



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City
Office of the General Counsel

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SEC-OGC Opinion No. 12-05
Election of Directors by Region;
Amendment of By-Laws

MR. ALFREDO J. NON

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Sir:

This refers to your letter dated 05 April 2011 concerning the Philippine Institute of Certified Public Accountants ("PICPA"). From your letter, we gather that PICPA is a national organization with several chapters nationwide.

Based on the By-Laws, PICPA has 25 National Directors consisting of 21 Regional Directors and 4 Sectoral Directors. The 21 Regional Directors are elected by members belonging to defined geographical areas while the Sectoral Directors are elected nationwide by members belonging to such sector. Section 3 of Article VII of the By-Laws provides that:

"Section 3. NATIONAL DIRECTORS. There shall be twenty-five (25) National Directors, consisting of twenty-one (21) Regional Directors and four (4) Sectoral Directors. The representation for purpose of election of TWENTY-ONE (21) Regional/ Directors, with each geographical area representing one (1) of the four (4) sectors, shall be:

NCR (METRO MANILA)	-	FOUR (4)
LUZON	-	EIGHT (8)
VISAYAS	-	FOUR (4)
MINDANAO	-	FOUR (4)
ROATING DIRECTOR (3 YEAR TERM)	-	ONE (1)
TOTAL	-	TWENTY-ONE (21)

Each of the four Sectoral Directors shall represent each of the four (4) sectors of the profession:

PUBLIC PRACTICE	ONE (1)
COMMERCE AND INDUSTRY	ONE (1)
EDUCATION/ACADEME	ONE (1)
GOVERNMENT	ONE (1)

(AMENDED ON NOVEMBER 26, 2005)

The directors from each region shall be elected by members belonging to such region, taking into consideration their sectoral affiliation for the purpose of providing the Geographical Area with full sectoral representation. Each Sectoral Director shall assist the Regional Directors belonging to the sector he represents. (AMENDED ON NOVEMBER 26, 2005)

The Rotating Director shall be elected from the region represented by the incoming President. (AMENDED ON NOVEMBER 26, 2005)

There shall only be ONE (1) National Directors, serving on the same year, coming from the same firm/company and their affiliates and/or government/government agencies and their instrumentalities. (AMENDED ON NOVEMBER 26, 2005)"

Also, the By-Laws also provide in Article XII that:

"SECTION 5. NATIONAL DIRECTORS. Each of the twenty-one (21) Regional Directors shall be elected by members belonging to such region and to the particular sector requiring representation. (AMENDED ON NOVEMBER 26, 2005)

xxx

SECTION 7. SIMULTANEOUS ELECTIONS FOR NATIONAL DIRECTORS, REGIONAL SECTORAL REPRESENTATIVES, AND CHAPTER OFFICERS. The elections for national directors and regional sectoral representatives and chapter officers shall be conducted following uniform rules prescribed by the National COMELEC, simultaneously and nationwide in scope which shall be held on May 16 of every year. xxx"

Your question is whether this method of electing directors on a regional basis is in violation of the Corporation Code.¹

Section 24 of the Corporation Code provides that:

"At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote."

The same Code also provides in Section 47 that:

"SECTION 47. Contents of by-laws. — Subject to the provisions of the Constitution, this Code, other special laws, and the articles of incorporation, a private corporation may provide in its by-laws for:

xxx

xxx

xxx

¹ Batas Pambansa Blg. 68 (1980).

7. The manner of election or appointment and the term of office of all officers other than directors or trustees; . . ." (Emphasis supplied)

The Commission has indeed previously opined that for the election of the members of the Board of Directors of a non-stock corporation, at least a majority of all the members entitled to vote must be present at the meeting held for the purpose.²

However, instead of Sections 24 and 47 of the Corporation Code, the pertinent provision of the law to apply in your case is Section 89, which is specifically applicable to non-stock corporations. Section 89 states that:

"Sec. 89. *Right to vote.* – The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws. xxx"

Under this provision, there is nothing objectionable about the manner of voting for the directors of PICPA as provided in its By-Laws. The By-Laws have, in effect, limited the right of members to vote only for candidates for director for their own region, which is allowed by Section 89.

This is consistent with the latest Supreme Court ruling interpreting Section 89 in a similar fashion, specifically in the case of *Luis Ao-As, et al. vs. Court of Appeals*³. In this case, the Court of Appeals disallowed the election of directors of the Lutheran Church of the Philippines by district, for the reason that:

"It is clear from Section 24 that in the election of the trustees of a non-stock corporation, it is necessary that at least "a majority of the members entitled to vote" must be present at the meeting held for the purpose. It follows that trustees cannot be elected by zones or regions, each zone or region electing independently and separately a member of the board of trustees of the corporation, such method being violative of Section 24. (SEC Opinions, Jan. 30, 1969, April 1, 1981). The election of the directors by district or regions as provided in the LCP By-Laws where a majority of the members are not present is inconsistent with the Corporation [Code] and must be struck down as invalid. Consequently, the directors elected by district cannot be considered as bona fide directors. Even the election of LCP officers in the SEC-SICD sponsored national convention of the LCP must be considered as invalid."⁴

Note that one of the SEC Opinions relied upon by the Court of Appeals is one of the two opinions you have attached to your letter-request.

However, the Supreme Court overruled the Court of Appeals and enunciated that:

² Exhibits "D" and "E" attached to your letter. See also the letter-opinion addressed to Philippine College of Surgeons, dated 01 April 1981.

³ G.R. No. 128464, 20 June 2006.

⁴ *Ibid.*

"[T]he stipulation in the By-Laws is not contrary to the Corporation Code. Section 89 of the Corporation Code pertaining to non-stock corporations provides that "(t)he right of the members of any class or classes (of a non-stock corporation) to vote may be limited, broadened or denied to the extent specified in the articles of incorporation or the by-laws." This is an exception to Section 6 of the same code where it is provided that "no share may be deprived of voting rights except those classified and issued as 'preferred' or 'redeemable' shares, unless otherwise provided in this Code." **The stipulation in the By-Laws providing for the election of the Board of Directors by districts is a form of limitation on the voting rights of the members of a non-stock corporation as recognized under the aforesaid Section 89.** Section 24, which requires the presence of a majority of the members entitled to vote in the election of the board of directors, applies only when the directors are elected by the members at large, such as is always the case in stock corporations by virtue of Section 6."⁵ (Emphasis supplied.)

Hence, under Section 89, regional elections for directors or trustees may be allowed as long as it is the mode of election provided in the non-stock corporation's by-laws.

The situation, thus, need not be remedied, because the by-laws of PICPA, insofar as it concerns your query about regional elections, is not contrary to the provisions of the Corporation Code and the latest ruling of the Supreme Court.

As regards your questions about the Chapter Directors, we would like to direct your attention to Exhibit B attached to your letter-request, particularly Section 4. It states that "The procedures governing the chapter elections shall be prescribed by the National Board of Directors. All questions and conflicts regarding the manner of holding chapter election as well as the results thereof shall be decided by the National COMELEC."

This matter is internal to PICPA and should be settled in the manner that is provided in the By-Laws. Thus, we defer to the judgment of PICPA's National Board of Directors regarding all issues that concern the chapters of the organization.

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. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.

Please be guided accordingly.


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⁵ *Ibid.*