

EN BANC

[G.R. No. 141386, November 29, 2001]

**THE COMMISSION ON AUDIT OF THE PROVINCE OF CEBU,
REPRESENTED BY PROVINCIAL AUDITOR ROY L. URSAL,
PETITIONER, VS. PROVINCE OF CEBU, REPRESENTED BY
GOVERNOR PABLO P. GARCIA, RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

May the salaries and personnel-related benefits of public school teachers appointed by local chief executives in connection with the establishment and maintenance of extension classes; as well as the expenses for college scholarship grants, be charged to the Special Education Fund (SEF) of the local government unit concerned?

The instant petition for review, which raises a pure question of law, seeks to annul and set aside the decision^[1] of the Regional Trial Court of Cebu, Branch 20, in a petition for declaratory relief, docketed as Civil Case No. CEB-24422.

The provincial governor of the province of Cebu, as chairman of the local school board, under Section 98 of the Local Government Code, appointed classroom teachers who have no items in the DECS plantilla to handle extension classes that would accommodate students in the public schools.

In the audit of accounts conducted by the Commission on Audit (COA) of the Province of Cebu, for the period January to June 1998, it appeared that the salaries and personnel-related benefits of the teachers appointed by the province for the extension classes were charged against the provincial SEF. Likewise charged to the SEF were the college scholarship grants of the province. Consequently, the COA issued Notices of Suspension to the province of Cebu,^[2] saying that disbursements for the salaries of teachers and scholarship grants are not chargeable to the provincial SEF.

Faced with the Notices of Suspension issued by the COA, the province of Cebu, represented by its governor, filed a petition for declaratory relief with the trial court.

On December 13, 1999, the court *a quo* rendered a decision declaring the questioned expenses as authorized expenditures of the SEF. The dispositive portion thereof reads:

WHEREFORE, in view of all the foregoing premises considered, judgment is hereby rendered giving due course to this instant petition for declaratory relief declaring and confirming that petitioner is vested with the authority to disburse the proceeds from the Special Educational Fund

[SEF] for the payment of salaries, allowances or honoraria for teachers and non-teaching personnel in the public schools in the Province of Cebu and its component cities, and, municipalities, as well as the expenses for scholarship grants of petitioners specially to poor but deserving students therein.

Declaring, further, respondent's audit findings on pages 36 and 37 in the Annual Audit Report on the Province of Cebu for the year ending December 31, 1999 as null and void.^[3]

Hence, the instant petition by the Commission on Audit.

The Special Education Fund was created by virtue of R. A. No. 5447, which is An act creating a special education fund to be constituted from the proceeds of an additional real property tax and a certain portion of the taxes on Virginia-type cigarettes and duties on imported leaf tobacco, defining the activities to be financed, creating school boards for the purpose, and appropriating funds therefrom, which took effect on January 1, 1969. Pursuant thereto, P.D. No. 464, also known as the Real Property Tax Code of the Philippines, imposed an annual tax of 1% on real property which shall accrue to the SEF.^[4]

Under R. A. No. 5447, the SEF may be expended exclusively for the following activities of the DECS

- (a) **the organization and operation of such number of extension classes as may be needed to accommodate all children of school age desiring to enter Grade I, including the creation of positions of classroom teachers, head teachers and principals for such extension classes** x x x;
- (b) the programming of the construction and repair of elementary school buildings, acquisition of sites, and the construction and repair of workshops and similar buildings and accessories thereof to house laboratory, technical and similar equipment and apparatus needed by public schools offering practical arts, home economics and vocational courses, giving priority to elementary schools on the basis of the actual needs and total requirements of the country x x x;
- (c) **the payment and adjustment of salaries of public school teachers under and by virtue of Republic Act Numbered Five Thousand One Hundred Sixty-Eight and all the benefits in favor of public school teachers provided under Republic Act Numbered Four Thousand Six Hundred Seventy;**
- (d) preparation, printing and/or purchase of textbooks, teacher's guides, forms and pamphlets x x x;
- (e) the purchase and/or improvement, repair and refurbishing of machinery, laboratory, technical and similar equipment and apparatus, including spare parts needed by the Bureau of

Vocational Education and secondary schools offering vocational courses;

- (f) the establishment of printing plant to be used exclusively for the printing needs of the Department of Education and the improvement of regional printing plants in the vocational schools;
- (g) the purchase of teaching materials such as work books, atlases, flip charts, science and mathematics teaching aids, and simple laboratory devices for elementary and secondary classes;
- (h) the implementation of the existing program for citizenship development in barrio high schools, folk schools and adult education classes;
- (i) the undertaking of education research, including that of the Board of National Education;
- (j) **the granting of government scholarships to poor but deserving students under Republic Act Numbered Four Thousand Ninety; and**
- (k) the promotion of physical education, such as athletic meets. (Emphasis supplied)

With the effectivity of the Local Government Code of 1991, petitioner contends that R.A. No. 5447 was repealed, leaving Sections 235, 272 and 100 (c) of the Code to govern the disposition of the SEF, to wit:

SEC. 235. Additional Levy on Real Property for the Special Education Fund (SEF). - A province or city or a municipality within the Metropolitan Manila Area, may levy and collect an annual tax of one percent (1%) on the assessed value of real property which shall be in addition to the basic real property tax. The proceeds thereof shall exclusively accrue to the Special Education Fund (SEF).

SEC. 272. Application of Proceeds of the Additional One Percent SEF Tax. - The proceeds from the additional one percent (1%) tax on real property accruing to the SEF shall be automatically released to the local school boards: Provided, That, in case of provinces, the proceeds shall be divided equally between the provincial and municipal school boards: **Provided, however, That the proceeds shall be allocated for the operation and maintenance of public schools, construction and repair of school buildings, facilities and equipment, educational research, purchase of books and periodicals, and sports development as determined and approved by the local school board.** (Emphasis supplied)

SEC. 100. Meeting and Quorum; Budget

(c) The annual school board budget shall give priority to the following:

(1) Construction, repair, and maintenance of school buildings and other facilities of public elementary and secondary schools;

(2) Establishment and maintenance of extension classes where necessary; and

(3) Sports activities at the division, district, municipal, and barangay levels. (Emphasis supplied)

Invoking the legal maxim "*expressio unius es exclusio alterius*," petitioner alleges that since salaries, personnel-related benefits and scholarship grants are not among those authorized as lawful expenditures of the SEF under the Local Government Code, they should be deemed excluded therefrom.

Moreover, petitioner claims that since what is allowed for local school boards to determine under Section 99^[5] of the Local Government Code is only the "annual **supplementary** budgetary needs for the operation and maintenance of public schools," as well as the "**supplementary** local cost to meet such needs," the budget of the local school boards for the establishment and maintenance of extension classes should be construed to refer only to the upkeep and maintenance of public school buildings, facilities and similar expenses other than personnel-related benefits. This is because, petitioner argued, the maintenance and operation of public schools pertain principally to the DECS.

The contentions are without merit. It is a basic precept in statutory construction that the intent of the legislature is the controlling factor in the interpretation of a statute.

^[6] In this connection, the following portions of the deliberations of the Senate on the second reading of the Local Government Code on July 30, 1990 are significant:

Senator Guingona. Mr. President.

The President. Senator Guingona is recognized.

Senator Guingona. Just for clarification, Mr. President. In this transfer, will it include everything eventually -- lock, stock and barrel, including curriculum?

Senator Pimentel. Mr. President, our stand in the Committee is to respect the decision of the National Government in terms of curriculum.

Senator Guingona. But, supposing the Local Education Board wishes to adopt a certain curriculum for that particular region?

Senator Pimentel. Mr. President, pursuant to the wording of the proposed transfer of this elementary school system to local government units, what are specifically covered here are merely the construction, repair, and maintenance of elementary school buildings and other structures connected with public elementary school education, **payment of salaries, emoluments, allowances et cetera**, procurement of books, other teaching materials and equipment needed for the proper