



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
OFFICE OF THE GENERAL COUNSEL

16 February 2021

SEC-OGC Opinion No. 21-02

Re: Nationality Rules; Public
Utility or Mass Media

**ROMULO MABANTA BUENAVENTURA SAYOC & DE LOS
ANGELES**

21st Floor, Philam Life Tower
8767 Paseo De Roxas
Makati City, Philippines

Attention: ATTY. KATRINA MONICA C. GAW

Dear Atty. Gaw:

This refers to your letter requesting for an opinion on whether a corporation which establishes, operates, maintains and/or manages commercial radio and television broadcasting station is a public utility or a mass media entity.

In your letter, you stated that the corporation in which your client is interested in investing is engaged in establishing, operating, maintaining, and/ or managing commercial radio and television broadcasting stations. You also mentioned that while commercial radio and television broadcasting stations help to deliver information to the public, they do not produce the messages disseminated, nor do they dictate what the message will state. Further, from your distinction of public utility and mass media entity, it is your view that a corporation which establishes, operates, maintains and/or manages commercial radio and television broadcasting stations is an operator of public utility.

Section 11, Article XVI of the 1987 Constitution provides:

“(1) The ownership and management of **mass media** shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

The term “mass media” refers to any medium of communication designed to reach the masses and that tends to set

the standards, ideals and aims of the masses.¹In addition, the term "mass media" shall mean the gathering, transmission of news, information, messages, signals, and forms of written, oral and all visual communications and shall embrace the print medium, radio, television, film, movies, wire and radio communication services. The distinctive feature of any mass media undertaking is the dissemination of information and ideas to the public, or a portion thereof. The citizenship requirement is intended to prevent the use of such facility by aliens to influence public opinion to the detriment of the best interests of the nation.²

The term "mass media" is also found in the Rules and Regulations ("RR") for Mass Media in the Philippines adopted by the Media Advisory Council. According to said RR, the term "mass media" embraces means of communication that reach and influence large numbers of people including print media (especially newspapers, periodicals and popular magazines) **radio, television, and movies, and involved the gathering, transmission and distribution of news, information, messages, signals and all forms of written, oral and visual communications.**³

In *SEC-OGC Opinion No. 18-22 dated November 28, 2018*, the Commission opined that **"the activities of live productions, short and full-length television shows and movies, and direct to audience, all constitute the dissemination of information and ideas to the public, and tend to influence the public's standards, ideals, aims and opinion."**⁴

Construed in light of the above-quoted definition of "mass media" which involves not only the transmittal but also the creation/publication, gathering and distribution of the news, information, messages and other forms of communications to the general public, it is clear that a corporation which establishes, operates, maintains and/or manages commercial radio and television broadcasting station is a mass media entity. By maintaining and operating a commercial radio and television broadcasting station, the company will essentially be disseminating information, messages, signals and all forms of written, oral and visual communications to the public which will, or may have an influence on the standards, ideals, aims and opinion of the latter. Accordingly, it falls within the coverage of the constitutional mandate limiting ownership and management of mass media to

¹DOJ Opinion No. 40, series of 1998; cited in SEC-OGC Opinion No. 18-21 dated 28 November 2020

² SEC Opinion No. 11-08 dated 03 March 2011 citing MOJ Opinion no. 24, series of 1986 citing MOJ Opinion No. 163, series of 1973.

³ DOJ Opinion No. 40, series of 1998.

⁴SEC-OGC Opinion No. 18-22 dated November 28, 2018 addressed to Kittleson and Carpo Consulting, Inc. citing SEC Opinion No. 09-33, dated 18 December 2009 addressed to the Law Firm of R.V. Domingo & Associates

citizens of the Philippines or wholly-owned and managed Philippine corporations.

In your letter, you posited the view that a corporation which establishes, operates, maintains and/or manages commercial radio and television broadcasting station is a "Public Utility" on the basis of Sec. 13(b)⁵ of the Public Service Act which provides for the definition of "Public Service" that includes "*wire or wireless communications system, wire or wireless broadcasting stations.*"

We note that the Supreme Court, in *JG Summit Holdings, Inc. v. Court of Appeals, et al.*,⁶ defined "Public Utility" as follows:

"A 'public utility' is a 'business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service, xxx As its name indicates, the term 'public utility' implies public use and service to the public. The principal determinative characteristic of a public utility is that of service to, or readiness to serve, an indefinite public or portion of the public as such which has a legal right to demand and receive its services or commodities. Stated otherwise, the owner or person in control of public utility must have devoted it to such use that the public generally or that part of the public which has been served and has accepted the service, has the right to demand that use or service so long as it is continued, with reasonable efficiency and under proper charges. Unlike a private enterprise which independently

⁵(b) The term "public service" includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whether may be its classification, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railways, marine repair shop, [warehouse] wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power water supply and power, petroleum, sewerage system, wire or wireless communications system, **wire or wireless broadcasting stations and other similar public services**: Provided, however, That a person engaged in agriculture, not otherwise a public service, who owns a motor vehicle and uses it personally and/or enters into a special contract whereby said motor vehicle is offered for hire or compensation to a third party or third parties engaged in agriculture, not itself or themselves a public service, for operation by the latter for a limited time and for a specific purpose directly connected with the cultivation of his or their farm, the transportation, processing, and marketing of agricultural products of such third party or third parties shall not be considered as operating a public service for the purposes of this Act.

⁶ *JG Summit Holdings, Inc. v. Court of Appeals, et al.*, G.R. No. 124293, 24 September 2003

determined whom it will serve, a "public utility holds out generally and may not refuse legitimate demand for service."⁷

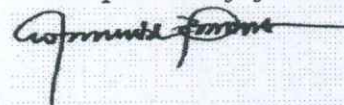
Although the operation and maintenance of radio and television broadcasting station can be considered "public service" as the same is covered by the phrase "wire or wireless broadcasting stations", and even *assuming* that the services of such company *may* fall under the definition of a "public utility", the same are still considered *mass media entities*, for which the Constitution provides a stricter rule (i.e. must be 100% Filipino-owned).

On the basis of the foregoing, it is our opinion that while radio and television broadcasting stations are entities engaged in "Public Service", the same are considered as engaged in "mass media" activities, and are therefore covered by the nationality rules governing mass media. The constitutional provision on mass media is intended to prevent the use of such facility by aliens to influence public opinion to the detriment of the best interest of the nation.⁸

It shall be understood that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein. It 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.⁹ If, upon further inquiry or investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.

Respectfully yours,



ROMUALD C. PADILLA
General Counsel

⁷ SEC OGC Opinion No. 18-15 citing JG Summit Holdings Inc. vs. Court of Appeals, G.R. No. 124293, 24 September 2003.

⁸SEC Opinion No. 11-08 dated 3 March 2011 citing MOJ Opinion No. 24, s. 1986 citing Quisumbing- Fernando, Constitutional Law, 1984 ed., p. 345.

⁹SEC Memorandum Circular No. 15, Series of 2003, No.7