08 March 2011

SEC Opinion No. 11-11
Income-generating activities
of Non-Stock Corporations

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Sir:

This refers to your letter dated 17 January 2011 addressed to the Commission's Cebu Extension Office and forwarded to this office, requesting our opinion on the following queries:

1. Is a SEC-registered non-stock foundation allowed to acquire funds from solicitations, sales and payment for services it renders to the public?

2. Is a foundation exempt from payment of income tax, real property tax, value-added tax and business permit fees?

3. Can a local government unit (LGU) take away a corporation's standing as a charitable foundation for tax purposes?

Based on our records[1], Lebumfacil – Sta. Ana Medical Foundation, Inc. (the "**Company**") is a non-stock corporation engaged in providing free medical consultation and medicines to indigent members of the community of Toledo City and neighboring towns. As stated in your letter, you have a business permit issued by the city government of Toledo that you intend to renew.

[1] 2009 General Information Sheet.

Preliminarily, we call your attention to Sections 87 and 88 of the Corporation Code[2], which pertinently provide:

> "Sec. 87. *Definition.* – For 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 in dissolution: *Provided,* **That <u>any profit</u> which a non-stock corporation may obtain <u>as an incident to its operations</u> shall, whenever necessary or proper, <u>be used for the furtherance of the purpose or purposes for which the corporation was organized</u>**, subject to the provisions of this Title.
>
> The provisions governing stock corporations, when pertinent, shall be applicable to non-stock corporations, except as may be covered by specific provisions of this Title. (n)
>
> Sec. 88. *Purposes.* – Non-stock corporations may be formed or organized for **charitable**, religious, educational, professional, cultural, fraternal, literary, scientific, social, civic service, or similar purposes, like trade, industry, agricultural and like chambers, or any combination thereof, subject to the special provisions of this Title governing particular classes of non-stock corporations. (n)" (Emphasis and underscoring supplied)

In response to your first query, the law clearly allows non-stock corporations to raise funds so long as it is incidental to the company's operations, and that said funds shall be used for the furtherance of the purpose for which it was established. The fact that a non-profit corporation earns a profit as a legal entity, as distinguished from profit, gain or income to the incorporators or members, does not make it a profit-making corporation where such profit or income is used for the purposes set forth in the articles of incorporation and is not distributed to its incorporators, members or officers, since mere intangible or pecuniary benefits to the members do not change the nature of the corporation.[3] In line with the foregoing, it is opined that non-stock corporations are not empowered to venture *primarily* in business activities. However, *as incidental to the object and purposes of the corporation,* a non-stock, non-profit corporation may engage in certain economic activities as may be specified in its charter or articles of incorporation, provided, however that profits realized as an incident to its operation shall be used for the furtherance of the purpose or purposes for which the corporation was organized.[4]

As regards your second query, please be informed that the Commission normally does not consider tax questions, seeing as this does not fall within our

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[2] (1980).
[3] 1A Fletcher Cyc. Corp., 1983 rev. vol., sec. 112, at 151 (cited in SEC Opinion dated 09 September 1988 addressed to Technology and Livelihood Resource Center.)
[4] Ibid.

jurisdiction. However, please note that in our letter dated 29 August 2003 addressed to Atty. Aurea Elnora A. Casiano, we gave the following opinion, to wit:

> "By definition, a non-stock corporation does not issue stock and distribute dividends to their members; they are created not for profit but for the public good and welfare. (De Leon, Corporation Code, p. 45) Incidental profits obtained from its operation shall, whenever necessary or proper, be used for the furtherance of the purpose or purposes for which the corporation was organized. It is in this sense that a non-stock corporation is considered a non-profit corporation. (*ibid.*, p. 636)
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> **However, not all non-stock corporations are classified as non-profit under the BIR**. There are instances when non-stock corporations earn profits which inure to the benefit of the corporation. To comply with the requirements of the Bureau of Internal Revenue for you to qualify as an accredited donee institution, please be advised that you have to amend the prefatory clause of your Articles of Incorporation to reflect the phrase ". . . to form a *non-stock and non-profit association* under the laws of the Republic of the Philippines". The prefatory clause of the SEC Express Lane Form for non-stock corporation (NS-97-01) had been revised to reflect the phrase 'non-stock and non-profit association'.
>
> Further, pursuant to the provisions of Sections 34(H) and 101(A) of the National Internal Revenue Code of 1997, as implemented by Revenue Regulations No. 13-98, please declare in your articles that '*No part of our net income inures to the benefit of any private individual, and that the level of administrative expenses of the association does not exceed thirty percent (30%) of total expenses for the total taxable year*'." (Emphasis supplied)

In connection herewith, we wish to point out the fact that the company has an existing business permit that it intends to have renewed, which indicates that it is engaged in business for profit. In any case, we opine that there is a need for the company to confirm if it has complied with the requirements of the Bureau of Internal Revenue (BIR) for exemption from payment of taxes.

Finally, please be informed that the Local Government Code of 1991[5] grants local government units (LGUs) the power to tax entities engaged in business within their respective territorial jurisdictions as well as real properties located therein.[6] For a business entity to be exempt from payment of said taxes, the requirements imposed by law and implemented by the LGU for the grant of the exemption must be strictly complied with at all times. While the power to approve the amendment of a non-stock corporation's charter, or to revoke the same, resides solely and

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[5] Republic Act No. 7160 (1992).

[6] Sec. 129. *Power to create sources of revenue.* – Each local government unit shall exercise its power to create its own sources of revenue and to levy taxes, fees and charges subject to the provisions herein, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local government units.

exclusively with the Commission, we opine that the power to "re-classify" a non-stock corporation for the purpose of withdrawing the exemption from payment of business tax that it previously enjoyed resides with the taxing authority – in this case, the LGU concerned. Hence, the company likewise needs to confirm if it has failed to meet any of the requirements of the LGU for the enjoyment of tax-free-status.

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.[7]

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[7] SEC Memorandum Circular No. 15, series of 2003.