

MANDA, Edgardo C.

Re: RA 6713

x-----x

RESOLUTION NO. 020891

General Manager Edgardo C. Manda of the Manila International Airport Authority (MIAA) appeals the opinion rendered by Assistant Commissioner Jesse J. Caberoy of the Commission relative to the interpretation of Section 7(b) of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees. Said opinion reads, as follows:

"You represented that the Ninoy Aquino International Airport (NAIA) Terminal 3 is about to be operational and will be run by a private consortium on a 'BOT scheme.' Because of this, several officials and employees of the Manila International Airport Authority (MIAA) have applied for possible employment with the said private entity.

"Hence, the instant request.

"It is explicit from the abovequoted provision of law that a public official or employee is prohibited from accepting employment from a private enterprise being regulated, supervised or licensed by his/her office unless expressly authorized by law. Thus, if the said private consortium is being regulated, supervised or licensed by the MIAA, then the subject prohibition as provided for by RA 6713 applies."

Gen. Manager Manda subsequently sought for a clarification/reconsideration of the aforequoted opinion and Asst. Commissioner Caberoy responded, as follows:

"In your latest request, you represented that at present, while construction of the NAIA Terminal 3 is still undergoing, MIAA does not exercise any regulatory, supervisory or licensing function over PIATCO. As such, you are of the belief that RA 6713 does not apply to MIAA officials and employees should they seek employment with PIATCO.

"We have evaluated and studied the Amended and Restated Concession Agreement entered into between the Government of the Republic of the Philippines and PIATCO and finds that, MIAA, in conjunction with the Department of Transportation and Communication (DOTC), is mandated to supervise, monitor, and inspect the construction of the NAIA Terminal 3. This is unequivocally stated in Section 5.04, Article V of said

agreement. It is thus obvious that the prohibition enunciated in RA 6713 applies to MIAA officials and employee desiring to seek employment with PIATCO."

The material allegations in the appeal are, as follows:

"With due respect to Assistant Commissioner Caberoy, we beg to disagree with said opinion. The title of said section 5.04 is rather misleading as a perusal of the contents of said section clearly provides that MIAA's role is limited to construction monitoring alone as even the inspection role was passed upon to the Quality Assurance Inspector. There is absolutely no regulatory, supervisory or licensing function to be exercised by MIAA over PIATCO under the aforementioned section 5.04 of the ARCA as falling within the prohibition contemplated by RA 6713.

X X X

"It is our view that the subject prohibition as provided under R.A. No. 6713 applies to officials/employees of government offices whose power or authority to regulate, supervise and license private enterprises are its inherent functions. However, this is not so in the case of MIAA as even the CSC opinion herein sought to be reconsidered cited a particular provision of the ARCA as sole basis of applying the prohibition.

"MIAA is vested with authority and power to administer and operate both international and domestic air traffic at the Ninoy Aquino International Airport. Thus, its main function is with respect to airport related operations and concessions. The monitoring function it exercises over PIATCO which was merely provided under the ARCA during the construction stage is obviously an isolated one if one considers the inherent functions of MIAA. In fact, it is not even MIAA, which directly performs this function as a Quality Assurance Inspector has been appointed by both parties for this purpose. This is precisely why we are of the firm belief that the prohibition of MIAA officials/employees from being employed by PIATCO should take effect only on in-service date since by then, the same clearly applies as MIAA shall be exercising regulatory functions over PIATCO.

"Assuming arguendo that MIAA, in monitoring PIATCO's plans and programs for the development and construction of the Terminal 3 Project, is construed to be performing supervisory functions within the purview of the prohibition provided under RA 6713, it is quite evident that the performance of said function is exercised by a limited number of MIAA employees and officers, specifically those involved in the Project Management Office of the NAIA Terminal 3 Development Project (PMO 3). Applying the law to other employees and officers who are not similarly involved in said Project would not serve the intention of the law in any way. Thus, if at all the prohibition is made to apply, the same should be limited only to employees of MIAA under its PMO 3 and none other.

"Depriving above mentioned employees of the opportunity to get employed in Terminal 3 by PIATCO would be tantamount to denying them the opportunity for gainful employment. In addition, to apply the said prohibition based merely on the provision of the ARCA would in effect be rendering another provision of the ARCA inutile, particularly Section 5.18 thereof, which provides as follows:

'Section 5.18 Employees of MIAA

*'Concessionaire shall not, by reason hereof, be deemed to be the successor employer of the existing employees of GRP, DOTC, and/or MIAA. In any event, Concessionaire shall not be responsible for the payment of separation and/or other benefits to the displaced employees of MIAA, and GRP undertakes to hold, as it hereby holds Concessionaire (on a full indemnity basis) free and clear of any and all liabilities thereto. While Concessionaire has no obligation to hire the displaced employees of GRP, DOTC, and/or MIAA, **Concessionaire shall give preference to the employment of qualified employees of MIAA in the operation of the Terminal/Terminal Complex, based on the reasonable selection criteria, which Concessionaire shall adopt.**'*

"For the Honorable Commission's information, the abovesited provision was negotiated and included in the ARCA at the instance of DOTC/MIAA precisely to give displaced employees the chance of reemployment considering that under the ARCA, upon in-service date, Terminal 3 will be the only international airport terminal operating in Metro Manila."

The records disclose that sometime in September 1997, the Government of the Republic of the Philippines (GRP), through the Department of Transportation and Communication (DOTC) and the Manila International Airport Authority (MIAA), entered into a Concession Agreement with the Philippine International Air Terminals, Co., Inc. (PIATCO), a private entity, for the Build-Operate-and-Transfer (BOT) arrangement of the Ninoy Aquino International Airport Passenger Terminal III. This agreement was subsequently amended on November 26, 1998 and was called Amended and Restated Concession Agreement (ARCA).

As the abovementioned terminal is about to be operational, there were employees of MIAA who applied for possible employment with PIATCO, the operator of the said terminal. Apprehensive that such act of these MIAA employees might be a violation of law, Gen. Manager Manda sought clarification as to the correct interpretation of Section 7(b) of Republic Act No. 6713 through a letter dated December 17, 2001.

In a letter dated January 11, 2002, Asst. Commissioner Caberoy rendered an opinion as quoted earlier. Gen. Manager Manda subsequently sought for a reconsideration but Asst. Commissioner Caberoy maintained his previous stand.

Hence, this appeal where the paramount issue to be resolved is whether it is legally permissible for present MIAA officials and employees to apply for and be employed by PIATCO, the concessionaire and operator of the soon to be opened Ninoy Aquino International Airport (NAIA) Terminal III.

Relevant to the resolution of the issue presented in this case is **Section 7(b) of RA 6713** which provides that:

"SEC. 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:

X X X

"(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;

"These prohibition shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office . . ."

As mandated in the aforequoted law, a government official or employee is prohibited from accepting employment from or be employed by a private enterprise or entity being regulated, supervised, or licensed by his/her office unless expressly authorized by law. And the prohibition is not limited only on being an employee or officer but extends to that of being a consultant, counsel, broker, agent, trustee or nominee of the private entity. Obviously, the intent of the law is to deter officials and employees of a government regulatory agency from extending undue privilege to private enterprises or entities that are being regulated, supervised, or licensed by it with the view of future employment with said private entities.

Thus, the question now to be asked is: Is the MIAA a government agency that inherently exercises regulatory, supervisory or licensing functions over PIATCO?

Section 5. 04 of the ARCA needs a thorough scrutiny to arrive at an objective and judicious resolution of the issue posed in the instant case. Said section reads, as follows:

"Section 5.04 Supervision, Monitoring and Inspection of Construction

"(a) GRP, through DOTC/MIAA, shall monitor all of Concessionaire's plans and programs for the development, construction and maintenance of the Project to ensure conformity with the Development Plan and accepted engineering practices."

The Commission carefully studied the foregoing section in conjunction with the other provisions in the ARCA and finds that the word "*supervision*" stated therein does not have the same connotation as that mentioned in Section 7(b) of RA 6713. It must be stressed that the MIAA is not a government regulatory agency mandated to supervise, regulate, or license a private enterprise or entity engaged in the construction of airport terminals in the Philippines.

Rather, the words "*supervision*" and "*monitor*" in the aforequoted section was simply used to designate the acts of an owner of an edifice that is undergoing construction. This is so because the Airport Terminal III is ultimately owned by the GRP and administered by the MIAA. Being the owner, the GRP through the MIAA has all the right to oversee and supervise the construction of the Airport Terminal III to ensure that its construction is in conformity with plans and sound engineering practices. Indeed, the supervision and monitoring being undertaken by MIAA over the construction of the Airport Terminal III was being done not as a regulatory or licensing body but as a mere owner of a property being constructed.

Moreover, the Commission takes due consideration of the fact that when the NAIA Terminal III will be operational, several MIAA employees will be displaced or separated from the service. This is so because the NAIA Terminal III is being constructed under a build-operate-transfer scheme wherein the concessionaire is to operate the same for a period of 25 years. Under the terms of the ARCA, however, the concessionaire obligated itself to give preference to the employment of MIAA employees who will be separated from the service. Hence, to deprive these MIAA employees of the right to seek employment and be employed by the concessionaire, PIATCO, shall be the height of inequity and social injustice.

In the light of the foregoing, the Commission is of the opinion, and so rules that the prohibition in Section 7(b) of RA 6713 shall not apply should MIAA employees and officials will be employed by PIATCO.

WHEREFORE, the Commission hereby rules that Section 7(b) of Republic Act No. 6713 shall not apply should MIAA officials and employees be employed by PIATCO except those who are involved with its PMO 3.

Quezon City, JUN 26 2002

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

CPS/nab062002
FPG/KPZ/Y9/w29/jrl
Manda
O 02-0004