



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

OFFICE OF THE GENERAL COUNSEL

14 March 2011

SEC-OGC Opinion No. 11-16

Stock and Transfer Book;
Executive Committee

MS. LUZ I. GARCIA

Chairman, Executive Committee
Mabini Colleges, Inc.
Daet, Camarines Norte

Madame:

This refers to your letter dated 20 February 2009.¹ In your letter, you posed the following queries:

1. May the shares of known stockholders who have failed or refused to present their stock certificates for reconstitution be recorded as shares held in trust by Mabini Colleges without prejudice to their being transferred to the lawful owner upon presentation of the certificate and pertinent documents?
2. In the absence of a Board (as there is no quorum at the moment), may the stockholders pass a resolution in lieu of a board resolution re: signatories to bank transactions, opening and closing of bank accounts, filing a case for the corporation and the like?
3. In reconstituting the stock and transfer book, shall recording be that as what it was when the STB was lost? Or should it be the current owner or last transactions affecting the shares?
4. May the third member of the Executive Committee, who has filed the resignation from the ExeCom albeit unaccepted, be compelled to attend the ExeCom meeting? How?

Please be advised that the Commission does not, as a matter of settled policy, render opinions on queries or transactions involving justiciable issues that may eventually be litigated in the future or that could only be clarified and determined in a proper proceeding, such as those presented in your letter. The opinion that may

¹ Received by this office on 24 February 2009.

be rendered thereon would not be binding upon private parties, who would in all probability, if the opinion happens to be adverse to their interest, take issue therewith and contest it before the Court.² For this reason, the Commission refrains from giving opinions on these kinds of queries.

However, **for purposes of information only**, based on the facts you provided, the following may be imparted.

Anent your first query, you stated in your letter that these stockholders are "known" but only refuse or failed to present their stock certificates for reconstitution. It is worth reiterating that: "a stock certificate is merely evidence of a share of stock and not the share itself."³ Thus, the Commission has previously opined that "a corporation cannot by itself cancel a recorded ownership of shares of stock just because the stockholder failed to comply with a directive to surrender the stock certificate for replacement."⁴ Based on various authorities:

"Extrinsic evidence of the acts or matters which are or should be recorded in the corporate books and records may be admitted where the original corporate records are lost, mislaid or destroyed or are otherwise inaccessible. Proper foundation proof explaining the failure to produce the original books and records must first be laid for the introduction of other evidence. Such secondary evidence ordinarily consists of copies of the records, either certified or sworn to, or parol testimony. (Fletcher, sec. 2197 648)

Apropos thereto, Section 4 Rule 130 of our Rules of Court reads thus:

SECTION 4. *Secondary evidence when original is lost or destroyed.* — When the original writing has been lost or destroyed, or cannot be produced in court, upon proof of its execution and loss or destruction, or unavailability, its contents may be proved by a copy, or by a recital of its contents in some authentic documents, or by the recollection of witnesses.

Hence, when the original stock and transfer book of a corporation has been lost or destroyed, secondary or extrinsic evidence may be introduced to reconstitute its contents. In line, however, with our rules requiring the maintenance of a stock and transfer book, said new book should be presented to this Commission for proper registration, accompanied by a sworn statement executed by any responsible corporate

² SEC Memorandum Circular No. 15, series of 2003.

³ Lincoln Phil. Life Ins. Co. G.R. No. 118043 (July 23, 1998).

⁴ Letter to Ms. Ma. Cecilia Salazar-Santos of Ishiwata Ngo & Associates, 28 January 1999.

officer setting forth the circumstances attending the loss. (SEC Opinion dated January 21, 1988)⁵ (emphasis supplied)

Anent your second query, the Corporation Code⁶ provides:

"Sec. 23. *The board of directors or trustees.* - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

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Sec. 29. *Vacancies in the office of director or trustee.* - Any vacancy occurring in the board of directors or trustees other than by removal by the stockholders or members or by expiration of term, may be filled by the vote of at least a majority of the remaining directors or trustees, if still constituting a quorum; otherwise, said vacancies must be filled by the stockholders in a regular or special meeting called for that purpose. A director or trustee so elected to fill a vacancy shall be elected only for the unexpired term of his predecessor in office."

Under your corporation's Amended By-Laws, it is stated that:

"The business and property of the corporation shall be managed by a Board of Five (5) Trustees who shall be elected annually by the stockholders for a term of one (1) year and shall serve until the election and acceptance of their duly qualified successors. xxx Any vacancies that may occur before the next annual meeting of the stockholders may be filled by the remaining members of the Board of Trustees if still constituting a quorum by a majority vote and the trustee of Trustees so chosen shall serve for the unexpired term."⁷

As you yourself stated in your letter, there is no quorum. We have previously opined that:

"Failure however of the corporation to obtain a quorum for the election of the board of directors, will simply result in the retention of the members of the board of directors in their present respective

⁵ Letter dated 10 July 1990 addressed to Santa Rosa Mining Company.

⁶ Batas Pambansa Blg. 68 (1980).

⁷ Section 1, Article IV, Amended By-Laws as approved on 06 May 2004.

position as hold-over until their successors shall have been elected and qualified."⁸

Thus, the lack of quorum should be addressed by conducting a meeting for the purpose of filling up the remaining vacancies in the Board.

Regarding your third point of query, the Corporation Code⁹ is clear on this point:

"Stock corporations must also keep a book to be known as the "stock and transfer book", in which must be kept a record of all stocks in the names of the stockholders alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made, and ***the date of payment of any installment; a statement of every alienation, sale or transfer of stock made***, the date thereof, and by and to whom made; and such other entries as the by-laws may prescribe."¹⁰

Where the statutes require or regulate the keeping of corporate books and record, a corporation is duty bound to comply with them. "The object of such statutes is to protect the right of stockholders, so that the books may be open to examination to aid the state in exercising its visitorial power over the corporation, and perhaps to enable the creditors to examine the books also."¹¹ Thus, your corporation's stock and transfer book should be accurate in all its entries, reflecting all necessary payments, alienations, sales or transfers of stock.

Anent your final question, the management of the affairs of the Executive Committee is left to the discretion and judgment of the Board Members "subject to specific statutory limitations which may not be delegated to committees, a properly constituted committee composed of directors has all the authority of the board to the extent provided in the resolution of the board or in the by-laws."¹²

The foregoing opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission whether of similar or dissimilar circumstances.¹³ If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

⁸ Letter addressed to Manuel G. Tino dated 21 January 1980.

⁹ See Note 5.

¹⁰ Section 74, 2nd paragraph.

¹¹ Letter dated 04 April 1987 Termulo, Yumang, Muñoz & Adamos, citing 5 Fletcher, Cyc. Corps., 2192, citing North and South Rolling Stock Co. v. People, 147 Ill. 234, 35 N.E. 608, 24 L.R.A. 462.

¹² Letter dated 18 May 1983 to Canlubang Automotive Resources Corporation, citing Ballantine & Sterling, supra, Chap. 3, sec. 311 at 29.

¹³ SEC Memorandum Circular No. 15, series of 2003.

Please be guided accordingly.



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