



Republic of the Philippines
Department of Trade and Industry
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

09 March 2011

SEC-OGC Opinion No. 11-12
Re: Non-Stock Corporations; Purposes/
Business Activities

VELICARIA EGENIAS LAW OFFICES

3rd Floor Adamson Centre
121 Leviste Street, Salcedo Village, Makati City

Attention: Atty. Francis M. Egenias

Gentlemen:

This refers to your 4 May 2010 letter requesting opinion on whether your client, OMF Literature, Inc. ("OMF", for brevity), a religious organization,

- a. can, at present, engage in retailing and franchising; and
- b. can amend its Articles of Incorporation ("AI") to include retailing and franchising in its incidental powers.

You mentioned that retailing and franchising are but ways of distribution or propagation of the Bible and other religious literature, which is a purpose of OMF.

Section 88 of the Corporation Code ("the Code")¹ provides:

"Sec. 88. *Purposes.* – Non-stock corporations may be formed or organized for charitable, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers or any combination thereof, subject to the special provisions of this title governing particular classes of a non-stock corporation."

Thus, Section 87 of the Code defines a non-stock corporation as follows:

"Sec. 87. *Definition.* – For the purposes of this Code, a non-stock corporation is one where no part of its income is distributable as dividends to its members, trustees, or officers, subject to the provisions of this Code on dissolution: Provided, That any profit which a non-stock corporation may obtain as an incident to its operations shall, whenever necessary or proper, be used for the furtherance of the purpose or

¹Batas Pambansa Bilang 68 (1980).

purposes for which the corporation was organized, subject to the provisions of this Title."

The Code further provides:

"Sec. 14. *Contents of articles of incorporation.* – xxx xxx xxx.

2. xxx: Provided, That a non-stock corporation may not include a purpose which would change or contradict its nature as such; xxx."

Under the foregoing provisions, non-stock, non-profit corporations, as a general rule, are not empowered to venture on profitable business activities. By way of exception, the corporation may, as incident to its purpose(s), engage in business activities which are reasonably necessary to carry out the purpose(s) for which the corporation was organized. Any such power which is reasonably necessary to enable a corporation to carry out express powers granted and the purposes of its creation is to be deemed implied or incidental purpose. **However, activities merely convenient or useful are not implied if they are not essential, having in view the nature and object of the corporation.** Thus, while non-stock corporations are not empowered to venture on profitable business activities, they may, as incident to their purposes, engage in such business activities that are reasonably necessary or essential to carry out the purposes for which they were organized, provided that any profit that may be derived therefrom are not distributable to the members but are used for the furtherance of corporate purposes.²

Accordingly, in determining whether a non-stock corporation can engage in business activities for profit, much would depend on the purpose clause provision in its AI. If the business activity is not incidental, necessary or essential to carry out the express objectives of the corporation as appearing in its AI, the same cannot be undertaken by a non-stock corporation.³

The purpose clause provision of OMF's AI reads:

"That the primary purpose for which the Corporation is formed is to administer the properties and temporalities of the Church and incidental thereto, to propagate the message of new life in Christ Jesus by reaching out to people in the Philippines, in East Asia and other parts of the world.

And that in the furtherance of the purpose, [t]he Corporation shall have the following incidental powers:

1. To propagate the Bible, Scripture portions, Christian books, literatures and religious materials consistent with the primary purpose and the Corporation's statement of faith herein set forth.

²SEC Opinion dated 19 September 1995 addressed to Nestor A. Gonzales; SEC Opinion dated 27 December 1993 addressed to Abraham L. Cu; SEC Opinion dated 29 July 1993 addressed to Atty. Cela Magdalen B. Alviedo; SEC Opinion dated 18 February 1993 addressed to Erlinda B. Ahorro; and SEC Opinion dated 18 September 1990 addressed to Manuel A. Serdan.

³Ibid.

2. To engage in importation, exportation and distribution of Bibles, books, Christian literatures, tapes, videos and religious items of Christian message or extolling Christian values in order to accomplish its primary objectives.

3. To receive and acquire donations, grants, exchange, device, bequest, purchase, lease, either absolutely or in trust, receive contributions from any persons, corporation, foundation, board, or entity whatsoever, of such properties, real and personal, including funds and valuable effects as may be useful or necessary to carry out the purpose and objectives of the Corporation and to hold, manage, use or otherwise dispose of the same.

IN GENERAL, to do and perform all acts and things necessary, suitable or proper for the accomplishment of the purpose herein enumerated, or which shall appear at any time conducive to, or expedient for [t]he Corporation."⁴

Anent your first query, OMF can sell copies of the Bible and other religious literature as the said activity can be said to be reasonably necessary and incidental to its purpose of propagating the word of Jesus Christ. The Commission had already opined that the act of a corporation selling merchandise as an incident to its primary purpose does not constitute retail trade.⁵ However, the said opinion referred to a stock corporation, and not to a non-stock corporation (such as OMF) to which the limitations imposed by the afore-quoted provisions of the Code should apply. In short, while OMF may sell copies of the Bible and other religious literature, (1) the requirements of Section 87 of the Code as to the use of profits realized must be observed, and (2) the selling must be reasonable so as not to amount to a contradiction or negation of OMF's nature as a religious organization.

The same cannot be said, however, of franchising. Franchising is an arrangement where one party (the franchiser) grants another party (the franchisee) the right to use its trademark or tradename as well as certain business systems and processes, to produce and market a good or service according to certain specifications, with the latter paying a franchise fee plus a percentage of sales revenue as royalty.⁶ Because of the franchise, the franchisee gains: (1) immediate name recognition, (2) tried and tested products, (3) standard building design and décor, (4) detailed techniques in running and promoting the business, (5) training of employees, and (6) ongoing help in promoting and upgrading of the products.⁷ Hence, franchising takes stock of one's business superiority and is a tool for business expansion and/or advancement. In essence, it is primarily a business function. Thus, while it may be convenient or useful, it is no longer reasonably necessary or essential to the propagation of Christian values and teachings, having in view the nature and object of OMF as a religious corporation.

⁴Third Article, OMF's AI.

⁵SEC Opinion No. 11-02 dated 13 November 2002 addressed to Attys. Alex Erlito S. Fider and Estrelita G. Gacutan of Picazo Buyco Tan Fider & Santos Law Offices.

⁶<http://www.businessdictionary.com/definition/franchising.html>.

⁷Ibid.

As to your second query, we answer the same in the negative. The word "retail" may not be used in the AI of OMF, as the same primarily connotes a business activity **for profit** governed by a specific law, the Retail Trade Liberalization Act⁸, the inclusion of which would engender confusion and/or abuse. Neither can franchising be included, for the same reason(s) stated above. To amend OMF's AI to specifically and expressly provide therein that the corporation may engage in retailing *and* franchising would run counter to the very nature of OMF as a religious organization, in violation of Section 14(2) of the Code.

This opinion is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein. It shall likewise be understood that the foregoing shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts.⁹ If, upon investigation, it will be disclosed that the facts relied upon are different, this Opinion shall be rendered void.

Please be guided accordingly.

Very truly yours,



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General Counsel

⁸Republic Act No. 8762, as amended (2000).

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