



VISAYAS STATE UNIVERSITY
6521-A Visca, City of Baybay, Leyte, Philippines

BOR RESOLUTION NO. 86, s. 2008

**A REFERENDUM ALLOWING THE GRANT OF
NON-CASH ALLOWANCE TO ALL EMPLOYEES
AND OFFICERS OF THE VISAYAS STATE UNIVERSITY
SYSTEM IN THE AMOUNT OF NOT MORE THAN
P1,000.00 PER EMPLOYEE/OFFICER**

Petition for *Certiorari* filed by the Benguet State University (BSU) with the Supreme Court

The Supreme Court of the Philippines, in an *en banc* meeting, passed Supreme Court Decision No. 169637 dated 07 June 2007. The said decision was made in relation to a Petition for Review on *Certiorari* filed by petitioner Benguet State University (BSU) seeking to nullify Commission on Audit (COA) Decision No. 2003-112 and Decision No. 2005-019 dated 17 March 2005.

COA Decision No. 2003-112 affirmed COA-CAR Decision No. 2000-3, disallowing rice subsidy and health care allowance to the employees of BSU, while COA Decision 2005-019 denied BSU's motion for reconsideration.

BSU filed a petition for review of Decision No. 2000-3 with the COA, which petition was denied in Decision No. 2003-12 dated 17 July 2003. The Commission ratiocinated:

Concededly, the provision in Section 8, Article IX-B, 1987 Constitution that, "No elective or appointive public officers or employees shall receive additional, double or indirect compensation, unless specifically authorized by law" allows the payment of additional compensation when specifically authorized by law. In the instant case, BSU alleges that the grant of Rice Subsidy and Health Care allowance to its employees in 1998 is authorized by law, specifically Section 4 of R.A. No. 8292, otherwise known as the Higher Education Modernization Act of 1997. However, a closer perusal of the specific legal provision which reads, thus:

"Sec. 4. Powers and Duties of Governing Boards

xxx

"d) xxx

Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension or other programs/projects of the university or college xxx"

clearly negate such claim of authority. It is noted that the term, "other programs/projects" refer to such programs which the university may specifically undertake in pursuance of its primary objective which is to attain quality higher education. The law could not have

intended that the term "programs/projects" embrace all programs of BSU, for these benefits, though part of the overall operations, are not directly related to BSU's academic program. Under the maxim of *ejusdem generis*, the mention of a general term after the enumeration of specific matters should be held to mean that the general term should be of the same genus as the specific matter enumerated and, therefore, the "other programs and projects" should be held to be of the same nature as instruction, research and extension. The inclusion of an incentive such as Rice Subsidy and Health Care allowance to its teachers and non-teaching personnel is a patent or blatant disregard of the statutory limitation on the powers of the governing Board of SUCs, as these benefits are indubitably not one of instruction, research or extension.

Furthermore, employment in government service guarantees salaries and other compensation packages and benefits pursuant to pertinent provisions of the Civil Service Law. Allowing other benefits to be granted in excess of those authorized is illegal. As such, BSUs attempt to grant benefits over and above those granted by the Civil Service Law cannot be countenanced.

A Motion for Reconsideration was filed but was denied in the assailed Decision No. 2005-019 dated March 17, 2005.

Supreme Court Ruling

The Supreme Court clarified that the Petition that was filed was captioned as a *Petition for Review on Certiorari* but that this is not the proper mode by which the COA's decisions are reviewed by this Court.

"Under Rule 24, Section 2 of the 1997 Rules of Civil Procedure, a judgment or final order of the COA may be brought by an aggrieved party to this Court on *certiorari* under Rule 65. Thus, only through a petition for *certiorari* under Rule 65 that the COA's decisions may be reviewed and nullified by us on the ground of *grave abuse of discretion or lack of jurisdiction*."

However, though captioned as a Petition for Review on *Certiorari*, the Court treated the Petition as a Petition for *Certiorari* under Rule 65 for it alleges "grave abuse of discretion" and "reversible legal error". The Court, like in previous rulings, have treated differently labeled actions as special civil actions for *certiorari* under Rule 65 for reasons such as justice, equity, and fair play.

BSU ascribes legal error and grave abuse of discretion to the COA in affirming the disallowance of the rice subsidy and health care benefits. Relying on R.A. 8292, BSU maintains that it can grant said benefits to its employees. It argues that the said law vests state universities and colleges with fiscal autonomy, and grants them ample leeway in the appropriation and disbursement of their funds. BSU adds that the grant did not contravene the constitutional prohibition on additional compensation because the allowances are granted as an incentive in appreciation of services rendered and in recognition of the economic plight of the employees. Also, the amounts used were taken from income generated by its operation and retained by the university which, under R.A. 8292, may be disbursed by the Governing Board in a manner it may determine to carry out its programs. Finally, it argues that the Salary standardization Law does not expressly prohibit the benefits, because the said allowances are in the nature of a financial assistance and not an additional income.

What is clear from Section 4 (d) of R.A. 8292 cited by BSU as legal basis of its claims well as from its implementing rules is that "...income generated by the university may be disbursed by its Governing Board for instruction, research, extension, or other programs/projects of the university or colleges".

The Court opined that under the principle of *ejusdem generis*, where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the statute which would repel such inference. The COA correctly ruled that the "other programs/projects" under R.A. 8292 and its Implementing Rules should be of the same nature as instruction, research, and extension. In BSU's case, the disbursements were for rice subsidy and health care allowances which are, in no way, intended for academic programs similar to instruction, research, or extension. Section 4 (d) cannot, therefore, be relied upon by BSU as the legal basis for the grant of the allowance.

Furthermore, a reading of the entire provision supports the COA's interpretation that the authority given to the Governing Board of state universities and colleges is not plenary and absolute. It is clear that the powers of the governing Board are subject to limitations. This belies BSU's claim of plenary and absolute authority.

Neither can BSU find solace in the academic freedom clause of the Constitution. Academic freedom as adverted to in the Constitution and in R.A. 8292 only encompasses *the freedom of the institution of higher learning to determine for itself, on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study*. The guaranteed academic freedom does not grant an institution of higher learning unbridled authority to disburse its funds and grant additional benefits sans statutory basis. **Unfortunately for BSU, it failed to present any sound legal basis that would justify the grant of these additional benefits to its employees.**

Besides, Section 12 of R.A. No. 6758 or the *Salary Standardization Law* already provides for consolidation of allowances in the standardized salary rates, thus:

SEC. 12. *Consolidation of All Allowances and Compensation* – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on-board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

The benefits excluded from the standardized salary rates are the "allowances" which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions. Clearly, the rice subsidy and health care allowance granted by BSU were not among the allowances listed in Section 12 which state workers can continue to receive under R.A. No. 6758 over and above their standardized salary rates. Hence, no abuse of discretion was committed by the COA in disallowing the disbursement of funds.

Depositive Portion of the Supreme Court Decision

WHEREFORE, the instant petition is **DENIED**. Commission on Audit Decisions No. 2003-112 and No. 2005-019 are **AFFIRMED** but with **MODIFICATION** that BSU employees need not refund the rice subsidy and the health care allowance received per Board Resolution No. 794, series of 1997.



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WHEREAS, the Visayas State University was created by virtue of Republic Act 9437 last April 27, 2007 which renamed the Leyte State University (created by virtue of Republic Act 9158 last 11 August 2001) which, in turn, converted the then Visayas State College of Agriculture (ViSCA) into a state university;

WHEREAS, Section 7 of R.A. 9158 as well as Section 4 of R.A. 8292 specifically empowers the Board of Regents of the University to exercise all the powers granted to the Board of Directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporate Code of the Philippines;

WHEREAS, among other powers granted to a corporation, is the power "*to establish pension, retirement and other plans for the benefit of the directors, trustees, officers and employees*" as stipulated in Paragraph 10, Section 36 of Batas Pambansa Blg. 68;

WHEREAS, the Administration deems it appropriate to grant a non-cash allowance of up to P1,000.00 to all employees and officers of the Visayas State University System;

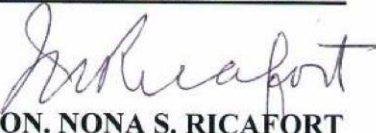
WHEREAS, funds for this year-end benefit will be sourced from Income – *University Share* – generated by the Main Campus and External Campuses, respectively;

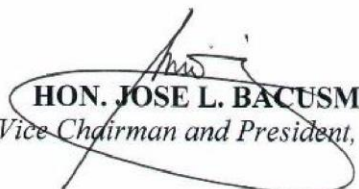
WHEREAS, the University Accountant has certified that there exists enough savings from Income – *University Share* – to warrant the granting of the non-cash allowance in the amount of not more than P1,000.00;

THEREFORE, BE IT RESOLVED AS IT IS HEREBY RESOLVED to approve the release of the non-cash allowance amounting to not more than P1,000.00 for all employees and officers of the Visayas State University System to be sourced from Income – *University Share* – of the respective campuses, effective upon Board approval, *Provided That* the usual accounting and auditing rules and regulations will be followed in the release of such allowance.

IN WITNESS of our approval thereof, we hereby affix our signatures this 17th day of December 2008 at VSU Main Campus, Baybay, Leyte.

VSU BOARD OF REGENTS

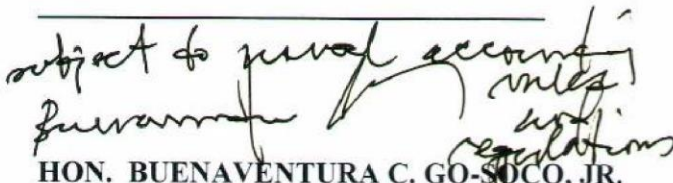

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CHED Commissioner and Chairman
VSU-Board of Regents



HON. JOSE L. BACUSMO
Vice Chairman and President, VSU


HON. MAR A. ROXAS
Chair, Committee on Education, Arts & Culture
Senate of the Philippines


HON. CYNTHIA A. VILLAR
Chair, Committee on Higher & Tech. Educ.
House of Representatives

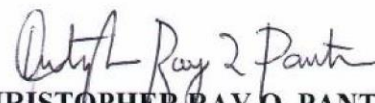
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HON. ALAN L. PRESBITERO
Faculty Regent – VSU System
Visayas State University, Visca, Baybay, Leyte

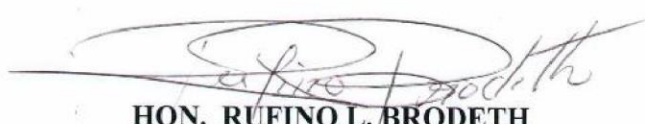

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Ormoc City

Referendum Approving the Grant of Non-Cash Benefits to VSU Employees and Officers.



Commission on Higher Education

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To: DR. DANIEL TUDHOPE - Board Sec. (Gfom): Office of Commissioner Nona S. Ricafort

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