



Republic of the Philippines  
Department of Finance  
**SECURITIES AND EXCHANGE COMMISSION**  
SEC Bldg. EDSA, Greenhills, Mandaluyong City

**OFFICE OF THE GENERAL COUNSEL**

November 6, 2008

**ATTY. AMADO M. SANTIAGO JR.**  
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Ortigas Avenue corner Meralco Avenue  
Pasig City 1605

**SEC-OGC Opinion No. 08-25**  
Corporate Officers Not Considered Employees

Dear Atty. Santiago Jr.,

We reply to your letter dated September 10, 2008 requesting confirmation of your opinion that the Policies and Implementing Guidelines on Retirement (Policies) of your client Maynilad Water Services, Inc. do not apply to its incumbent President who turned 60 years old in September of this year.

You stated that said Policies prescribe the age of 60 years as the compulsory retirement age for all employees, regardless of position or designation. It is your position that the president is not considered an employee, but an executive officer as the by-laws of the Corporation, particularly Article IV thereof, created, among others, the office of the president.

In support of your opinion, you cited the Supreme Court Decision entitled "**Ongkiko vs. National Labor Relations Commission**"<sup>1</sup>, which made a distinction between an executive officer and an employee, to wit:

"The president, vice-president, secretary and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, other offices are sometimes created by the charter or by-laws of a corporation, or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.

It has been held that an 'office' is created by the charter of the corporation and officer is elected by the directors or stockholders. On the other hand, an 'employee' usually occupies no office and generally is employed not by an action of the directors or stockholders but by the

<sup>1</sup> 270 SCRA 613 (1997).

(66)

managing officer of the corporation who also determines the compensation to be paid to such employee.”

You added that this pronouncement is a reiteration of our Opinion dated May 9, 1989 addressed to PEFTOK Integrated Services, Inc. wherein this Commission opined that the president of the corporation may continue to serve his term of office, in spite of having reached compulsory retirement age as prescribed in its retirement plan.

We confirm your position.

In determining the qualifications of the corporate officers, including the president who must be a member of the board of directors, reference must be made to the pertinent provisions of the law, particularly Sections 23, 25 and 27 of the Corporation Code of the Philippines (the Code), and the corporation’s by-laws. Indubitably, there is nothing in the afore-cited provisions of the Code and your client’s by-laws which prescribe an age limit for corporate officers.

Hence, Mr. Singson, despite his having reached the age of 60 years old, can continue with his term as president. He is not covered by the compulsory retirement age for employees. Settled is the rule that inference of limitations, prohibitions or disqualifications are frowned upon by courts. In general, they must be expressly provided for. Consequently, we opine that the provision on compulsory retirement age found in the Policies do not apply to the president, as he is an executive officer of the company and not an ordinary employee.

The foregoing opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission.

Very truly yours,



**VERNETTE G. UMALI-PACO**  
General Counsel