

EN BANC

[G.R. No. 212584, November 25, 2014]

**ALROBEN J. GOH, PETITIONER, VS. HON. LUCILO R. BAYRON
AND COMMISSION ON ELECTIONS, RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This case is a Petition for *Certiorari*^[1] with prayer for the issuance of a preliminary mandatory injunction filed by Alroben J. Goh (Goh) assailing Resolution Nos. 9864 and 9882 issued by the Commission on Elections (COMELEC).

Resolution No. 9864,^[2] promulgated on 1 April 2014, affirmed the recommendation of the Office of the Deputy Executive Director (ODEDO). The ODEDO found the petition seeking the recall (recall petition) of Mayor Lucilo R. Bayron (Mayor Bayron), the incumbent mayor of Puerto Princesa City, sufficient in form and substance. However, Resolution No. 9864 suspended all proceedings under the recall petition because the Financial Services Department (FSD) of the COMELEC raised an issue as to the funding of the entire process of recall. The COMELEC Chairman and all COMELEC Commissioners^[3] signed Resolution No. 9864 without any separate opinion.

Resolution No. 9882,^[4] promulgated on 27 May 2014, suspended any proceeding relative to recall as the recall process, as stated in said Resolution, does not have an appropriation in the General Appropriations Act of 2014 (2014 GAA)^[5] and the 2014 GAA does not provide the COMELEC with legal authority to commit public funds for the recall process. Unlike Resolution No. 9864, five COMELEC Commissioners signed Resolution No. 9882 with a comment or a separate opinion.^[6]

The Facts

On 17 March 2014, Goh filed before the COMELEC a recall petition, docketed as SPA EM No. 14-004 (RCL),^[7] against Mayor Bayron due to loss of trust and confidence brought about by "gross violation of pertinent provisions of the Anti-Graft and Corrupt Practices Act, gross violation of pertinent provisions of the Code of Conduct and Ethical Standards for Public Officials, Incompetence, and other related gross inexcusable negligence/dereliction of duty, intellectual dishonesty and emotional immaturity as Mayor of Puerto Princesa City."

On 1 April 2014, the COMELEC promulgated Resolution No. 9864. Resolution No. 9864 found the recall petition sufficient in form and substance, but suspended the

funding of any and all recall elections until the resolution of the funding issue. We reproduce the text of Resolution No. 9864 below:

WHEREAS, the Commission is mandated to enforce all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall;

WHEREAS, a petition for the recall of Mayor Lucilo Bayron of Puerto Princesa City, Palawan, is pending before this Commission, and has been reviewed by the [ODEDO] and submitted to the *en banc* through a Memorandum dated 24 March 2014, to wit:

After review of the reports/findings of EO Gapulao, the ODEDO recommends to the Commission the issuance of a Resolution certifying to the SUFFICIENCY of the petition for recall of Mayor Lucilo R. Baron [sic] of Puerto Princesa City, Palawan.

WHEREAS, Section 75 of the Local Government Code (LGC) of 1991 provides for the source of funding for the conduct of recall elections, to wit:

Section 75. Expenses Incident to Recall Elections. – All expenses incidental to recall elections shall be borne by the COMELEC. For this purpose, there shall be included in the annual General Appropriations Act a contingency fund at the disposal of the COMELEC for the conduct of recall elections.

WHEREAS, Section 31 of COMELEC Resolution No. 7505 decrees that all expenses incident to recall elections shall be borne by the Commission, pursuant to Section 75 of the LGC.

WHEREAS, a Memorandum from the Finance Services Department dated 24 March 2014 raised an issue as to the funding of the *entire* process of recall;

NOW THEREFORE, the Commission on Elections, by virtue of the powers vested in it by the Constitution, the Local Government Code, as amended, the Omnibus Election Code, Republic Act No. 9244, and other elections laws, RESOLVED, as it hereby RESOLVES, to AFFIRM the recommendation of the ODEDO as to the SUFFICIENCY of the Recall Petition filed against Mayor Lucilo R. Bayron of Puerto Princesa City, Palawan.

RESOLVED FURTHER, considering that the FSD has raised an issue as to the funding of any and all recall elections, any proceeding in furtherance thereof, *including the verification process*, is hereby SUSPENDED until the funding issue shall have been resolved.

SO ORDERED.^[8]

On 28 April 2014, Mayor Bayron filed with the COMELEC an Omnibus Motion for Reconsideration and for Clarification^[9] which prayed for the dismissal of the recall petition for lack of merit.

On 19 May 2014, Goh filed a Comment/Opposition (To the 27 April 2014 Omnibus Motion for Reconsideration and for Clarification) with Motion to Lift Suspension^[10] which prayed for the COMELEC's denial of Mayor Bayron's 27 April 2014 Omnibus Motion, as well as to direct COMELEC's authorized representative to immediately carry out the publication of the recall petition against Mayor Bayron, the verification process, and the recall election of Mayor Bayron.

On 27 May 2014, COMELEC promulgated Resolution No. 9882, as follows:

This refers to the petition for recall against Mayor Lucilo Bayron of the City of Puerto Princesa, Province of Palawan. In Resolution No. 9864, while the Commission *en banc* affirmed the recommendation of the Office of the Deputy Executive Director for Operations (ODEDO) as to the sufficiency of the Recall Petition, it suspended further proceedings on recall until the funding issue raised by the Finance Services Department shall have been resolved.

The power of recall for loss of confidence is exercised by the registered voters of a local government unit to which the local elective official subject to such recall belongs [Footnote 1 - Sec. 69 of the Local Government Code]. The exercise of this power is subject to the following limitations provided for by law: (a) any elective local official may be the subject of a recall election only once during his term of office for loss of confidence; and (b) [n]o recall shall take place within one (1) year from the date of the official's assumption to office or one (1) year immediately preceding a regular election [Footnote 2 - Section 74 of the Local Government Code]. Because of the cost implications involved, the achievability of pursuing a recall proceeding to its conclusion will depend on the availability of funds at the disposal of the Commission on Elections (the Commission).

The conduct of recall is one of several constitutional mandates of the Commission. Unfortunately, it cannot now proceed with the conduct of recall elections as it does not have an appropriation or legal authority to commit public funds for the purpose.

I. All expenses incident to Recall elections shall be for the account of the Commission.

It is important to note that the Local Government Code (LGC) specifically provides for the expenses in the conduct of recall elections, to wit:

"SECTION 75. *Expenses Incident to Recall Elections.* - All expenses incident to recall elections shall be borne by the COMELEC. For this purpose, there shall be included in the annual General Appropriations Act a contingency fund at the disposal of the COMELEC for the conduct of recall election."

Hence, the Commission is mandated to shoulder ALL expenses relative to the conduct of recall elections. Expenses in recall elections, unlike the

other exercises mandated by the [C]onstitution to be administered by the Commission, is specifically treated in a special law - the LGC. Section 75 of the LGC likewise requires the annual General Appropriations Act (GAA) to include a contingency fund at the disposal of the Commission for the conduct of recall elections. This leads us to the crucial question: does the 2014 GAA [Footnote 3 - Republic Act No. 10633] include such contingency fund in the Commission's appropriations?

II. The Commission does not have an appropriation or line item budget to serve as a contingency fund for the conduct of recall elections under the 2014 GAA.

A careful review of the Commission's budget under the 2014 GAA reveals that it does not have any appropriation or line item budget (line item) to serve as a contingency fund for the conduct of recall elections. While **the Commission has a line item for the "Conduct and supervision of elections, referenda, recall votes and plebiscites" under the Program category of its 2014 budget in the amount of Php1,401,501,000.00**, the said amount cannot be considered as "an appropriation made by law" as required by the Constitution [Footnote 4 - Art. VI, Section 29 (1)] nor a contingent fund provided under the LGC considering that the said line item is legally intended to finance the basic continuing staff support and administrative operations of the Commission such as salaries of officials and employees as well as essential office maintenance and other operating expenses. As such, it cannot be used for the actual conduct of recall elections.

Under the Revised Administrative Code, an appropriation may be used only for the specific purpose for which they are appropriated, to wit:

"SECTION 32. Use of Appropriated Funds. - All moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purposes for which these are appropriated."

In prior years, including election years such as 2007, 2010 and 2013, the Commission had a line item for the "Conduct and Supervision of Elections and other Political Exercises" under the Program category of its budget. However, the said line item was never utilized for the actual conduct of any elections or other political exercises including recall elections. Again, the said line item has been consistently spent for the basic continuing staff support and administrative operations of the Commission. This is because on top of the line item for the "Conduct and Supervision of Elections and other Political Exercises" under the Program category, separate line items were provided by Congress for the conduct of the "National and Local Elections," "SK and Barangay Elections" as well as "Overseas Absentee Voting" under the Locally Funded Projects (Project) category of the Commission's 2007, 2010 and 2013 budget, to wit:

Year/GAA	Item	Amount	Item Budget	Amount
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	Budget under Program		under Projects	
2007	Conduct and Supervision of Elections and Other Political Exercises	P957,294,000	National and Local Elections	P5,128,969,000
			SK and Barangay Elections	P2,130,969,000
			Overseas Absentee Voting	P238,421,000
2010	Conduct and Supervision of Elections and Other Political Exercises	P1,101,072,000	Automated National and Local Elections	P5,216,536,000
			SK and Barangay Elections	P3,241,535,000
			Overseas Absentee Voting	P188,086,000
2013	Conduct and Supervision of Elections and Other Political Exercises	P1,452,752,000	Synchronized National, Local and ARMM Elections	P4,585,314,000
			SK and Barangay Elections	P1,175,098,000
			Overseas Absentee Voting	P105,036,000

Thus, all expenses relative to the actual conduct of elections were charged against the specific line items for "*National and Local Elections*," "*SK and Barangay Elections*" and "*Overseas Absentee Voting*" under the Locally Funded Projects category and not against the separate line item for the "*Conduct and Supervision of Elections and other Political Exercises*" under the Program category.

This brings us to the relevance of classifying an agency's budget into two major categories - Programs and Projects. Their definitions are found in the 2014 Budget of Expenditures and Sources of Financing (BESF) submitted by the President to Congress as required by the Constitution [Footnote 5 - Article VII, Sec. 22]. In the Glossary of Terms attached to the 2014 BESF, a "Program" [Footnote 6 - Page 1015] is defined as "*a homogenous group of activities necessary for the performance of a major purpose for which a government agency is established, for the basic maintenance of the agency's administrative operations or for the provisions of staff support to agency's administrative operations or for the provisions of staff support to the agency's line functions.*" On the