

**HANNAH EUNICE D. SERANA, G.R. No. 162059 Petitioner, VS.
SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES, Respondents.**

G.R. No. 162059. January 22, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

CAN the Sandiganbayan try a government scholaran iskolar ng bayan a** accused, along with her brother, of swindling government fundsccused of being the swindler ng bayan?

MAAARI bang litisin ng Sandiganbayan ang isang iskolar ng bayan, at ang kanyang kapatid, na kapwa pinararatangan ng estafa ng pera ng bayan?

The jurisdictional question is posed in this petition for Certiorari with Prayer for the Issuance of Temporary Restraining Order or Preliminary Injunction certiorari assailing the Resolutions[1] of the Sandiganbayan, Fifth Division, denying petitioner's motion to quash the information and herdenying petitioner's motion for reconsideration.

The Antecedents

Petitioner Hannah Eunice D. Serana was a senior student of the University of the Philippines-Cebu (UP). A student of a state university is known as a government scholar. She was appointed by then President Joseph Estrada on December 21, 1999 as a student regent of UP, to serve a one-year term starting January 1, 2000 and ending on December 31, 2000.

In the early part of 2000, petitioner discussed with President Estrada the renovation of Vinzons Hall Annex in UP Diliman.[2] On September 4, 2000, petitioner, with her siblings and relatives, registered with the Securities and Exchange Commission the Office of the Student Regent Foundation, Inc. (OSRFI).[3]

One of the projects of the OSRFI was the renovation of the Vinzons Hall Annex.[4] President Estrada gave Fifteen Million Pesos (P15,000,000.00) to the OSRFI as financial assistance for the proposed renovation. The source of the funds, according to the information, wais disputed the Office of the President.

The renovation of Vinzons Hall Annex failed to materialize.[5] The succeeding student regent, Kristine Clare Bugayong, and Christine Jill De Guzman, Secretary General of the KASAMA sa U.P., a system-wide alliance of student councils within the state university, consequently filed a complaint for Malversation of Public Funds and Property with the Office of the Ombudsman.[6]

On July 3, 2003, the Ombudsman, after due investigation, found probable cause to indict petitioner and her brother Jade Ian D. Serana forof estafa, docketed as Criminal Case No. 27819 of the Sandiganbayan.[7] The Information against her reads:

The undersigned Special Prosecution Officer III, Office of the Special Prosecutor, hereby accuses HANNAH EUNICE D. SERANA and JADE IAN D. SERANA of the crime of Estafa, defined and penalized under

Paragraph 2(a), Article 315 of the Revised Penal Code, as amended committed as follows:

That on October, 24, 2000, or sometime prior or subsequent thereto, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, HANNAH EUNICE D. SERANA, a high-ranking public officer, being then the Student Regent of the University of the Philippines, Diliman, Quezon City, while in the performance of her official functions, committing the offense in relation to her office and taking advantage of her position, with intent to gain, conspiring with her brother, JADE IAN D. SERANA, a private individual, did then and there wilfully, unlawfully and feloniously defraud the government by falsely and fraudulently representing to former President Joseph Ejercito Estrada that the renovation of the Vinzons Hall of the University of the Philippines will be renovated and renamed as "President Joseph Ejercito Estrada Student Hall," and for which purpose accused HANNAH EUNICE D. SERANA requested the amount of FIFTEEN MILLION PESOS (P15,000,000.00), Philippine Currency, from the Office of the President, and the latter relying and believing on said false pretenses and misrepresentation gave and delivered to said accused Land Bank Check No. 91353 dated October 24, 2000 in the amount of FIFTEEN MILLION PESOS (P15,000,000.00), which check was subsequently encashed by accused Jade Ian D. Serana on October 25, 2000 and misappropriated for their personal use and benefit, and despite repeated demands made upon the accused for them to return aforesaid amount, the said accused failed and refused to do so to the damage and prejudice of the government in the aforesaid amount.

CONTRARY TO LAW. (Underscoring supplied)

Petitioner moved to quash the information. She claimed that the Sandiganbayan does not have any jurisdiction over the offense charged or over her person, in her capacity as UP student regent.

Petitioner claimed that Republic Act (R.A.) No. 3019, as amended by R.A. No. 8249, enumerates the crimes or offenses over which the Sandiganbayan has jurisdiction.[8] It has no jurisdiction over the crime of estafa.[9] It only has jurisdiction over crimes covered by Title VII, Chapter II, Section 2 (Crimes Committed by Public Officers), Title VII, Book II of the Revised Penal Code (RPC). Estafa falling under Title X, Chapter VI (Crimes Against Property), Book II of the RPC is not within the Sandiganbayan's jurisdiction.

ShePetitioner also arguedreasoned that it was President Estrada, and not the government, that was duped. Even assuming that she received the P15,000,000.00, that amount came from Estrada, and not from the coffers of the government.[10]

Petitioner likewise posited that the Sandiganbayan had no jurisdiction over her person. AShe claimed that as a student regent, she was not a public officer since she merely represented her peers, in contrast to the other regents whothat held their positions in an ex officio capacity. She addsd that she was a simple student and did not receive any salary as a student regent.

Petitioner She further contended also claimed that she had no power or authority to receive monies or funds. She claimed such power was vested with the Board of Regents (BOR) as a whole. Hence, Since it was not alleged in the information that it was among her functions or duties to receive funds, or that the crime was committed in connection with her official functions, the same is beyond the jurisdiction of the Sandiganbayan citing the case of Soller v. Sandiganbayan.[11]

The Ombudsman opposed the motion.[12] It disputed petitioner's interpretation of the law. Section 4(b) of Presidential Decree (P.D.) No. 1606 clearly contains the catch -all phrase "in relation to office," thus, the Sandiganbayan has jurisdiction over the charges against petitioner. In the same breath, the prosecution countered that the source of the money is a matter of defense. It should be threshed out during a full-blown trial.[13]

According to the Ombudsman, petitioner, despite her protestations, iwas a public officer. As a member of the

BOR, she had the general powers of administration and exercised the corporate powers of UP. Based on Mechem's definition of a public office, petitioner's stance that she was not compensated, hence, thus not a public officer, is erroneous. Compensation is not an essential part of public office. Parenthetically, compensation has been interpreted to include allowances. By this definition, petitioner was compensated.[14]

Sandiganbayan Disposition

In a Resolution dated November 14, 2003, the Sandiganbayan denied petitioner's motion for lack of merit.[15] It ratiocinated:

The focal point in controversy is the jurisdiction of the Sandiganbayan over this case.

It is extremely erroneous to hold that only criminal offenses covered by Chapter II, Section 2, Title VII, Book II of the Revised Penal Code are within the jurisdiction of this Court. As correctly pointed out by the prosecution, Section 4(b) of R.A. 8249 provides that the Sandiganbayan also has jurisdiction over other offenses committed by public officials and employees in relation to their office. From this provision, there is no single doubt that this Court has jurisdiction over the offense of estafa committed by a public official in relation to his office.

Accused-movant's claim that being merely a member in representation of the student body, she was never a public officer since she never received any compensation nor does she fall under Salary Grade 27, is of no moment, in view of the express provision of Section 4 of Republic Act No. 8249 which provides:

Sec. 4. Jurisdiction – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

(A) x x x

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade "27" and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

x x x x

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations. (*Italics supplied*)

It is very clear from the aforequoted provision that the Sandiganbayan has original exclusive jurisdiction over all offenses involving the officials enumerated in subsection (g), irrespective of their salary grades, because the primordial consideration in the inclusion of these officials is the nature of their responsibilities and functions.

Is accused-movant included in the contemplated provision of law?

A meticulous review of the existing Charter of the University of the Philippines reveals that the Board of Regents, to which accused-movant belongs, exclusively exercises the general powers of administration and corporate powers in the university, such as: 1) To receive and appropriate to the ends specified by law such sums as may be provided by law for the support of the university; 2) To prescribe rules for its own government and to enact for the government of the university such general ordinances and regulations, not contrary to law, as are consistent with the purposes of the university; and 3) To appoint, on recommendation of the President of the University, professors, instructors, lecturers and other employees of the University; to fix their compensation, hours of service, and such other duties and conditions as it may deem proper; to grant to them in its discretion leave of absence under such regulations as it may promulgate, any other provisions of law to the contrary notwithstanding, and to remove them for cause after an investigation and hearing shall have been had.

It is well-established in corporation law that the corporation can act only through its board of directors, or board of trustees in the case of non-stock corporations. The board of directors or trustees, therefore, is the

governing body of the corporation.

It is unmistakably evident that the Board of Regents of the University of the Philippines is performing functions similar to those of the Board of Trustees of a non-stock corporation. This draws to fore the conclusion that being a member of such board, accused-movant undoubtedly falls within the category of public officials upon whom this Court is vested with original exclusive jurisdiction, regardless of the fact that she does not occupy a position classified as Salary Grade 27 or higher under the Compensation and Position Classification Act of 1989.

Finally, this court finds that accused-movant's contention that the same of P15 Million was received from former President Estrada and not from the coffers of the government, is a matter a defense that should be properly ventilated during the trial on the merits of this case.[16]

On November 19, 2003, petitioner filed a motion for reconsideration.[17] The motion was denied with finality in a Resolution dated February 4, 2004.[18]

Issue

Petitioner is now before this Court, contending that "THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN NOT QUASHING THE INFORMATION AND DISMISING THE CASE NOTWITHSTANDING THAT IS HAS NO JURISDICTION OVER THE OFFENSE CHARGED IN THE INFORMATION." [19]

In her discussion, she reiterates her four-fold argument below, namely: (a) the Sandiganbayan has no jurisdiction over estafa; (b) petitioner is not a public officer with Salary Grade 27 and she paid her tuition fees; (c) the offense charged was not committed in relation to her office; (d) the funds in question personally came from President Estrada, not from the government.

Our Ruling

The petition cannot be granted.

Preliminarily, the denial of a motion to quash is not correctible by certiorari.

We would ordinarily dismiss this petition for certiorari outright on procedural grounds. Well-established is the rule that when a motion to quash in a criminal case is denied, the remedy is not a petition for certiorari, but for petitioners to go to trial, without prejudice to reiterating the special defenses invoked in their motion to quash.[20] Remedial measures as regards interlocutory orders, such as a motion to quash, are frowned upon and often dismissed.[21] The evident reason for this rule is to avoid multiplicity of appeals in a single action.[22]

In *Newsweek, Inc. v. Intermediate Appellate Court*, [23] the Court clearly illustrated explained and illustrated the rule and the exceptions, thus:

As a general rule, an order denying a motion to dismiss is merely interlocutory and cannot be subject of appeal until final judgment or order is rendered. (Sec. 2 of Rule 41). The ordinary procedure to be followed in such a case is to file an answer, go to trial and if the decision is adverse, reiterate the issue on appeal from the final judgment. The same rule applies to an order denying a motion to quash, except that instead of filing an answer a plea is entered and no appeal lies from a judgment of acquittal.

This general rule is subject to certain exceptions. If the court, in denying the motion to dismiss or motion to quash, acts without or in excess of jurisdiction or with grave abuse of discretion, then certiorari or prohibition lies. The reason is that it would be unfair to require the defendant or accused to undergo the ordeal and expense

of a trial if the court has no jurisdiction over the subject matter or offense, or is not the court of proper venue, or if the denial of the motion to dismiss or motion to quash is made with grave abuse of discretion or a whimsical and capricious exercise of judgment. In such cases, the ordinary remedy of appeal cannot be plain and adequate. The following are a few examples of the exceptions to the general rule.

In *De Jesus v. Garcia* (19 SCRA 554), upon the denial of a motion to dismiss based on lack of jurisdiction over the subject matter, this Court granted the petition for certiorari and prohibition against the City Court of Manila and directed the respondent court to dismiss the case.

In *Lopez v. City Judge* (18 SCRA 616), upon the denial of a motion to quash based on lack of jurisdiction over the offense, this Court granted the petition for prohibition and enjoined the respondent court from further proceeding in the case.

In *Enriquez v. Macadaeg* (84 Phil. 674), upon the denial of a motion to dismiss based on improper venue, this Court granted the petition for prohibition and enjoined the respondent judge from taking cognizance of the case except to dismiss the same.

In *Manalo v. Mariano* (69 SCRA 80), upon the denial of a motion to dismiss based on bar by prior judgment, this Court granted the petition for certiorari and directed the respondent judge to dismiss the case.

In *Yuviengco v. Dacuycuy* (105 SCRA 668), upon the denial of a motion to dismiss based on the Statute of Frauds, this Court granted the petition for certiorari and dismissed the amended complaint.

In *Tacas v. Cariaso* (72 SCRA 527), this Court granted the petition for certiorari after the motion to quash based on double jeopardy was denied by respondent judge and ordered him to desist from further action in the criminal case except to dismiss the same.

In *People v. Ramos* (83 SCRA 11), the order denying the motion to quash based on prescription was set aside on certiorari and the criminal case was dismissed by this Court.[24]

We do not find the Sandiganbayan to have committed a grave abuse of discretion.

The jurisdiction of the Sandiganbayan is set by P.D. No. 1606, as amended, not by R.A. No. 3019, as amended.

We first address petitioner's contention that the jurisdiction of the Sandiganbayan is determined by Section 4 of R.A. No. 3019 (The Anti-Graft and Corrupt Practices Act, as amended). We note that petitioner refers to Section 4 of the said law yet quotes Section 4 of P.D. No. 1606, as amended, in her motion to quash before the Sandiganbayan.[25] She repeats the reference in the instant petition for certiorari[26] and in her memorandum of authorities.[27]

We cannot bring ourselves to write this off as a mere clerical or typographical error. It bears stressing that petitioner repeated this claim twice despite corrections made by the Sandiganbayan.[28]

Her claim has no basis in law. It is P.D. No. 1606, as amended, rather than R.A. No. 3019, as amended, that determines the jurisdiction of the Sandiganbayan. A brief legislative history of the statute creating the Sandiganbayan is in order. The Sandiganbayan was created by P.D. No. 1486, promulgated by then President Ferdinand E. Marcos on June 11, 1978. It was promulgated to attain the highest norms of official conduct required of public officers and employees, based on the concept that public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain at all times accountable to the people.[29]

P.D. No. 1486 was, in turn, amended by P.D. No. 1606 which was promulgated on December 10, 1978. P.D. No. 1606 expanded the jurisdiction of the Sandiganbayan.[30]

P.D. No. 1606 was later amended by P.D. No. 1861 on March 23, 1983, further altering the Sandiganbayan jurisdiction. R.A. No. 7975 approved on March 30, 1995 made succeeding amendments to P.D. No. 1606, which was again amended on February 5, 1997 by R.A. No. 8249. Section 4 of R.A. No. 8249 further modified the jurisdiction of the Sandiganbayan. As it now stands, the Sandiganbayan has jurisdiction over the following:

Sec. 4. Jurisdiction. - The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:

- Violations of Republic Act No. 3019, as amended, other known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

(1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as Grade "27" and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:

" ____ (a) Provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other city department heads;

" ____ (b) City mayor, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;

" ____ (c) Officials of the diplomatic service occupying the position of consul and higher;

" ____ (d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

" ____ (e) Officers of the Philippine National Police while occupying the position of provincial director and those holding the rank of senior superintended or higher;

" ____ (f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor;

" ____ (g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations.

" ____ (2) Members of Congress and officials thereof classified as Grade "Grade '27'" and up under the Compensation and Position Classification Act of 1989;

" ____ (3) Members of the judiciary without prejudice to the provisions of the Constitution;

" ____ (4) Chairmen and members of Constitutional Commission, without prejudice to the provisions of the Constitution; and

" ____ (5) All other national and local officials classified as Grade "Grade '27'" and higher under the Compensation and Position Classification Act of 1989.

- Other offenses of felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.

- Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

" ____ In cases where none of the accused are occupying positions corresponding to Salary Grade "Grade

'27'" or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officer mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

" ____The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or order of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

" ____The Sandiganbayan shall have exclusive original jurisdiction over petitions for the issuance of the writs of mandamus, prohibition, certiorari, habeas corpus, injunctions, and other ancillary writs and processes in aid of its appellate jurisdiction and over petitions of similar nature, including quo warranto, arising or that may arise in cases filed or which may be filed under Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986: Provided, That the jurisdiction over these petitions shall not be exclusive of the Supreme Court.

" ____The procedure prescribed in Batas Pambansa Blg. 129, as well as the implementing rules that the Supreme Court has promulgated and may thereafter promulgate, relative to appeals/petitions for review to the Court of Appeals, shall apply to appeals and petitions for review filed with the Sandiganbayan. In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986.

" ____In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees, including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees in the proper courts which shall exercise exclusive jurisdiction over them.

" ____Any provisions of law or Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability shall, at all times, be simultaneously instituted with, and jointly determined in, the same proceeding by the Sandiganbayan or the appropriate courts, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing such civil action separately from the criminal action shall be recognized: Provided, however, That where the civil action had heretofore been filed separately but judgment therein has not yet been rendered, and the criminal case is hereafter filed with the Sandiganbayan or the appropriate court, said civil action shall be transferred to the Sandiganbayan or the appropriate court, as the case may be, for consolidation and joint determination with the criminal action, otherwise the separate civil action shall be deemed abandoned."

Upon the other hand, R.A. No. 3019 is a penal statute approved on August 17, 1960. The said law represses certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.[31] Pursuant to Section 10 of R.A. No. 3019, all prosecutions for violation of the said law should be filed with the Sandiganbayan.[32]

R.A. No. 3019 does not contain an enumeration of the cases over which the Sandiganbayan has jurisdiction. In fact, Section 4 of R.A. No. 3019 erroneously cited by petitioner, deals not with the jurisdiction of the Sandiganbayan but with prohibition on private individuals. We quote:

Section 4. Prohibition on private individuals. – (a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close

personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

In fine, the two statutes differ in that P.D. No. 1606, as amended, defines the jurisdiction of the Sandiganbayan while R.A. No. 3019, as amended, defines graft and corrupt practices and provides for their penalties.

Sandiganbayan has jurisdiction over the offense of estafa.

Relying on Section 4 of P.D. No. 1606, petitioner contends that estafa is not among those crimes cognizable by over which the Sandiganbayan has jurisdiction. We note that in hoisting this argument, petitioner isolated the first paragraph of Section 4 of P.D. No. 1606, without regard to the succeeding paragraphs of the said provision.

The rule is well-established in this jurisdiction that statutes should receive a sensible construction so as to avoid an unjust or an absurd conclusion.[33] Interpretatio talis in ambiguis semper fienda est, ut evitetur inconveniens et absurdum. Where there is ambiguity, such interpretation as will avoid inconvenience and absurdity is to be adopted. Kung saan mayroong kalabuan, ang pagpapaliwanag ay hindi dapat maging mahirap at katawa-tawa.

Every section, provision or clause of the statute must be expounded by reference to each other in order to arrive at the effect contemplated by the legislature.[34] The intention of the legislator must be ascertained from the whole text of the law and every part of the act is to be taken into view.[35] In other words, petitioner's interpretation lies in direct opposition to the rule that a statute must be interpreted as a whole under the principle that the best interpreter of a statute is the statute itself.[36] Optima statuti interpretatrix est ipsum statutum. Ang isang batas ay marapat na bigyan ng kahulugan sa kanyang kabuuan sa ilalim ng prinsipyo na ang pinakamainam na interpretasyon ay ang mismong batas.

Section 4(B) of P.D. No. 1606 reads:

B. Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection a of this section in relation to their office.

Evidently, the Sandiganbayan has jurisdiction over other felonies committed by public officials in relation to their office. We see no plausible or sensible reason to exclude estafa as one of the offenses included in Section 4(bB) of P.D. No. 1606. Plainly, estafa is one of those other felonies. The jurisdiction is simply subject to the twin requirements that (a) the offense is committed by public officials and employees mentioned in Section 4(A) of P.D. No. 1606, as amended, and that (b) the offense is committed in relation to their office.

In *Perlas, Jr. v. People*,^[37] the Court had occasion to explain that the Sandiganbayan has jurisdiction over an indictment for estafa versus a director of the National Parks Development Committee, a government instrumentality. The Court held then:

The National Parks Development Committee was created originally as an Executive Committee on January 14, 1963, for the development of the Quezon Memorial, Luneta and other national parks (Executive Order No. 30). It was later designated as the National Parks Development Committee (NPDC) on February 7, 1974 (E.O. No. 69). On January 9, 1966, Mrs. Imelda R. Marcos and Teodoro F. Valencia were designated Chairman and Vice-Chairman respectively (E.O. No. 3). Despite an attempt to transfer it to the Bureau of Forest Development, Department of Natural Resources, on December 1, 1975 (Letter of Implementation No. 39, issued pursuant to PD No. 830, dated November 27, 1975), the NPDC has remained under the Office of the President (E.O. No. 709, dated July 27, 1981).

Since 1977 to 1981, the annual appropriations decrees listed NPDC as a regular government agency under the Office of the President and allotments for its maintenance and operating expenses were issued direct to NPDC (Exh. 10-A, Perlas, Item Nos. 2, 3).

The Sandiganbayan's jurisdiction over estafa was reiterated with greater firmness in *Bondoc v. Sandiganbayan*.^[38] Pertinent parts of the Court's ruling in *Bondoc* read:

Furthermore, it is not legally possible to transfer *Bondoc*'s cases to the Regional Trial Court, for the simple reason that the latter would not have jurisdiction over the offenses. As already above intimated, the inability of the Sandiganbayan to hold a joint trial of *Bondoc*'s cases and those of the government employees separately charged for the same crimes, has not altered the nature of the offenses charged, as estafa thru falsification punishable by penalties higher than prision correccional or imprisonment of six years, or a fine of P6,000.00, committed by government employees in conspiracy with private persons, including *Bondoc*. These crimes are within the exclusive, original jurisdiction of the Sandiganbayan. They simply cannot be taken cognizance of by the regular courts, apart from the fact that even if the cases could be so transferred, a joint trial would nonetheless not be possible.

Petitioner UP student regent
is a public officer.

Petitioner also contends that she is not a public officer. She does not receive any salary or remuneration as a UP student regent. This is not the first or likely the last time that We will be called upon to be required to define a public officer. In *Khan, Jr. v. Office of the Ombudsman*, We ruled that it is difficult to pin down the definition of a public officer.^[39] The 1987 Constitution does not define who are public officers. Rather, the varied definitions and concepts are found in different statutes and jurisprudence.

In *Aparri v. Court of Appeals*,^[40] the Court held that:

A public office is the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public ([*Mechem Public Offices and Officers*,] Sec. 1). The right to hold a public office under our political system is therefore not a natural right. It exists, when it exists at all only because and by virtue of some law expressly or impliedly creating and conferring it (*Mechem Ibid.*, Sec. 64). There is no such thing as a vested interest or an estate in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office or its salary (42 Am. Jur. 881).

In *Laurel v. Desierto*,^[41] the Court adopted the definition of *Mechem* of a public office:

"A public office is the right, authority and duty, created and conferred by law, by which, for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer."^[42]

Petitioner claims that she is not a public officer with Salary Grade 27; she is, in fact, a regular tuition fee-paying student. This is likewise bereft of merit. It is not only the salary grade that determines the jurisdiction of the Sandiganbayan. The Sandiganbayan also has jurisdiction over other officers enumerated in P.D. No. 1606. In *Geduspan v. People*,^[43] We held that while the first part of Section 4(A) covers only officials with Salary Grade 27 and higher, its second part specifically includes other executive officials whose positions may not be of Salary Grade 27 and higher but who are by express provision of law placed under the jurisdiction of the said court. Petitioner falls under the jurisdiction of the Sandiganbayan as she is placed there by express provision of law.^[44]

Section 4(A)(1)(g) of P.D. No. 1606 explicitly vested the Sandiganbayan with jurisdiction over Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations. We find no reason to disturb the findings of the Sandiganbayan that Petitioner falls under this category. As the Sandiganbayan pointed out, the BOR performs functions similar to those of a board of trustees of a non-stock corporation.[45] By express mandate of law, We find that petitioner is, indeed, a public officer as contemplated by P.D. No. 1606 the statute defining the jurisdiction of the Sandiganbayan.

Moreover, it is well established that compensation is not an essential element of public office.[46] At most, it is merely incidental to the public office.[47]

We uphold that the conclusions of the Sandiganbayan that Delegation of sovereign functions is essential in the public office. An investment in an individual of some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public makes one a public officer.[48]

The administration of the UP is a sovereign function in line with Article XIV of the Constitution. UP performs a legitimate governmental function by providing advanced instruction in literature, philosophy, the sciences, and arts, and giving professional and technical training.[49] Moreover, UP is maintained by the Government and it declares no dividends and is not a corporation created for profit.[50] Petitioner is therefore a public officer by express mandate of P.D. No. 1606 and jurisprudence.

The offense charged was committed
in relation to public office, according
to the Information.

Petitioner likewise argues that even assuming that she is a public officer, the Sandiganbayan would still not have jurisdiction over the offense because it was not committed in relation to her office.

According to petitioner, she had no power or authority to act without the approval of the BOR. She adds there was no Board Resolution issued by the BOR authorizing her to contract with then President Estrada; and that her acts were not ratified by the governing body of the state university. Resultantly, her act was done in a private capacity and not in relation to public office.

It is axiomatic that jurisdiction is determined by the averments in the information.[51] More than that, jurisdiction is not affected by the pleas or the theories set up by defendant or respondent in an answer, a motion to dismiss, or a motion to quash.[52] Otherwise, jurisdiction would become dependent almost entirely upon the whims of defendant or respondent.[53]

In the case at bench, the information alleged, in no uncertain terms that petitioner, being then a student regent of U.P., “while in the performance of her official functions, committing the offense in relation to her office and taking advantage of her position, with intent to gain, conspiring with her brother, JADE IAN D. SERANA, a private individual, did then and there wilfully, unlawfully and feloniously defraud the government x x x.” (Underscoring supplied)

Clearly, there was no grave abuse of discretion on the part of the Sandiganbayan when it did not quash the information based on this ground.

Source of funds is a defense that should
be raised during trial on the merits.

It is contended anew that the amount came from President Estrada’s private funds and not from the government

coffers. Petitioner insists the charge has no leg to stand on.

We cannot agree. The information alleges that the funds came from the Office of the President and not its then occupant, President Joseph Ejercito Estrada. Under the information, it is averred that “petitioner requested the amount of Fifteen Million Pesos (P15,000,000.00), Philippine Currency, from the Office of the President, and the latter relying and believing on said false pretenses and misrepresentation gave and delivered to said accused Land Bank Check No. 91353 dated October 24, 2000 in the amount of Fifteen Million Pesos (P15,000,000.00).”

Again, the Court sustains the Sandiganbayan observation that the source of the P15,000,000 is a matter of defense that should be ventilated during the trial on the merits of the instant case.[54]

A lawyer owes candor, fairness and honesty to the Court.

As a parting note, petitioner’s counsel, Renato G. dela Cruz, misrepresented his reference to Section 4 of P.D. No. 1606 as a quotation from Section 4 of R.A. No. 3019. A review of his motion to quash, the instant petition for certiorari and his memorandum, unveils the misquotation. We urge petitioner’s counsel to observe Canon 10 of the Code of Professional Responsibility, specifically Rule 10.02 of the Rules stating that “a lawyer shall not misquote or misrepresent.”

The Court stressed the importance of this rule in *Pangan v. Ramos*,[55] where Atty Dionisio D. Ramos used the name Pedro D.D. Ramos in connection with a criminal case. The Court ruled that Atty. Ramos resorted to deception by using a name different from that with which he was authorized. We severely reprimanded Atty. Ramos and warned that a repetition may warrant suspension or disbarment.[56]

We admonish petitioner’s counsel to be more careful and accurate in his citation. A lawyer’s conduct before the court should be characterized by candor and fairness.[57] The administration of justice would gravely suffer if lawyers do not act with complete candor and honesty before the courts.[58]

WHEREFORE, the petition is DENIED for lack of merit DUE COURSE and DISMISSED.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, Corona, and Nachura, JJ., concur.

* Vice Associate Justice Minita Chico-Nazario, per Raffle dated January 14, 2008. Justice Chico-Nazario penned the assailed Sandiganbayan decision, with the concurrence of Associate Justices Ma. Cristina G. Cortez-Estrada and Teresita V. Diaz-Baldos.

[**]As it is funded partly by the Philippine government and private donations, the UP student shoulders a minimal tuition fee while being provided a wide range of courses and programs.

UP also has a Socialized Tuition and Financial Assistance Program (STFAP, otherwise known as the Iskolar ng Bayan Program), which enables students to avail of discounted tuition fees to full tuition fee waivers and cash subsidies determined according to their income brackets. (www.up.edu.ph.)

[1] Rollo, pp. 58-64.

[2] Id. at 5.

[3] Id.

[4] Id.

[5] Id.

[6] Id. at 29.

[7] Id. at 36-40.

[8] Id. at 7-10.

[9] Id. at 43.

[10] Id. at 44.

[11] Id. at 45, citing G.R. Nos. 144261-62, May 9, 2001, 357 SCRA 677.

[12] Id. at 47.

[13] Id. at 50.

[14] Id. at 54.

[15] Id. at 58.

[16] Id. at 61-64.

[17] Id. at 65.

[18] Id. at 74.

[19] Id. at 6.

[20] *De los Reyes v. People*, G.R. No. 138297, January 27, 2006, 480 SCRA 294; *Lee v. People*, G.R. No. 137914, December 4, 2002, 393 SCRA 398; *Yap v. Intermediate Appellate Court*, G.R. No. 68464, March 22, 1993, 220 SCRA 245, 253, citing *Acharon v. Purisima*, G.R. No. 23731, June 27, 1965, 13 SCRA 309; *Bulaong v. Court of Appeals*, G.R. No. 78555, January 30, 1990, 181 SCRA 618.

[21] *Marcelo v. De Guzman*, G.R. No. L-29077, June 29, 1982, 114 SCRA 657.

[22] *Go v. Court of Appeals*, G.R. No. 128954, October 8, 1998, 297 SCRA 575.

[23] G.R. No. L-63559, May 30, 1986, 142 SCRA 171.

[24] Id. at 177-179.

[25] Rollo, pp. 42-43.

[26] Id. at 8-10.

[27] Id. at 182.

[28] Id. at 62.

[29] Presidential D.ecree No. 1486., Whereas Clause

[30] Section 4. Jurisdiction. – The Sandiganbayan shall have jurisdiction over:

(a) Violations of Republic Act No. 3019, as amended, otherwise, known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379;

(b) Crimes committed by public officers and employees including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and

(c) Other crimes or offenses committed by public officers or employees, including those employed in government-owned or controlled corporations, in relation to their office.

The jurisdiction herein conferred shall be original and exclusive if the offense charged is punishable by a penalty higher than prision correccional, or its equivalent, except as herein provided; in other offenses, it shall be concurrent with the regular courts.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees.

Where an accused is tried for any of the above offenses and the evidence is insufficient to establish the offense charged, he may nevertheless be convicted and sentenced for the offense proved, included in that which is charged.

Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall, at all times, be simultaneously instituted with, and jointly determined in the same proceeding by, the Sandiganbayan, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such action shall be recognized; Provided, however, that, in cases within the exclusive jurisdiction of the Sandiganbayan, where the civil action had therefore been filed separately with a regular court but judgment therein has not yet been rendered and the criminal case is hereafter filed with the Sandiganbayan, said civil action shall be transferred to the Sandiganbayan for consolidation and joint determination with the criminal action, otherwise, the criminal action may no longer be filed with the Sandiganbayan, its exclusive jurisdiction over the same notwithstanding, but may be filed and prosecuted only in the regular courts of competent jurisdiction; Provided, further, that, in cases within the concurrent jurisdiction of the Sandiganbayan and the regular courts, where either the criminal or civil action is first filed with the regular courts, the corresponding civil or criminal action, as the case may be, shall only be filed with the regular courts of competent jurisdiction.

Excepted from the foregoing provisions, during martial law, are criminal cases against officers and members of the armed forces in the active service.

[31] Republic Act No. 3019, Section. 1.

[32] *Id.*, Section. 10.

[33] *People v. Rivera*, 59 Phil. 236 (1933).

[34] *Commissioner of Internal Revenue v. TMX Sales*, G.R. No. 83736, January 15, 1992, 205 SCRA 184.

[35] *Aboitiz Shipping Corporation v. City of Cebu*, G.R. No. L-14526, March 31, 1965, 13 SCRA 449; *Lopez v. El Hogar Filipino*, 47 Phil. 249 (1925); *Chartered Bank v. Imperial*, 48 Phil. 931 (1921).

[36] *Loyola Grand Villas Homeowners (South) v. Court of Appeals*, G.R. No. 117188, August 7, 1997, 276 SCRA 681.

[37] G.R. Nos. 84637-39, August 2, 1989, 176 SCRA 57.

[38] G.R. Nos. 71163-65, November 9, 1990, 191 SCRA 252.

[39] G.R. No. 125296, July 20, 2006, 495 SCRA 452, 458-459.

[40] G.R. No. L-30057, January 31, 1984, 127 SCRA 231, 237-238.

[41] 430 Phil. 658 (G.R. No. 145368. April 12, 2002).

[42] Laurel v. Desierto, *id.* at 672-673, citing F.R. Mechem, A Treatise on the Law of Public Offices and Officers, §Sec. 1.

[43] G.R. No. 158187, February 11, 2005, 451 SCRA 187.

[44] Presidential Decree No. 1606, Sec. 4(A)(1)(g).

[45] Rollo, p. 63.

[46] Laurel v. Desierto, *supra* note 41, at G.R. No. 145268, April 12, 2003, 381 SCRA 48, 6879-6980.

[47] *Id.*

[48] *Id.* 430 Phil. 658, 672 (2002).

[49] University of the Philippines v. Court of Industrial Relations, 107 Phil. 848 (G.R. No. L-15416, April 28, 1960)..

[50] *Id.*

[51] Lacson v. Executive Secretary, G.R. No. 128096, January 20, 1999, 301 SCRA 298; Lim v. Rodrigo, G.R. No. L-76974, November 18, 1988, 167 SCRA 487.

[52] Commart (Phils.), Inc. v. Securities & Exchange Commission, G.R. No. 85318, June 3, 1991, 198 SCRA 73.

[53] *Id.*

[54] Rollo, p. 64.

[55] Adm. Case No. 1053, September 7, 1979, 93 SCRA 87.

[56] Rollo, p. 89.

[57] Far Eastern Shipping Company v. Court of Appeals, G.R. Nos. 130068 & 130150, October 1, 1998, 297 SCRA 30, 51-52; Albert v. Court of First Instance of Manila (Br. VI), G.R. No. L-26364, May 29, 1968, 23 SCRA 948.

[58] Chavez v. Viola, Adm. Case No. 2152, April 19, 1991, 196 SCRA 10.

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