[ADMINISTRATIVE ORDER NO. 97, November 23, 1999]

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE ON VIGOR D. MENDOZA II, BOARD MEMBER, LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS

This resolves the complaint filed with the Presidential Commission Against Graft and Corruption ("PCAGC" or "Commission") on November 3, 1998, by one Isagani C. Reyes, charging Vigor D. Mendoza II, a board member of the Land Transportation Franchising and Regulatory Board (LTFRB) and at that time its Officer-in-Charge, with violation of Section 3(a), Republic Act (R.A.) No. 3019, as amended, and Section 4(c), R.A. No. 6713, for issuing a memorandum dated October 29, 1998, under his sole signature, ordering the respective heads of the Technical and Legal Divisions, LTFRB, to receive all PUB applications for Certificate of Public Convenience (CPC) for routes entering Metro Manila and to set for hearing all pending cases, contrary to the Board's existing moratorium policy thereon.

Finding sufficient basis to commence an administrative investigation against respondent, the PCAGC issued an order dated November 11, 1998, requiring him to file his answer/counter-affidavit.

On December 29, 1998, respondent filed his counter-affidavit averring the following:

> 1. The Memorandum in question is merely an internal office order directed to the Board's Legal and Technical Evaluation Divisions. It merely formalizes a practice which is already being done even before he sat in office.
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> 2. There has been no amendment to the moratorium policy. It is very much in place and effective. The questioned memorandum merely levels the playing field and establishes equality in the treatment of applications. (P. 25, Records)
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> 3. After over a month in office, he noticed that some applications for provincial bus routes entering Metro Manila have been treated differently. There were some that were refused acceptance, others were accepted but hearing was suspended, while others were heard and eventually decided. All these were done despite the effectivity of the moratorium policy. (*Ibid*.)
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> 4. In order to establish transparency in the handling of these cases and to afford all applicants the basic right of due process and equal protection, he issued the questioned Memorandum. (*Ibid*.)
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> 5. Considering that the Board has in effect amended its policy by accepting, hearing and at times granting CPCs for certain cases, the

Memorandum merely formalizes this practice. (*Ibid*.)

6. In summary, being an internal office order, it was sell within respondent's authority, as OIC, to issue the questioned Memorandum. It was not violative of any LTFRB or DOTC policy or circular as it never opened any provincial route nor did it lift the moratorium policy in Metro Manila. It merely formalized an ongoing practice and enforced the constitutional rights of the applicants, whether big or small operators, to due process and equal protection which can never be subservient to any circular. It is not irregular nor illegal as the practice of the Chairperson signing Office Orders by themselves have long been in place and unquestioned. (P. 26, Records)

7. The questioned office order cannot be said to be advantageous to anyone as no one was given a CPC by virtue of the order. It only gave everybody the opportunity to be heard on the issue of the applicability of moratorium policy to their respective cases. Once the explanation is unjustified, however, the proceeding of the case are suspended. (*Ibid*.)

In its report, styled "Resolution", the PCAGC stated as follows:

"The only issue in this case is whether or not the act of respondent in issuing the memorandum in question, referred to as Memo hereafter, violated RA No. 3019, as amended and RA No. 6713.

"Excepted from the coverage thereof were (a) applications for extensions of validity for valid and subsisting CPCs; (b) applications for approval of the sales and transfers of valid and subsisting CPCs; (c) applications for CPCs on bus routes in Metro Manila other than EDSA or any portion thereof determined by the DOTC, LTFRB and the MMDA as still deficient in transport services and not traffic congested or adversely affected by ongoing traffic rationalization policies, projects and measures. (P. 6, Records)

"Subsequently, in its . . . (MC) No. 97-009 dated August 6, 1998, the LTFRB reimposed the aforecited moratorium 'on the acceptance, processing and resolution of all applications, including those pending, for certificates of public convenience for the operation of buses in Metro Manila and on provincial routes whether entering Metro Manila or terminating outside the periphery of the metropolis, given the fact that those issued CPCs terminating outside Metro Manila have been entering Metro Manila as far as Cubao and other points inside Metro Manila and also the difficulty of monitoring their operations to insure compliance with the terms and conditions of their franchises.' It was also provided therein that the exceptions under MC-No. 95-013 shall remain. (Pp. 7 and 8, Records).

"The two (2) issuances involving policy matter were signed by Board Chairman Dante M. Lantin and Board Member Nabor C. Gaviola (MC No. 95-013) and by all three Board Members (MC No. 97-009), the Board being a collegial body.

"As respondent admitted in his counter-affidavit, there has been no amendment to the moratorium policy of the Board under Memorandum