Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

December 06, 2005
SEC Opinion No. 05-19
Hold-over and other matters

PICPA (DAVAO) FOUNDATION, INC.
Dr # 10, Don Estanislao Bldg.
Lapu-Lapu St., Davao City

Attention: Ms. Nelia Estuaria-Tumarao
Secretary

Gentlemen:

This refers to your letter dated 14 September 2005 requesting opinion on the queries posed therein.

Relative to the passage of the New Accountancy Act, one of the requirements for the Philippine Institute of Certified Public Accountants (PICPA) to be the Accredited Professional Organization is the submission of a consolidated financial report for all organizations carrying the name PICPA.

It is in this regard that you request the assistance of the Commission in the resolution of the following queries quoted hereunder:

"1. Will our foundation be included in the consolidation considering that we have our own separate registration and personality;

2. If such consolidation will include us, does it mean that all our assets and resources be part of the national organization;

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3. Is there a need for us to amend the name of our Foundation to exclude the name PICPA in order to protect our interest
4. Our chairman who was elected to office last January 23, 2003 has not called for any annual meeting and election up to now. Can we have a special general assembly now and have an election of officers considering that all our officers now are only on a "hold-over" capacity.

5. Although our by-laws provide in Sec. 4-a, provision on election of officers, our by-laws is silent on the term of office of the officers. Likewise in Sec. 2-c, Annual meetings, it did not specify that an election of officers shall be held during the annual general assembly. Does it mean that election during the annual general assembly is optional and that the officers can have an indefinite term of office."

Regarding your first and second queries, it appears from the records on file that your foundation has its own separate registration and personality from PICPA. At any rate, the law merely requires that its chapter/region/national office and their respective foundations keep proper books of accounts and submit audited annual financial statements thereof. The national office shall consolidate these financial statements on an annual basis for submission to the Professional Regulatory Board of Accountancy and the Professional Regulation Commission in accordance with the applicable accounting procedures.[1]

However, it does not mean that the assets and resources of your foundation will be part of the national organization. What is required to be submitted is merely the consolidated financial statements of the national office and the regions and chapters and their respective foundations.

The third query is rendered academic by the above answer.

Anent your fourth query, the Commission has consistently opined on several instances that generally, there must be an annual election of directors and officers. However, in case of failure of the corporation to hold an election due to any justifiable reason, the incumbent Board may hold-over their office until their successors are duly elected and qualified.[2] This hold-over principle is sanctioned under Section 23 of the Code which provides that the Board of Directors *"shall hold office for one (1) year and until their successors are elected and qualified.*[3] While non- stock corporations are primarily governed by Title XI of

[1] Rules and Regulations Implementing Section 30, Article IV of Republic Act No. 9298 otherwise known as the Philippine Accountancy Act of 2004 Covering the Accreditation of an Accredited National Professional Organization of CPAs, Renewal of Certificate of Accreditation and its Suspension/Cancellation.
[2] SEC Opinion dtd. July 3, 1989, addressed to Maria Francisca Viado
[3] SEC Opinion dtd. May 31, 1996, addressed to Euney Marie J. Mata

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the Corporation Code, Section 87 (par.2) thereof states that provisions of the Code governing stock corporations, when pertinent, shall be applicable to non-stock corporations. Inasmuch as there is no special provision relating to hold-over term of the directors of non-stock corporations in Title XI of the Corporation Code, the provision under Section 23 of the Code allowing such situation to stock corporations shall also be applicable to non-stock corporations. [4] However, it has to be emphasized that "hold-over" is a situation that arises only when no successors are elected due to *valid and justifiable reasons.* [5]Non-holding of annual meeting for the election of the Board of Directors and Officers without justifiable reason is subject to Section 5 (k) of the Securities Regulation Code and the SEC Rules Governing the Filing of Information Sheet by Domestic Corporation. Said SEC Rules require submission of a General Information Sheet effecting the change in the Directors and Officers within thirty (30) days after election. Violations of said Rules carry with it the corresponding penalty prescribed therein.

Under the circumstances stated in your letter, your Chairman, who was elected to office since 23 January 2003, has not called for any meeting and election up to the present. Non-holding of annual meeting for two (2) years is considered an unreasonable length of time. Thus, the foundation should, as soon as possible, call a special meeting for such purpose and with proper notice given to all members. However, it was observed that the scheduled annual meeting of the foundation as provided in the by-laws, which was the third Saturday of January of every year, had already lapsed. It is therefore advised that the annual meeting of the foundation, for practical considerations, be called on the third Saturday of next year.

In this regard, please be advised that a show cause letter (Annex "A") was issued against your foundation by the Company Registration and Monitoring Department for non-compliance with SEC reportorial requirements.

Hence, your query no.4 is answered in the affirmative.

Regarding the last query, an examination of your by- laws on file reveals that the same is indeed silent insofar as the term of officers is concerned. The pertinent provision of the Corporation Code relative to the term of office of Directors/Officers of non-stock corporations provides:

> "SECTION 92. *Election and term of trustees. – Unless otherwise provided in the articles of incorporation or the by-laws,* the board of trustees of non-stock corporations, which may be more than fifteen (15) in number as may be fixed in their articles of incorporation or by-laws, shall, as soon as organized, so classify themselves that the term of office of one-third (1/3) of their number shall expire every year, and

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[4]SEC Opinion dtd. March 14, 1994, addressed to Rev. Roberto-Jose M. Livioco
[5] Idem 3

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subsequent elections of trustees comprising one third (1/3) of the board of trustees shall be held annually and trustees so elected shall have a term of three (3) years. Trustees thereafter elected to fill vacancies occurring before the expiration of a particular term shall hold office only for the unexpired period." (Emphasis supplied)

It is clear from the above-provision that non-stock corporations are allowed to provide in their articles of incorporation or by-laws the term of office of the Board. However, while the term of directors or trustees of non-stock corporations may vary under the articles of incorporation or by-laws, lifetime or unlimited term of the Board is not allowed. A lifetime or unlimited term of the Board absolutely deprives other stockholders or members of the opportunity to participate in the management of the corporation. [6]

"It is worth mentioning that the Board of Directors cannot change the date of the annual meeting prescribed in the by-laws of the corporation so as to lengthen their term of office, unless the reason is justifiable and proper notice of the postponement is given to the members.

An annual meeting, required and stated for each year, cannot be dispensed with by the corporate officers, and the directors cannot, by a by-law or otherwise, so change the time of the annual election, so as to continue themselves in office more than a year..." [7]

Hence, we answer your last query in the negative.

We hope we have satisfied your queries.

VERNETTE G. UMALI-PACO
General Counsel

[6] SEC Opinion dtd. September 23, 1991, addressed to Mr. Nelo R. Roldan
[7] SEC Opinion dtd. January 5, 1981, addressed to the Board of Directors, Philippine Government Retired Employees Association, Inc. citing 5 Fletcher, Cyc. Corp. Sec. 200 a, p.22.

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