertook the said project contrary to the ruling of the Board of Trustees and implemented the same without COA clearance. Respondent submitted as part of her evidence a copy of the Excerpts of the minutes of the 50th, 51st and 57th ASIST Board Meetings held on March 10, 1994, April 14, 1994 and September 8, 1994, respectively (Exhibits ‘13’, ‘15’ and ‘16’ for respondent, pages 128, 126 and 125 of records) to refute complainant’s claims that the concreting of the main road was in contravention of the decision of the ASIST Board of Trustees.

Respondent claims that during the Board meeting on March 10, 1994, Regent Jeremias Zapata objected to her proposal to award the contract for the concreting of the main road to APO General Construction. She further claims that her proposal was based on the result of the public bidding for the proposed project conducted in December 1993. As a consequence of Regent Zapata’s objection, the Board passed Res. No. 39 s. 1994 declaring the bidding on December 14, 1993 null and void because of the absence of a list of functions to guide the Prequalification, Bids and Awards Committee (PBAC). (Exhibit “13” for respondent, *ibid.*)

In view of the Board’s decision to declare the bidding null and void, respondent, at the 51st ASIST Board Meeting on April 14, 1994, requested for authority to prosecute by administration the construction of the ASIST Road Concreting Project. The authority granted to ASIST management is embodied in Res. No. 46 s. 1994. (Exhibit “15” for respondent, *supra*)

While it is true that construction projects in government are generally undertaken by contract after competitive bidding, exceptions may be allowed under certain conditions. Sec. 63 of the General Appropriations Act of 1993 (RA 7645) provides:

‘Construction projects funded from capital outlays authorized in this Act under the various departments xxx of the national government, including the construction of buildings for state universities, colleges, schools xxx shall be implemented only in accordance with the appropriate standards and specifications for



the planning, survey, design and construction of the project as prescribed by the Department of Public Works and Highways or the Department of Transportation and Communication xxx In the implementation of the construction projects, sections 2, 3, 4, 5, 6, 7, 9, 10 and 12 of Executive Order No. 182 entitled 'Rationalizing Public Works Measures, Appropriating Funds for Public Works, and for other purposes', and other legislations on public works shall be strictly complied with.'

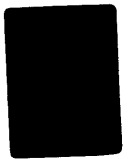
Sec. 7 of said Executive Order No. 182 dated June 3, 1987 provides:

'x x x a project costing over P 1,000,000.00 may be prosecuted by administration by the agency concerned only in case of failure to award a contract after open competitive public bidding for a valid cause or causes, and subject to the approval of the Secretary of Public Works and Highways or the Secretary of Transportation and Communications, if the project cost is P 10,000,000.00 or less; xxx'

A study of the provisions enumerated above reveal two (2) requirements for construction projects costing more than one million pesos (P 1,000,000.00), namely: (a) failure to award after public bidding for valid cause/s and (b) approval of the Secretary of DPWH.

The prosecution by the ASIST management of the concreting project with an approved agency estimate (AAE) of P 1,341,719.30 (p. 146 of records) raises a few issues which, even if not directly attributable to respondent, must be disclosed for the information of the Office of the President. The Commission is of the opinion that the ground for declaring the bidding null and void does not come under any of those enumerated in Sec. 562 of the Government Accounting and Auditing Manual (GAAM, Vol. I). Further, the general functions of the Prequalification, Bids and Awards Committee (PBAC) for all government agencies are embodied in Sec. 549 as well as in other sections of Title 3, Chapter 3 (Infrastructure contract) of the same Government Manual. These serve as the guidelines for all committees constituted for the same purposes, regardless of the government agency or its location. There is no need for a specific enumeration of PBAC functions for each government agency.

While it is true that respondent constituted only one (1) vote of the total seven (7) votes on the Board, she cannot be absolved from liability for the unlawful expenditure.



The ground relied upon by the Board failed (sic) to justify its grant of authority to the ASIST management to prosecute the concreting project by administration. The excerpt of the minutes of the 50th ASIST Board of Trustees Meeting on March 10, 1994 indicates that respondent, representing ASIST management, was not in agreement with the objection of Regent Zapata. The stand of respondent is recorded, thus:

'On the other hand, management justifies its action on the following premises: xxx Second, while management recognizes the importance of PBAC delineation of functions duly adopted by the Board, it is not always a necessary pre-requisite in the conduct of bidding since such functions are already explicit in P.D. 1594 and its implementing guidelines. In fact, the Honorable Board had been approving PBAC recommendations which were guided solely by the provisions of P.D. 1594 and its implementing guidelines ever since[.]' (Exh. '13' for respondent, p. 128 of records)

Hence, the Commission is surprised with respondent's turnaround when she requested for authority to prosecute by administration the aforementioned project during the 51st meeting of the ASIST Board of Trustees on April 14, 1994 (Exh. '15' for respondent, p. 126 of records).

What is even more disconcerting is the subsequent request of respondent dated September 5, 1994 for authority to implement/undertake ALL civil works at ASIST by administration. She cites the unsatisfactory and substandard performance of past contractors which have caused undue delays in the completion of projects (Exh. '14' for respondent, p. 127 of records).

Such arguments, however, are not enough to justify deviation from the usual requirement of public bidding which procedure has been instituted to ensure maximum utilization of government funds. What is needed is strict supervision by the agency head and/or his representatives to enforce compliance with construction contracts.

In the face of the declaration of failure of the bidding by the Board of Trustees, she should have given instructions to ASIST PBAC to comply with the Board's requirement for a list of PBAC functions by citing pertinent laws and to undertake a second bidding. The possibility of prosecuting the contract by administration should have been considered only in the event of a failed bidding and only upon compliance with the conditions set forth in Sec. 7 of EO 182.



Under Section 102 of the State Audit Code (PD 1445), respondent, as head of the ASIST, is immediately and primarily responsible for all government funds and property pertaining to that university. She is expected to be the first person to demand compliance with the law and the rules and regulations formulated for the efficient functioning of government in general and her agency in particular.

Sec. 127 of the aforementioned State Audit Code Provides that any unjustified failure by the Public Officer concerned to comply with any requirement imposed in said code shall constitute neglect of duty.

xxx

xxx

xxx

Regarding the use of the EDPITAF-EEC Land Rover, the following issues were raised:

1. Non-compliance with a COA requirement to mark each and every vehicle of the government 'FOR OFFICIAL USE ONLY';
2. The government vehicle is used daily by respondent from home to office and vice-versa and is parked in some dark corner in respondents' hometown of Tayum, Abra; and
3. The use of government vehicle without the required trip tickets.

Respondent presented to the Commission a copy of the Certificate of Donation of the Land Rover by the Commission of the European Communities to the government (Exhibit '23' for respondent, Page 118 of records). She posits that in view of the nature of the acquisition of the government, namely by donation, a taxpayer like complainant cannot lawfully complain against its suspected misuse.

Sec. 75, Ch. 7, Book VI (National Gov't. Budgeting) of the Administrative Code of 1987 confirms the inclusion of motor vehicles acquired in the regular fleet of government vehicles, thus providing:

'All departments, bureaus, offices and agencies authorized to purchase motor transport equipment including those acquired through donations, gifts or gratuitous title are likewise authorized to use, operate and maintain them for purposes of carrying out official functions and activities of the agency.'



Regarding the allegation of non-compliance with a COA requirement to mark all government vehicles, RA 7845 (General Appropriations Act of 1995) and COA Circular 75-6 (November 7, 1975) require the marking of all government vehicles in the following manner: the words 'FOR OFFICIAL USE ONLY' should appear on each side of the vehicle under which should be written the corresponding name of the agency operating or using the same. RA 7845 further provides for exceptions to this requirement for security reasons. However, the use of the vehicle in question does not come under any of the exceptions.

In her testimony on November 6, 1995, respondent claimed that the vehicles were donated when she was not yet President and were already used regularly when she became President of the University. However, as head of the university she is expected to supervise compliance with all valid government rules and regulations applicable to her agency. It is admitted that there is partial compliance by the marking of 'EDPITAF-EEC' (Complainant's memorandum, page 98 of records). Nevertheless she had chosen to close her eyes to an omission that resulted into the university's disregard not only of an established COA rule, but more importantly, of an appropriations law.

Anent the allegation on the misuse of the Land Rover for being used by respondent from home to office and vice versa (sic) respondent acknowledged that she travels to Tayum, her hometown, on certain days of the month. (Order of November 6, 1995, p. 68 of records) she further admitted that as a precautionary measure she would park the vehicle near the municipal hall of Tayum where the PNP head-quarters is located.

The same COA Circular 75-6 (SUPRA), reiterating General Circular No. 26 dated July 28, 1953 and Memorandum Circular No. 332 dated June 12, 1957, provides:

'Unless specifically authorized by the Office of the President, government motor vehicles shall not (be) used for fetching officials or employees from home to office or vice versa (sic).'

x x x

x x x

x x x

Under Section 34 of R.A. 7845 (General Appropriations Act of 1995), only the following officials are entitled to exclusive use of government vehicles:

x x x

x x x

x x x



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Respondent, whose position and rank does not belong to the above-
enumeration, is not entitled to exclusive use of any government vehicle.
Like other heads of office of similar rank, she is however allowed use of a
government vehicle for official business.

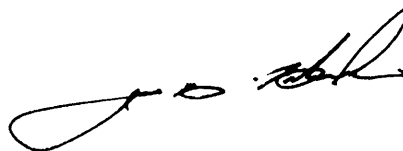
In connection with the issue on the required trip tickets, respondent
submitted ten (10) trip tickets representing the various kinds of official
trips undertaken by her and other ASIST officials (marked as Exhibits '24'
to '24-I', pp. 108-117 of records). However, not one showed travel to and
from Tayum, Abra, her hometown. Nemo Dat Qui Non Habet. No one
can give what he has not.

The use by respondent of a government vehicle without a properly
accomplished and duly approved driver's trip ticket violates the same
COA Circular 75-6, which provides that except in emergency cases, under
no circumstances should government motor vehicles be used without the
corresponding trip ticket having been duly issued by the official designated
for the purpose."

WHEREFORE, in view of the foregoing, and as recommended by the Presidential
Commission Against Graft and Corruption, respondent Imelda A. Buenafe, President,
Abra State Institute of Science and Technology, is hereby found guilty of simple neglect
of duty and is accordingly suspended for a period of three (3) months without pay,
effective from finality of this Order. 14 OCT 1999

SO ORDERED.

Manila, Philippines,



By authority of the President:



RONALDO B. ZAMORA
Executive Secretary

