



Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
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Mandaluyong City Metro Manila
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Ms. Rayla Melchor Santos
11 Wilchester St.
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SEC-OGC Opinion No. 06- 29
*Non-Stock Corporations; Use of
Profits Derived by Non-Stock
Corporations.
Special Corporations; Non-Stock
Educational Corporations; Required
Number of Members of the Board of
Trustees of Non-Stock Educational
Corporation.*

Attention: Ms. Rayla Melchor Santos

Madame:

This refers to your letter dated 02 May 2006 requesting opinion on the queries posed therein relative to non-stock, non-profit educational corporations.

Your queries are:

- (1) Whether or not the sharing of profits reflect the number of seats available in the board; and
- (2) Whether or not, non-stock, non-profit educational corporations can have a board consisting of seven (7) members.

Relative to your first query, for purposes of information, Section 87 of the Corporation Code provides:

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

The provisions governing stock corporation, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title. (n) [Emphasis supplied]

The following are the most common characteristics of a non-stock corporation:

- (1) Any profit derived by it from any authorized activity cannot be distributed as dividends to its members;¹
- (2) It may not lawfully engage in any business activity for profit as it would run counter to its very nature as a non-profit entity;²
- (3) When incidental to the objects and purposes of the corporation and without the end of making profits to be distributed to the members, it may engage in certain economic activities stated in its articles of incorporation;³
- (4) Do not issue stock and distribute dividends to their members; they are created not for profit but for public good and welfare;⁴ and
- (5) The mere fact that a non-stock corporation may earn profit does not make it a profit-making corporation where such profit or income is used to carry out the purposes set forth in the articles of incorporation and is not distributed to its incorporators, members, trustees or officers.⁵

In relation to the above-quoted provision and enumeration, it is clear that non-stock corporations may not distribute its profits to its members. Thus, to address your first query, no profit derived by the non-stock corporation may ever be distributed or apportioned to the members of the board of trustees, nor to any officer or member thereof. The corporation is allowed by law the use of such profits solely for the furtherance of the purpose or purposes for which the corporation was organized, and to those that are necessary and incidental thereto.

Pertinent to your second query, the composition and term of office of the board of trustees of non-stock, non-profit educational corporations are governed by the provisions of Chapter I - Educational Corporations, classified under Title XIII Special Corporations of the Corporation Code. Section 108 of the aforestated Chapter governs to wit:

Section 108. Board of trustees. - Trustees of educational institutions organized as non-stock corporations shall not be less than five (5) nor more than fifteen (15): Provided, however, That the *number of trustees shall be in multiples of five (5).*

Unless otherwise provided in the articles of incorporation or the by-laws, the board of trustees of incorporated schools, colleges, or other

¹ De Leon, Hector S. Corporation Code of the Philippines Annotated, 2002 Edition, p. 675

² Section 14 (2), Corporation Code of the Philippines

³ *Supra*, p. 675-676

⁴ *Ibid*, p. 47

⁵ SEC Opinion addressed to Atty Generosa R. Jacinto 13 November 1989

institutions of learning shall, as soon as organized, so classify themselves that the term of office of one-fifth (1/5) of their number shall expire every year. Trustees thereafter elected to fill vacancies, occurring before the expiration of a particular term, shall hold office only for the unexpired period. *Trustees elected thereafter to fill vacancies caused by expiration of term shall hold office for five (5) years.* A majority of the trustees shall constitute a quorum for the transaction of business. The powers and authority of trustees shall be defined in the by-laws.

For institutions organized as stock corporations, the number and term of directors shall be governed by the provisions on stock corporations.
[Emphasis supplied]

The requirement by the Code that members of the board of trustees be in multiples of five (5) must be complied with, since the provisions of Section 108 are expressed in the mandatory, and not permissive sense, as evidenced by the use of the word "shall." Likewise, had such requirements not been mandatory, the legislature would have provided for an exception to the same.⁶

In view of the foregoing, non-stock, non-profit educational corporations cannot have a board of trustees consisting of seven (7) trustees or members considering that the aforecited proviso of the Code requires that the number of said educational institution should always be in multiples of five (5) not to exceed fifteen (15).

For your information and guidance.

Very truly yours,



VERNETTE G. UMALI-PACO, CESO II
General Counsel

⁶ *Ibid*, p. 765, citing SEC Opinion addressed to Mr. Ruben M. Ortega dated 17 November 1994, XXIX SEC Quarterly Bulletin 5 (No. 2, June 1995)