

Republika ng Pilipinas
PAMBANSANG PANGASIWAAN NG PATUBIG
(National Irrigation Administration)
Lungsod ng Quezon

MC # 65, s. 1991

MEMORANDUM CIRCULAR

TO : The Deputy Administrator, Assistant Administrators,
Department Managers, Staff Heads, Regional
Irrigation Managers, Operation/Project Managers,
Irrigation Superintendents, Provincial Irrigation
Engineers and all others concerned
This Agency

SUBJECT : Commission on Audit Circular No. 91-361
Dated August 28, 1991

Quoted hereunder in full is Commission on Audit Circular
No. 91-361 dated August 28, 1991 for your information and
guidance.

"Republic of the Philippines
Commission on Audit
Quezon City

COA Circular # 91-361

TO : All Heads of Departments, Agencies, Bureaus and
Offices of the National Government, Government-
Owned or Controlled Corporations, Self-Governing
Boards or Commissions, Local Government Units;
COA Directors, Heads of Auditing Units; and All
Others Concerned

SUBJECT : Opinion No. 95, s. 1991, of the Secretary of
Justice, on the inapplicability of R.A. No. 1405
to government bank deposits

For the information and guidance of all concerned,
quoted hereunder is the full text of the 3rd Indorsement,
dated May 31, 1991, of the Secretary of Justice, which is
self-explanatory:

of 02 Oct 91

Republika ng Pilipinas
Kagawaran ng Katarungan
Department of Justice
Manila"

"3rd Indorsement
May 31, 1991

"Respectfully returned to the Chairman, Commission on Audit, Quezon City, his within request for an advisory opinion 'as to whether or not R.A. No. 1405 which prohibits disclosure of, or inquiry into, deposit(s) with any banking institution, applies to deposits made by government agencies like municipalities, provinces, cities, etc.'.

"It appears that in conducting cash examination of the accounts of Municipal Treasurers, one technique employed by the Provincial Auditor is to reconcile the records of the agency concerned with that of the depository bank; that pursuant thereto, the Auditor obtains from the bank a cut-off statement for the preparation of the corresponding reconciliation statement; that previously, depository banks release the cut-off statement to the Auditor merely upon request; and that lately, however, the PNB Branch of Cagayan de Oro City, refused to give the cut-off statement for all the deposit accounts of the Municipalities of Misamis Oriental, invoked R.A. No. 1405, as amended, and required the prior permission of the local executive or treasurer concerned.

"The COA Director of Cagayan de Oro City claims that the abovesaid condition imposed by the PNB Management would result in delay in the determination of the total accountability of the accountable officer as of cash examination day and that in case of shortage, immediate demand for restitution cannot be made, but instead, the officer concerned would have ample time to cover-up the shortage during the delay. He believes, therefore, that R.A. No. 1405 is not applicable to the deposits made by the government agencies but to private depositors only.

"This Office finds merit in the aforesaid view.

"The legislative intention behind R.A. No. 1405 in penalizing the disclosure of, or inquiry into, deposits with any banking institution, is to encourage the people to deposit their money in banking institutions and to discourage private hoarding (Sec. 1). Expressed otherwise, its purpose is to encourage moneyed people to deposit in banks by ensuring the confidentiality of bank deposits (Secretary of Justice Opn. No. 92, s. 1975).

"Elaborating on this point, this Department has observed that the 'prime purpose of Republic Act No. 1405 is to keep bank accounts from prying eyes, or in the words of its sponsor, from 'fishing expedition', by those who for one reason or another specially for tax assessment, would find out whether a given person has money in a bank and if so where, when or how he got it' (Id., Opns. No. 115, s. 1885 and No. 318, s. 1959, both citing Opn. No. 54, s. 1956), and that, generally speaking, those banned from looking into bank deposits are 'tax collectors, police officers, creditors and persons engaged in 'fishing expedition' unrelated to the conduct and administration of banks' for 'it is from these persons and officials that the depositors' fear from safety of their deposits and of themselves from molestations would come' (Id. Opn. No. 243, s. 1957).

"Thus, it is not difficult to conclude that R.A. No. 1405 was not intended to apply to government funds deposited by the local treasurers of the provinces, cities and municipalities, since these funds are, by their very nature, open to official scrutiny. Indeed, if, as this Department once ruled, the National Treasurer is not precluded by the bank deposit secrecy law from inquiring into banks deposits of private persons for purposes of the Unclaimed Balances Law (Id., Opn. No. 104, s. 1975), there is more reason to allow COA representatives to examine bank deposits of government funds in connection with the exercise of its audit jurisdiction over such funds.

"Moreover, the COA is explicitly empowered by the Constitution 'to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies,

instrumentalities, including government-owned and controlled corporations with original charters' (Sec. 2(1), Art. IX-D, 1987 Constitution; see also Section 26, P.D. No. 1445, as amended). It has been said that the main objective of this Constitutional duty of the Commission is to see to it that the expenditures of government funds have been made in conformity with the law (Guevarra v. Ginenez, 6 SCRA 807/1962/; Villegas v. Auditor General, 18 SCRA 877 /1966/). It would be preposterous to posit that the all-encompassing scope of this constitutionally-mandated authority of the CDA is delimited by the statute in question. Pertinent is the axiom that the legislature, in enacting a statute is presumed to have adhered to appropriate constitutional limitations."

"Please be guided accordingly.

Very truly yours,

(SGD.) FRANKLIN M. DRILON
Secretary"

Compliance hereof is enjoined.

(SGD.) JOSE B. DEL ROSARIO, JR.
Administrator

September 23, 1991