



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

7 July 2014

SEC-OGC Opinion No. 14-16
Re: SEC-OGC Opinion No. 08-11 on
Power of Corporations to Enter into
Guaranty & Suretyship Agreements

ATTY. RITCHEL B. CAPARAL-LLENA

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Madam:

This is in response to your letter dated 23 June 2011, requesting our opinion on the applicability of the Commission's previous opinion, SEC-OGC Opinion No. 08-11 (the Opinion),¹ to similar cases.

In the Opinion, the Commission stated that the general rule is that no corporation has the power, by any form of contract or endorsement, to become a guarantor or surety or otherwise lend its credit to another person or corporation. If there is nothing in its Articles of Incorporation which confers a corporation the power to enter into a contract of guarantee or suretyship, it is deemed that the corporation is not authorized to do so especially since such act could prove to be disadvantageous to the corporation. Entering into such contracts would be *ultra vires* which, according to the strict construction of the term, is an act not within the express, implied, and incidental powers of the corporation conferred by the Corporation Code or the articles of incorporation. It is an act which is not positively forbidden, but impliedly forbidden for lack of express or implied authority.

You also took note of the reminder of the Commission that the 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.

You then ask for our confirmation that the aforementioned opinion can be considered a precedent on cases similar to the subject of the letter of the addressee, Atty. Barot, despite the Commission's qualification. Specifically, you seek confirmation of the position that when the articles of incorporation of the corporate surety expressly provides that it can enter into surety agreement[s] to secure the obligations of other corporations or such is necessary or incidental to the exercise of powers so conferred, the surety agreement is valid, and conversely, that the surety agreement is not valid if such power is not provided in the articles of incorporation or such is not necessary or incidental to the exercise of powers so conferred.

¹ Dated 16 April 2008, addressed to Atty. Peter D.A. Barot.


Firstly, the opinions issued by the Commission cannot be considered precedents under the *stare decisis* principle. Opinions are not doctrinal decisions that command following. Rather, these are determinations on questions which are not yet subject of actual controversy, but which the Commission is competent to answer, as they involve the laws which are being implemented by, and circumstances which are under the jurisdiction of the Commission. These opinions reflect the tenor of the Commission's interpretation of the laws that it is tasked to enforce. It bears stressing that interpretations of administrative agencies in charge of enforcing a law are entitled to great weight and consideration by the courts, unless such interpretations are in sharp conflict with the governing statute or the Constitution and other laws.² It is persuasive and accorded with much respect, but not finality.³ While not binding upon the Commission, the reasoning invoked or used therein may be adopted by the Commission in its future decisions or opinions. **Of course, the facts and circumstances of the cases or queries in the future must fall squarely and be similarly situated in order that the same ruling and reasoning of the previous opinion may be applicable.** Moreover, the Commission warns that, if, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, the opinion shall be rendered void.

With regard to confirming your presented position, it is worth stressing that the conclusions of the Commission in the Opinion do not refer to the validity of surety agreements. In fact, the Commission does not answer questions which determine the validity of contracts since interpretation thereof is a justiciable question.⁴ To reiterate, what is enunciated therein is the general rule that no corporation has the power, by any form of contract or endorsement, to become a guarantor or surety, or otherwise lend its credit to another person or corporation. This power may only be exercised if it is expressly granted under its Articles of Incorporation. Otherwise, entering into such contract is an *ultra vires* act of the corporation.

To conclude, if the facts and circumstances of a case fall squarely within the attendant facts and circumstances present in the Opinion, then the conclusions will apply as well.

Again, please be reminded that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether of similar or dissimilar circumstances.⁵ Please be guided accordingly.

Very truly yours,


Camilo S. Correa
General Counsel

/MPB

² Dumaguete Cathedral Credit Cooperative vs. Commissioner of Internal Revenue, G.R. No. 182722, 22 January 2010.

³ Cruz, Philippine Administrative Law, p. 30 (1994).

⁴ SEC Memorandum Circular No. 15, Series of 2003.

⁵ Ibid.