



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

SEC Opinion No. 15-08  
27 July 2015  
**Re: Political Contributions by  
Corporations**

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Sir:

This refers to your letter dated 04 May 2015 requesting for an advisory opinion from the Commission on the legality of a corporation granting political contributions to a candidate for public office.

The main questions raised in your letter may be stated as follows, to wit:

1. Did Section 95 of B.P. Blg. 881 or "The Omnibus Election Code of the Philippines" (Omnibus Election Code)<sup>1</sup>, which enumerates the juridical entities that are prohibited from making political contributions, amend or repeal the more general prohibition provided in Section 36(9) of B.P. Blg. 68, "The Corporation Code of the Philippines" (Corporation Code)?
2. Is your client-corporation, as described in your letter, considered a foreign corporation for purposes of determining whether it is included in the prohibition under the Omnibus Election Code?

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<sup>1</sup> Sec. 95. Prohibited contributions. - No contribution for purposes of partisan political activity shall be made directly or indirectly by any of the following:

- (a) Public or private financial institutions: Provided, however, That nothing herein shall prevent the making of any loan to a candidate or political party by any such public or private financial institutions legally in the business of lending money, and that the loan is made in accordance with laws and regulations and in the ordinary course of business;
- (b) Natural and juridical persons operating a public utility or in possession of or exploiting any natural resources of the nation;
- (c) Natural and juridical persons who hold contracts or sub-contracts to supply the government or any of its divisions, subdivisions or instrumentalities, with goods or services or to perform construction or other works;
- (d) Natural and juridical persons who have been granted franchises, incentives, exemptions, allocations or similar privileges or concessions by the government or any of its divisions, subdivisions or instrumentalities, including government-owned or controlled corporations;
- (e) Natural and juridical persons who, within one year prior to the date of the election, have been granted loans or other accommodations in excess of P100,000 by the government or any of its divisions, subdivisions or instrumentalities including government-owned or controlled corporations;
- (f) Educational institutions which have received grants of public funds amounting to no less than P100,000.00;
- (g) Officials or employees in the Civil Service, or members of the Armed Forces of the Philippines; and
- (h) Foreigners and foreign corporations.xxx

As regards the first query, it should be noted that under Section 36(9)<sup>2</sup> of the Corporation Code, there is an absolute prohibition for corporations, both foreign and domestic, from giving donations to any political party, candidate or for the purpose of any partisan political activity.

On the other hand, Section 95 of the Omnibus Election Code provides an enumeration of natural and juridical persons, including corporations, who, because of benefits, privileges, license or franchise received from government, are prohibited from making contributions, directly or indirectly, for purposes of partisan political activity.

The Commission is of the opinion that Section 95 of the Omnibus Election Code neither amended nor repealed, whether expressly or impliedly, Section 36(9) of the Corporation Code.

To note, an “amendment” is defined as “the change or modification, by addition, deletion, or alteration, of a statute which survives in its amended form.”<sup>3</sup> There are two types of amendment – express and implied. “Express amendment is done by providing in the amendatory act that specific sections or provisions of a statute are amended as recited therein.”<sup>4</sup> There is an implied amendment “[w]here a part of a prior statute embracing the same subject as the later act may not be enforced without nullifying the pertinent provision of the latter, in which event, the prior act is deemed amended or modified to the extent of repugnancy.”<sup>5</sup> Stated differently, for there to be an implied amendment, there must be a level of repugnancy such that implementation and enforcement of the new statute will be impossible if the prior statute is still deemed effective.

On the other hand, there is a repeal of a statute or part thereof when the whole or specific portions of the said statute have been rendered revoked. As in amendment, repeal may be express or implied. Similar to an express amendment, for there to be an express repeal, a declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number of (sic) title, is repealed.<sup>6</sup> As for a repeal by implication or an implied repeal, there should be a sufficient indication of the legislative intent to repeal, the intention to repeal must be clear and manifest before the same is considered effective.

Applying the concepts discussed above, it is apparent that there has been no amendment or repeal, whether express or implied, of Section 36(9) of the Corporation Code by the enactment of the Omnibus Election Code, particularly, Section 95.

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<sup>2</sup>Section 36 (9) *Corporate Powers and Capacity*. – Every corporation incorporated under this Code has the power and capacity:

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(9) To make reasonable donations, including those for the public welfare or for hospital, charitable, cultural, scientific, civic, or similar purposes: Provided, That no corporation, domestic or foreign, shall give donations in aid of any political party or candidate or for purposes of partisan political activity;xxx

<sup>3</sup>Agpalo (2003), *Statutory Construction*, pp. 387.

<sup>4</sup>*Estrada vs. Caeda*, 84 Phil. 791 (1949) as cited in *Supra* note 2.

<sup>5</sup>*Supra* note 2.

<sup>6</sup>*Mecano v. Commission on Audit*, 216 SCRA 500 (1992).

First, there is no provision in the Omnibus Election Code that specifically provides for the amendment of Section 36(9) of the Corporation Code. Thus, it can be said that the Omnibus Election Code did not expressly amend the Corporation Code.

Second, the repealing clause of the Omnibus Election Code states as follows:

“Section 282. Repealing Clause. Presidential Decree No. 1296, otherwise known as The 1978 Election Code, as amended, is hereby repealed. All other election laws, decrees, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Code are hereby repealed, except Presidential Decree No. 1618 and Batas Pambansa Blg. 20 governing the election of members of the Sangguniang Pampook of Regions IX and XII.”

Since the repealing clause does not indicate the Corporation Code or any part thereof, it is plain that Section 282 of the Omnibus Election Code does not expressly repeal Section 36(9) of the Corporation Code.

Neither has there been an implied amendment or implied repeal of Section 36(9) of the Corporation Code. To note, an amendment or repeal by implication is neither presumed nor favored. Absent any showing of the intention of the legislature to amend or repeal Section 36(9) of the Corporation Code through Section 95 of the Omnibus Election Code, or that the two are inconsistent with each other such that effective implementation of the latter law is impossible while the former still exists, there is no amendment or repeal by implication.

At this juncture, instructive is the pronouncement in *Valera vs. Tuason*<sup>7</sup>, wherein the Court stated that “one of the well-established rules of statutory construction enjoins that endeavor should be made to harmonize the provisions of a law or two laws so that each shall be effective.” Further, “every statute should be harmonized with other laws on the same subject, in the absence of a clear inconsistency between them.”<sup>8</sup>

A reading of Section 36(9) of the Corporation Code and Section 95 of the Omnibus Election Code does not lead to the conclusion that they are in any way inconsistent or repugnant to each other rendering the former unenforceable. The Commission is of the opinion that there is no conflict in the two provisions of the laws under discussion and that both can be harmonized and be given effect insofar as the **Corporation Code provides a prohibition specifically applicable to corporations making political contributions while the Omnibus Election Code imposes the same prohibition on all natural or juridical persons falling under specific categories enumerated.** At first glance, the enumeration in Section 95 of the Omnibus Election Code gives the impression that the prohibition applies only to the entities listed therein, and, conversely, all other entities not specifically included are permitted to give contributions for the purpose of partisan political activities. However, if we are to harmonize and give effect to both laws, it is prudent to uphold the absolute prohibition on donations to any candidate or political party or for purposes of partisan political activity by any and all corporations.

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<sup>7</sup>G.R. No. L-1276, April 30, 1948.

<sup>8</sup>People v. Olarte, 108 Phil. 756 (1960).

If we are to construe the provisions in the two laws in an effort to harmonize them, Section 95 of the Omnibus Election Code should be appreciated as an amplification of the absolute prohibition contained in the Corporation Code and is actually illustrative of some specific circumstances of the evil sought to be avoided in both the Corporation Code and the Omnibus Election Code. Further, while the Corporation Code is a blanket prohibition over all corporations without regard to any classification, the Omnibus Election Code is industry and activity specific, taking into consideration the amount of influence the prohibited entity can exercise over the government. The fines and penalties provided also differ for the two laws. Be that as it may, these differences do not clash with each other to the point that one is a bar to the enforcement and effectivity of the other. If anything the presence of these two laws, especially as they affect corporations, serve as a more effective deterrent for corporations planning to make contributions for partisan political activities.

To reiterate, there can be no implied amendment or repeal unless there is a clear and manifest showing of the legislative intent to amend or repeal a statute by implication or there is inconsistency or repugnance between the subject statutes.

In this connection, it may be argued that in the repealing clause of the Omnibus Election Code, the legislative intent is to repeal all election laws inconsistent with the Omnibus Election Code. In this regard, may Section 36(9) of the Corporation Code providing a restriction against corporations making political contributions be considered an election law, insofar as the said provision affects the financing of election activities and can, therefore, be subject to an implied repeal by the Omnibus Election Code in case of repugnance with the latter legislation?

“Election” is defined as “the means by which the people choose their officials for definite and fixed periods and to whom they entrust, for the time being as their representatives, the exercise of powers of governments; it involves the choice of election of candidates to public office by popular vote.”<sup>9</sup> Election law, on the other hand, are laws which regulate who votes, when and how they vote, for whom they can vote, how campaigns are conducted, and how votes are recorded, counted and allocated.

Section 36 of the Corporation Code is a provision which enumerates the express powers of a corporation, one of which, in Section 36(9), is the ability of a corporation to make donations with the prohibition that the said donation or contribution is not in furtherance of any partisan political activity. This provision does not directly affect the exercise of the right to vote or to be elected, the manner in which political campaigns should be conducted or how votes shall be tallied.

Hence, Section 36(9) of the Corporation Code, not being an election law, may not be subject of an implied repeal by the Omnibus Election Code. Further, for purposes of discussion, even if Section 36(9) was considered an election law, the same, not being inconsistent or repugnant to the Omnibus Election Law, will still not be impliedly repealed by the latter and will remain effective.

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<sup>9</sup> De Leon (2011), *The Law on Public Officers and Election Law*, pp. 519.

As regards the second query, it is important to note that Section 36(9) of the Corporation Code, imposes an **absolute prohibition for corporations, both foreign and domestic, from giving political donations** to any political party, candidate or for the purpose of any partisan political activity. Hence, under the Corporation Code, nationality of a corporation is of no moment in determining applicability of the prohibition as all corporations, regardless of percentage of foreign ownership or participation, are forbidden to make any kind of donation for partisan political activity.

From the foregoing, Section 36(9) of the Corporation Code has not been amended or repealed by Section 95 of the Omnibus Election Code.

In this regard, the determination of whether or not your client-corporation is a domestic corporation or a foreign corporation is immaterial in relation to its ability to make political contributions.

It shall be understood, however, 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 courts whether of similar or dissimilar circumstances. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

By Authority of the Commission En Banc:

  
CAMILO S. CORREA  
General Counsel

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