

January 22, 2009

MS. FRELYN F. MABANAG  
Secretary  
Sangguniang Panlungsod  
City Hall  
Mandaue City

Dear Ms. Mabanag:

This has reference to Resolution No. 11-979-2008, dated December 02, 2008, of the Sangguniang Panlungsod of Mandaue requesting legal opinion on the issue of conflict of interest and prohibited transactions involving local government officials.

Section 3(i) of Republic Act 6713, as amended, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees defines conflict of interest in the following manner:

“Section 3. Definitions of Terms – As used in this Act, the term:

x x x

(i) “Conflict of Interest” arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has 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.” (Emphasis Supplied)

In relation thereto, Sections 7 and 9 of the same Code provide for the legal consequences when conflict of interest arises -

“Section 7. Prohibited Acts and Transactions. - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest – Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

(b) Outside employment and other activities related thereto – Public officials and employees during their incumbency shall not:

1. Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;”

x x x

“Section 9. A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.”

Also, worthy of note is Section 3(h) and (i) of R.A. 3019, the Anti-Graft and Corrupt Practices Act which provide -

“Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

xxx

xxx

(h) Directly or indirectly having 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.

(i) Directly or indirectly becoming interested for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.”

xxx

xxx

xxx

Based on the foregoing, conflict of interest arises whenever a public official or employee, by faithfully performing his official duty, may oppose or affect the interest of a private corporation or business to which he is also affiliated, either as member of a board, officer or a substantial stockholder. Accordingly, if the faithful performance of his official duty will not oppose or affect the interest of a private corporation or business to

which is affiliated, there is no conflict of interest to speak of. Thus, it can be said conflict of interest does not ipso facto arise whenever a public official or employee holds another position in a private corporation or business.

The rationale behind the prohibition on conflict of interest and the consequent mandatory divestment under Section 9 of R.A. 6713 is that no public officer shall be permitted to entertain two (2) conflicting loyalties, one public and the other private, with regard to matters brought before his consideration. Experience has shown that where private interest clashes with the duty to uphold public interest, the tendency is that the concerned public officer will favor his personal interest. The test of conflict of interest therefore is whether the activity, investment, relationship or interest involving the private corporation or business to which a public official or employee is affiliated may prevent him from faithfully discharging his duty as such public official or employee.

In the aforequoted provisions, in sum, a public official or employee's faithful performance of his official duty may oppose or affect or may be in conflict with the interest of a private corporation or business to which he is also affiliated when said public official or employee, 1) **directly or indirectly, have any financial or material interest in any transaction requiring the approval of his office**, 2) **directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity**, or which he is prohibited by the Constitution or by any law from having any interest, and 3) own control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law.

Truly yours,

PEDRO A. NOVAL, JR.  
Regional Director

.ord/legal





