

NATIONAL AMNESTY COMMISSION, PETITIONER, VS. COMMISSION ON AUDIT, JUANITO G. ESPINO, DIRECTOR IV, NCR, COMMISSION ON AUDIT, AND ERNESTO C. EULALIA, RESIDENT AUDITOR, NATIONAL AM...*G.R. No. 156982. September 08, 2004*

Ponente: CORONA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-156982/>**CORONA, J.:**

This petition for review[1] seeks to annul the two decisions of respondent Commission on Audit (COA)[2] dated July 26, 2001[3] and January 30, 2003,[4] affirming the September 21, 1998 ruling[5] of the National Government Audit Office (NGAO). The latter in turn upheld Auditor Ernesto C. Eulalia's order disallowing the payment of honoraria to the representatives of petitioner's ex officio members, per COA Memorandum No. 97-038.

Petitioner National Amnesty Commission (NAC) is a government agency created on March 25, 1994 by then President Fidel V. Ramos through Proclamation No. 347. The NAC is tasked to receive, process and review amnesty applications. It is composed of seven members: a Chairperson, three regular members appointed by the President, and the Secretaries of Justice, National Defense and Interior and Local Government as ex officio members.[6]

It appears that after personally attending the initial NAC meetings, the three ex officio members turned over said responsibility to their representatives who were paid honoraria beginning December 12, 1994. However, on October 15, 1997, NAC resident auditor Eulalia disallowed on audit the payment of honoraria to these representatives amounting to P255,750 for the period December 12, 1994 to June 27, 1997, pursuant to COA Memorandum No. 97-038. On September 1, 1998, the NGAO upheld the auditor's order and notices of disallowance were subsequently issued to the following:[7]

REPRESENTATIVES AMOUNT

1. Cesar Averilla
Department of National Defense

P 2,500.00

2. Ramon Martinez
Department of National Defense

73,750.00

3.

Cielito Mindaro,
Department of Justice

18,750.00

4. Purita Deynata
Department of Justice

62,000.00

5. Alberto Bernardo
Department of the Interior
And Local Government

71,250.00

6. Stephen Villaflor
Department of the Interior and
Local Government

26,250.00

7. Artemio Aspiras
Department of Justice

1,250.00

P 255,750.00

Meanwhile, on April 28, 1999, the NAC passed Administrative Order No. 2 (the new Implementing Rules and Regulations of Proclamation No. 347), which was approved by then President Joseph Estrada on October 19, 1999. Section 1, Rule II thereof provides:

Section 1, Composition – The NAC shall be composed of seven (7) members:

- a) A Chairperson who shall be appointed by the President;
- b) Three (3) Commissioners who shall be appointed by the President;
- c) Three (3) Ex-officio Members
 - 1. Secretary of Justice
 - 2. Secretary of National Defense
 - 3. Secretary of the Interior and Local Government

The ex officio members may designate their representatives to the Commission. Said Representatives shall be entitled to per diems, allowances, bonuses and other benefits as may be authorized by law. (Emphasis

supplied)

Petitioner invoked Administrative Order No. 2 in assailing before the COA the rulings of the resident auditor and the NGAO disallowing payment of honoraria to the ex officio members' representatives, to no avail.

Hence, on March 14, 2003, the NAC filed the present petition, contending that the COA committed grave abuse of discretion in: (1) implementing COA Memorandum No. 97-038 without the required notice and publication under Article 2 of the Civil Code; (2) invoking paragraph 2, Section 7, Article IX-B of the 1987 Constitution to sustain the disallowance of honoraria under said Memorandum; (3) applying the Memorandum to the NAC ex officio members' representatives who were all appointive officials with ranks below that of an Assistant Secretary; (4) interpreting laws and rules outside of its mandate and declaring Section 1, Rule II of Administrative Order No. 2 null and void, and (5) disallowing the payment of honoraria on the ground of lack of authority of representatives to attend the NAC meetings in behalf of the ex officio members.[8]

We hold that the position of petitioner NAC is against the law and jurisprudence. The COA is correct that there is no legal basis to grant per diem, honoraria or any allowance whatsoever to the NAC ex officio members' official representatives.

The Constitution mandates the Commission on Audit to ensure that the funds and properties of the government are validly, efficiently and conscientiously used. Thus, Article IX-D of the Constitution ordains the COA to exercise exclusive and broad auditing powers over all government entities or trustees, without any exception:

Section 2. (1) The Commission on Audit shall have the power, authority and duty 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, or instrumentalities, including government-owned and controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law of the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, inexpensive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

Section 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit. (Emphasis supplied).

It is in accordance with this constitutional mandate that the COA issued Memorandum No. 97-038 on September 19, 1997:

COMMISSION ON AUDIT MEMORANDUM NO. 97-038

SUBJECT:

Implementation of Senate Committee Report No. 509, Committee on Accountability of Public Officers and Investigations and Committee on Civil Service and Government Reorganization.

The Commission received a copy of Senate Committee Report No. 509 urging the Commission on Audit to immediately cause the disallowance of any payment of any form of additional compensation or remuneration to cabinet secretaries, their deputies and assistants, or their representatives, in violation of the rule on multiple positions, and to effect the refund of any and all such additional compensation given to and received by the officials concerned, or their representatives, from the time of the finality of the Supreme Court ruling in *Civil Liberties Union v. Executive Secretary* to the present. In the *Civil Liberties Union* case, the Supreme Court ruled that Cabinet Secretaries, their deputies and assistants may not hold any other office or employment. It declared Executive Order 284 unconstitutional insofar as it allows Cabinet members, their deputies and assistants to hold other offices in addition to their primary office and to receive compensation therefor. The said decision became final and executory on August 19, 1991.

In view thereof, all unit heads/auditors/team leaders of the national government agencies and government owned or controlled corporations which have effected payment of subject allowances, are directed to implement the recommendation contained in the subject Senate Committee Report by undertaking the following audit action:

- On accounts that have not been audited and settled under certificate of settlements and balances on record from August 19, 1991 to present – to immediately issue the Notices of disallowance and corresponding certificate of settlements and balances.
- On accounts that have been audited and settled under certificate of settlements and balances on record – to review and re-open said accounts, issue the corresponding notices of disallowance, and certify a new balance thereon. It is understood that the re-opening of accounts shall be limited to those that were settled within the prescriptive period of three (3) years prescribed in Section 52 of P.D. 1445.
- On disallowances previously made on these accounts – to submit a report on the status of the disallowances indicating whether those have been refunded/settled or have become final and executory and the latest action taken by the Auditor thereon.

All auditors concerned shall ensure that all documents evidencing the disallowed payments are kept intact on file in their respective offices.

Any problem/issue arising from the implementation of this Memorandum shall be brought promptly to the attention of the Committee created under COA Officer Order No. 97-698 thru the Director concerned, for immediate resolution.

An initial report on the implementation of this Memorandum shall be submitted to the Directors concerned not later than October 31, 1997. Thereafter, a quarterly progress report on the status of disallowances made shall be submitted, until all the disallowances shall have been enforced.

The Committee created under COA Office Order No. 97-698, dated September 10, 1997, shall supervise the implementation of this Memorandum which shall take effect immediately and shall submit a consolidated report thereon in response to the recommendation of the Senate Committee on Accountability of Public Officers and Investigation and Committee on Civil Service and Government Reorganization.[9] (Emphasis supplied)

Contrary to petitioner's claim, COA Memorandum No. 97-038 does not need, for validity and effectivity, the publication required by Article 2 of the Civil Code:

Art. 2. Laws shall take effect after fifteen days following the completion of their publication in the Official Gazette, unless it is otherwise provided. This Code shall take effect one year after such publication.

We clarified this publication requirement in *Tañada vs. Tuvera*:^[10]

[A]ll statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant to a valid delegation. Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties. (Emphasis supplied.)

COA Memorandum No. 97-038 is merely an internal and interpretative regulation or letter of instruction which does not need publication to be effective and valid. It is not an implementing rule or regulation of a statute but a directive issued by the COA to its auditors to enforce the self-executing prohibition imposed by Section 13, Article VII of the Constitution on the President and his official family, their deputies and assistants, or their representatives from holding multiple offices and receiving double compensation.

Six years prior to the issuance of COA Memorandum No. 97-038, the Court had the occasion to categorically explain this constitutional prohibition in *Civil Liberties Union vs. The Executive Secretary*:^[11]

Petitioners maintain that this Executive Order which, in effect, allows members of the Cabinet, their undersecretaries and assistant secretaries to hold other government offices or positions in addition to their primary positions, albeit subject to the limitation therein imposed, runs counter to Section 13, Article VII of the 1987 Constitution, which provides as follows:

“Sec. 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.”

x x x x x x x x

[D]oes the prohibition in Section 13, Article VII of the 1987 Constitution insofar as Cabinet members, their deputies or assistants are concerned admit of the broad exceptions made for appointive officials in general under Section 7, par. (2), Article IX-B which, for easy reference is quoted anew, thus: "Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporation or their subsidiaries."

We rule in the negative.

x x x x x x x x

But what is indeed significant is the fact that although Section 7, Article IX-B already contains a blanket prohibition against the holding of multiple offices or employment in the government subsuming both elective and appointive public officials, the Constitutional Commission should see it fit to formulate another provision, Sec. 13, Article VII, specifically prohibiting the President, Vice-President, members of the Cabinet, their deputies and

assistants from holding any other office or employment during their tenure, unless otherwise provided in the Constitution itself.

x x x x x x x x

Thus, while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself. In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while Section 13, Article VII is meant to be the exception applicable only to the President, the Vice-President, Members of the Cabinet, their deputies and assistants. This being the case, the qualifying phrase "unless otherwise provided in this Constitution" in Section 13, Article VII cannot possibly refer to the broad exceptions provided under Section 7, Article IX-B of the 1987 Constitution. . . .

x x x x x x x x

The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the Constitution must not, however, be construed as applying to posts occupied by the Executive officials specified therein without additional compensation in an ex-officio capacity as provided by law and as required by the primary functions of said officials' office. The reason is that these posts do not comprise "any other office" within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials. ...

x x x x x x x x

[T]he prohibition under Section 13, Article VII is not to be interpreted as covering positions held without additional compensation in ex-officio capacities as provided by law and as required by the primary functions of the concerned official's office. The term ex-officio means "from office; by virtue of office." It refers to an "authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position." Ex-officio likewise denotes an "act done in an official character, or as a consequence of office, and without any other appointment or authority than that conferred by the office." An ex-officio member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment. To illustrate, by express provision of law, the Secretary of Transportation and Communications is the ex-officio Chairman of the Board of the Philippine Ports Authority, and the Light Rail Transit Authority.

x x x x x x x x

The ex-officio position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. x x x

x x x x x x x x

...[E]x-officio posts held by the executive official concerned without additional compensation as provided by law and as required by the primary functions of his office do not fall under the definition of "any other office" within the contemplation of the constitutional prohibition... (Emphasis supplied).

Judicial decisions applying or interpreting the laws or the Constitution, such as the Civil Liberties Union doctrine, form part of our legal system.[12] Supreme Court decisions assume the same authority as valid statutes.[13] The Court's interpretation of the law is part of that law as of the date of enactment because its interpretation merely

establishes the contemporary legislative intent that the construed law purports to carry into effect.[14]

COA Memorandum No. 97-038 does not, in any manner or on its own, rule against or affect the right of any individual, except those provided for under the Constitution. Hence, publication of said Memorandum is not required for it to be valid, effective and enforceable.

In *Civil Liberties Union*, we elucidated on the two constitutional prohibitions against holding multiple positions in the government and receiving double compensation: (1) the blanket prohibition of paragraph 2, Section 7, Article IX-B on all government employees against holding multiple government offices, unless otherwise allowed by law or the primary functions of their positions, and (2) the stricter prohibition under Section 13, Article VII on the President and his official family from holding any other office, profession, business or financial interest, whether government or private, unless allowed by the Constitution.

The NAC ex officio members' representatives who were all appointive officials with ranks below Assistant Secretary are covered by the two constitutional prohibitions.

First, the NAC ex officio members' representatives are not exempt from the general prohibition because there is no law or administrative order creating a new office or position and authorizing additional compensation therefor.

Sections 54 and 56 of the Administrative Code of 1987 reiterate the constitutional prohibition against multiple positions in the government and receiving additional or double compensation:

SEC. 54. Limitation on Appointment. – (1) No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

x x x x x x x x

(3) Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

x x x x x x x x

SEC. 56. Additional or Double Compensation. -- No elective or appointive public officer or employee shall receive additional or double compensation unless specifically authorized by law nor accept without the consent of the President, any present, emolument, office, or title of any kind from any foreign state.

Pensions and gratuities shall not be considered as additional, double or indirect compensation.

RA 6758, the Salary Standardization Law, also bars the receipt of such additional emolument.

The representatives in fact assumed their responsibilities not by virtue of a new appointment but by mere designation from the ex officio members who were themselves also designated as such.

There is a considerable difference between an appointment and designation. An appointment is the selection by the proper authority of an individual who is to exercise the powers and functions of a given office; a designation merely connotes an imposition of additional duties, usually by law, upon a person already in the public service by virtue of an earlier appointment.[15]

Designation does not entail payment of additional benefits or grant upon the person so designated the right to claim the salary attached to the position. Without an appointment, a designation does not entitle the officer to receive the salary of the position. The legal basis of an employee's right to claim the salary attached thereto is a duly issued and approved appointment to the position,[16] and not a mere designation.

Second, the ex officio members' representatives are also covered by the strict constitutional prohibition imposed on the President and his official family.

Again, in *Civil Liberties Union*, we held that cabinet secretaries, including their deputies and assistants, who hold positions in ex officio capacities, are proscribed from receiving additional compensation because their services are already paid for and covered by the compensation attached to their principal offices. Thus, in the attendance of the NAC meetings, the ex officio members were not entitled to, and were in fact prohibited from, collecting extra compensation, whether it was called per diem, honorarium, allowance or some other euphemism. Such additional compensation is prohibited by the Constitution.

Furthermore, in *de la Cruz vs. COA*[17] and *Bitonio vs. COA*,[18] we upheld COA's disallowance of the payment of honoraria and per diems to the officers concerned who sat as ex officio members or alternates. The agent, alternate or representative cannot have a better right than his principal, the ex officio member. The laws, rules, prohibitions or restrictions that cover the ex officio member apply with equal force to his representative. In short, since the ex officio member is prohibited from receiving additional compensation for a position held in an ex officio capacity, so is his representative likewise restricted.

The Court also finds that the re-opening of the NAC accounts within three years after its settlement is within COA's jurisdiction under Section 52 of Presidential Decree No. 1445, promulgated on June 11, 1978:

SECTION 52. Opening and revision of settled accounts. (1) At any time before the expiration of three years after the settlement of any account by an auditor, the Commission may motu proprio review and revise the account or settlement and certify a new balance.

More importantly, the Government is never estopped by the mistake or error on the part of its agents.[19] Erroneous application and enforcement of the law by public officers do not preclude subsequent corrective application of the statute.

In declaring Section 1, Rule II of Administrative Order No. 2 s. 1999 null and void, the COA ruled that:

Petitioner further contends that with the new IRR issued by the NAC authorizing the ex-officio members to designate representatives to attend commission meetings and entitling them to receive per diems, honoraria and other allowances, there is now no legal impediment since it was approved by the President. This Commission begs to disagree. Said provision in the new IRR is null and void for having been promulgated in excess of its rule-making authority. Proclamation No. 347, the presidential issuance creating the NAC, makes no mention that representatives of ex-officio members can take the place of said ex-officio members during its meetings and can receive per diems and allowances. This being the case, the NAC, in the exercise of its quasi-legislative powers, cannot add, expand or enlarge the provisions of the issuance it seeks to implement without committing an ultra vires act.[20]

We find that, on its face, Section 1, Rule II of Administrative Order No. 2 is valid, as it merely provides that:

The ex officio members may designate their representatives to the Commission. Said Representatives shall be entitled to per diems, allowances, bonuses and other benefits as may be authorized by law. (Emphasis supplied).

The problem lies not in the administrative order but how the NAC and the COA interpreted it.

First, the administrative order itself acknowledges that payment of allowances to the representatives must be authorized by the law, that is, the Constitution, statutes and judicial decisions. However, as already discussed, the payment of such allowances is not allowed, prohibited even.

Second, the administrative order merely allows the ex officio members to designate their representatives to NAC

meetings but not to decide for them while attending such meetings. Section 4 of the administrative order categorically states:

Decisions of the NAC shall be arrived at by a majority vote in a meeting where there is a quorum consisting of at least four members.

Thus, although the administrative order does not preclude the representatives from attending the NAC meetings, they may do so only as guests or witnesses to the proceedings. They cannot substitute for the ex officio members for purposes of determining quorum, participating in deliberations and making decisions.

Lastly, we disagree with NAC's position that the representatives are de facto officers and as such are entitled to allowances, pursuant to our pronouncement in *Civil Liberties Union*:

"where there is no de jure officer, a de facto officer, who in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in appropriate action recover the salary, fees and other compensation attached to the office."

A de facto officer "derives his appointment from one having colorable authority to appoint, if the office is an appointive office, and whose appointment is valid on its face. (He is) one who is in possession of an office and is discharging its duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent be not a mere volunteer." [21]

The representatives cannot be considered de facto officers because they were not appointed but were merely designated to act as such. Furthermore, they are not entitled to something their own principals are prohibited from receiving. Neither can they claim good faith, given the express prohibition of the Constitution and the finality of our decision in *Civil Liberties Union* prior to their receipt of such allowances.

WHEREFORE the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Callejo, Sr., Azcuna, Tinga and Chico-Nazario, JJ., concur.
Austria-Martinez and Carpio Morales JJ., on official leave.

[1] Under Rule 64 of the 1997 Rules of Civil Procedure.

[2] Composed by COA Chairman Guillermo N. Carague, Commissioners Raul C. Flores and Emmanuel M. Dalman.

[3] COA Decision No. 2001-144

[4] COA Decision No. 2003-026.

[5] NGAO Decision No. 98-006, penned by COA Director Juanito G. Espino, Jr.

[6] Section 4, Proclamation No. 347, March 25, 1994, as amended by Proclamation No. 724, May 17, 1996, Proclamation No. 21, September 23, 1998, Proclamation Nos. 10 and 10-A and Proclamation No. 405, October 26, 2000.

[7] Rollo, pp. 78-79.

[8] Rollo, pp. 53-54.

[9] Rollo, pp. 90-91.

[10] 146 SCRA 446, 453-454 [1986].

[11] 194 SCRA 317 [1991].

[12] Article 8 of the Civil Code of the Philippines.

[13] Floresca vs. Philex Mining Corporation, 136 SCRA 141 [1985].

[14] People vs. Licera, 65 SCRA 270 [1975].

[15] Dimaandal vs. COA, 291 SCRA 322 [1998]; Santiago vs. COA, 199 SCRA 125 [1991].

[16] Dimaandal vs. COA, 291 SCRA 322, 329 [1998].

[17] 371 SCRA 157 [2001].

[18] G.R. No. 147392, March 12, 2004.

[19] Philippine Basketball Association vs. Court of Appeals, 337 SCRA 358 [2000]; Baybay Water District vs. COA, 374 SCRA 482 [2002].

[20] COA Decision No. 2001-144; Rollo, p. 358.

[21] Dimaandal vs. COA, 291 SCRA 322, 329 [1998].

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.