



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

13 September 2019

SEC-OGC Opinion No. 19-37

Re: Mustering the required quorum;
representation of the dormant/inactive
stockholders

PHILIPPINE VETERANS BANK

101 V.A. Rufino corner
Dela Rosa Street
Legaspi Village,
Makati City

**Attention: Atty. Federico A. Manalo
Atty. Vincent Jason T. Villanueva**

Dear Sir:

We write in response to your letter dated 06 August 2018 requesting for an opinion on whether the practice by Philippine Veterans Bank (PVB) of representing inactive/dormant stockholders in the stockholders' meeting to muster the required quorum, is acceptable.

As stated in your letter, in 2005 and earlier, despite written notices and publication, a substantial number of stockholders have not been communicating with or attending the stockholders' meetings of the PVB. Personal notices to the stockholders have been returned unopened or they have not communicated with any of the veterans' associations. No legal heir, claimant or transferee has likewise come over to advise PVB of his/her right to the shares. If these shares are not represented in the stockholders' meeting, the PVB would not be able to pass resolutions necessary for it to be financially viable or to comply with regulatory obligations.

Thus, the PVB only uses these shares for quorum purposes and for matters requiring stockholders' consent or approval. The PVB has refrained from using the shares to vote for

the election of directors. From 2005 to 2017, the PVB, thru its Chairman of the Board, has been representing inactive and dormant stockholders, in the stockholders' meeting, as authorized by its Board of Directors.

For such representation by the Chairman, you cited as basis *Guingona, Jr. vs. PCGG*¹ which applied *negotiorum gestio*, and previous SEC opinions² on implied trust between the corporation and its stockholder in cases where the stockholders cannot be located.

However, the Bangko Sentral ng Pilipinas (BSP) was unsatisfied and still required PVB to secure a formal SEC opinion on the acceptability of the practice. Hence, this request.

The issue is whether the practice of representing inactive/dormant stockholders in the stockholders' meeting by the PVB, to muster the required quorum, is acceptable.

Please be advised that based on SEC Memorandum Circular No. 15, Series of 2003, it is the policy of the Commission not to render categorical opinions on matters which would involve substantive and contractual rights of private parties who would in all probability, contest the same in court if the opinion turns out to be adverse to their interest.

Considering that your query requires a review of the act of BSP in expressing its opinion on PVB's practice, as well as affect substantive and contractual rights of private parties, i.e. inactive stockholders' right to vote, we refrain from categorically answering your queries.

However, **for purposes of information only**, the following may be imparted.

PLANTERS OPINION

In SEC Opinion dated 10 September 1982 addressed to Candido Dizon of Planters Foundation, Inc. (Foundation), the Commission issued its first opinion regarding implied trust for unknown stockholders. In the said opinion, the Foundation was authorized by a Letter of Intent (LOI) to assume as trustee of Planters Products Cooperative Marketing and Supply, Inc. (PPI) stocks and to distribute the same to fertilizer end-users by issuing an Undertaking to Transfer Shares of Stock (UTSS). However, these UTSS did not state the names and addresses of the purchasers, hence, there were queries as to how the unknown stockholders may be identified and as to what is the status of these shares of stock.

The Commission held that there was an implied trust between the Foundation (trustee) and the fertilizer end-users (cestuis que trust) over the PPI shares. The Foundation has the legal title to the undistributed shares of PPI which were purchased by the farmers, and would hold such shares in trust for the equitable title-holders.

¹ G.R. No. 96087 dated 31 March 1992

² SEC Opinion dated 31 December 1988 and SEC Opinion dated 10 July 1990

To identify the unknown stockholders of PPI, the Commission suggested that they be properly notified thru publication in a newspaper of general circulation, whereby the purchasers of PPI stock will be directed to step forward and effect the proper transfer of the shares in their respective names, requiring them to produce evidence of identity as well as their right to the transfer.

The Planters opinion on implied trust was later applied to stockholders who cannot be found in the SEC opinions³ cited by PVB. In these opinions, the Commission opined that for shares whose owners cannot be located, a trust relation is impliedly created between the corporation and the unknown stockholders. Such shares may be entered in the corporate book and shall stand in the name of the corporation as "trustee" or said holder may be described as "trustee" in the certificate. However, it is an elementary rule that a trustee should not profit out of the handling of the trust estate, e.g. the trustee should not himself buy the trust estate. This springs from the fiduciary duty of the trustee of protecting the interest of the beneficiary and not to permit his personal interest to conflict with this duty in this respect. Thus, the corporation should exhaust all available means in ascertaining the whereabouts of the stockholders, whether through publication and/or sending of notices to their next of kin, if known. Should the search prove to be futile, it is still the fiduciary obligation of the corporation to continuously hold the shares in trust for the owners thereof, unless otherwise escheated in accordance with law.⁴

APPLICABILITY OF THE PLANTERS OPINION

It is worthy to state that unlike the Planters opinion which involves unknown stockholders who cannot be located, the case of PVB concerns stockholders that are known but inactive or dormant. Further, it appears that the trust mentioned in the opinions covers only safekeeping or holding of the shares, which does not necessarily confer other ownership rights to the trustee, such as the right to vote at the stockholders' meeting. In fact, in these opinions, the subject corporations were not allowed to recall, retire or sell the shares of its stockholders who cannot be identified or located, despite being considered as implied trustees. Instead, they were reminded to exhaust all available means to locate their stockholders. Finally, there is nothing in these opinions that allowed the trustee corporation to vote the subject shares.

The right to vote is a stockholder's most basic and fundamental right inherent in and incidental to the ownership of corporate shares of stock. It is an incident of ownership or of the property in the stock of which the stockholder cannot be deprived without his consent⁵.

It is through the right to vote that stockholders participate in the management of the corporation. The right to vote, unlike the right to receive dividends and liquidating distributions, is not a passive thing because management or administration is, under the

³ SEC Opinion dated 31 December 1988 and SEC Opinion dated 10 July 1990

⁴ SEC Opinion dated 1 December 1988 addressed to KENRAM Philippines, Inc.

⁵ 5 Fletcher, p.99

Corporation Code, now the Revised Corporation Code (RCC), vested in the board of directors, with certain reserved powers residing in the stockholders directly.⁶

Only stockholders of record as of the date fixed in the by-laws shall enjoy the right to vote.⁷ The RCC provides only three instances when a stockholder may vote indirectly, through a representative: (1) by means of a written proxy⁸; or (2) by a trustee under a voting trust agreement⁹; or (3) by executors, administrators, receivers and other legal representatives duly appointed by the court.¹⁰

Under the *rule of expressio unius est exclusio alterius*, where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.¹¹

This strict interpretation is appropriate especially since the right to vote is a property right of which the stockholder cannot be deprived except upon written consent or upon representation provided for by law.

NEGOTIORUM GESTIO

As for the application of *negotiorum gestio*, an officious manager cannot be presumed to have the power to exercise the stockholders' right to vote, which is an act of ownership or an act of strict dominion. Even a duly appointed agent under Article 1878 (15) of the Civil Code, has no power to exercise any act of strict dominion on behalf of the principal unless authorized by a special power of attorney. The grant of special powers cannot be presumed from the grant of general powers. Moreover, the authority to exercise special powers must be duly established by evidence, even though it need not be in writing.¹² Using this analogy, an officious manager can exercise only acts of administration.

Thus, the Commission previously opined¹³ that it would be illegal for a corporation to adopt a rule that a stockholder who fails to attend the meeting or appoint a proxy is deemed to have appointed the Chairman of the meeting as his proxy. Section 57 of the RCC clearly provides that a proxy to be valid must be in writing and signed by the stockholder. Since the appointment of proxy is purely personal, and the "right to vote is inseparable from the right of ownership of stock without the owner's consent, and therefore a proxy to vote stock, to be

⁶ Cojuanco, Jr. vs. Roxas 195 SCRA 794 [1991].

⁷ SEC Opinion dated 17 November 1982 addressed to Atty. Nestor H. Santana

⁸ Section 57 of the Revised Corporation Code (previously Section 58 of the Corporation Code)

⁹ Section 58 of the Revised Corporation Code (previously Section 59 of the Corporation Code)

¹⁰ Section 54 of the Revised Corporation Code (previously Section 55 of the Corporation Code)

¹¹ Agpalo, Statutory Construction, 2nd ed., 1990, pp. 160-161

¹² V-Gent, Inc. v. Morning Star Travel and Tours, Inc., G.R. No. 186305, July 22, 2015

¹³ SEC Opinion dated 3 December 1993 addressed to Mr. Victorio V. Soliven

valid, must have been given by the person who is the legal owner of the stock and entitled to vote the same at the time it is to be voted.¹⁴

NEW RCC PROVISION

To solve the recurring problem of "no quorum-no meeting" and in this case, avoid the standstill of bank operations, the RCC provides for an emergency quorum under paragraph 4, Section 25 of the RCC, for purposes of conducting an election, to wit:

Section. 25. Report of Election of Directors, Trustees and Officers, Non-holding of Election and Cessation from Office. -

"xxx xxx xxx."

"The non-holding of elections and the reasons therefor shall be reported to the Commission within thirty (30) days from the date of the scheduled election. The report shall specify a new date for the election, which shall not be later than sixty (60) days from the scheduled date."

"If no new date has been designated, or if the rescheduled election is likewise not held, the Commission may, upon the application of a stockholder, member, director or trustee, and after verification of the unjustified non-holding of the election, summarily order that an election be held. The Commission shall have the power to issue such orders as may be appropriate, including orders directing the issuance of a notice stating the time and place of the election, designated presiding officer, and the record date or dates for the determination of stockholders or members entitled to vote."

"Notwithstanding any provision of the articles of incorporation or bylaws to the contrary, the shares of stock or membership represented at such meeting and entitled to vote shall constitute a quorum for purposes of conducting an election under this section."

"xxx xxx xxx."

Based on this provision, if no election is held consecutive times, or if the non-holding of election is unjustified, the SEC may, upon application of a stockholder or member, director or officer and after verification of the unjustified non-holding of the election, summarily order that an election be held. The shares or members represented at such a meeting and entitled to vote shall constitute a quorum for conducting an election.

We hope you find these information pertinent and useful.


CAMILO S. CORREA
 General Counsel 

¹⁴ Ibid.