

COMMISSION ON AUDIT CIRCULAR NO. 2001-002
July 31, 2001

TO : Heads of Departments; Chiefs of Bureaus, Agencies, and Offices; Managing Heads of Government-Owned and/or Controlled Corporations; Local Chief Executives; Assistant Commissioners, Directors, Officers-in-Charge, and Auditors of the Commission on Audit; and All Others Concerned.

SUBJECT: Supreme Court Administrative Circular No. 10-2000 captioned "Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units".

Quoted hereunder in full is Supreme Court Administrative Circular No. 10-2000 issued on October 25, 2000, treating on the above subject.

"Republic of the Philippines
Supreme Court
Manila

ADMINISTRATIVE CIRCULAR NO. 10-2000

TO : All Judges of Lower Courts

SUBJECT : Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units

In order to prevent possible circumvention of the rules and procedures of the Commission on Audit, judges are hereby enjoined to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.

Judges should bear in mind that *in Commissioner of Public Highways v. San Diego* (31 SCRA 617, 625 [1970]), this Court explicitly stated:

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

Moreover, it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines (Department of Agriculture v. NLRC, 227 SCRA 693, 701-02 [1993] citing Republic vs. Villasor, 54 SCRA 84 [1973]). All money claims against the Government must first be filed with the Commission on Audit

which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on *certiorari* and in effect sue the State thereby (P.D. 1445, Sections 49-50).

However, notwithstanding the rule that government properties are not subject to levy and execution unless otherwise provided for by statute (Republic v. Palacio, 23 SCRA 899 [1968], Commissioner of Public Highways v. San Diego, *supra*) or municipal ordinance (Municipality of Makati v. Court of Appeals, 190 SCRA 206 [1990]), the Court has, in various instances, distinguished between government funds and properties for public use and those not held for public use. Thus, in *Viuda de Tan Toco v. Municipal Council of Iloilo* (49 Phil 52 [1962]), the Court ruled that "[w]here property of a municipal or other public corporation is sought to be subjected to execution to satisfy judgments recovered against such corporation, the question as to whether such property is leviable or not is to be determined by the usage and purposes for which it is held." The following can be culled from *Viuda de Tan Toco v. Municipal Council of Iloilo*:

1. Properties held for public uses - and generally everything held for governmental purposes - are not subject to levy and sale under execution against such corporation. The same rule applies to funds in the hands of a public officer and taxes due to a municipal corporation.
2. Where a municipal corporation owns in its proprietary capacity, as distinguished from its public or governmental capacity, property not used or used for a public purpose but for *quasi* private purposes, it is the general rule that such property may be seized and sold under execution against the corporation.
3. Property held for public purposes is not subject to execution merely because it is temporarily used for private purposes. If the public use is wholly abandoned, such property becomes subject to execution.

This Administrative Circular shall take effect immediately and the Court Administrator shall see to it that it is faithfully implemented.

Issued this 25th day of October 2000 in the City of Manila.

(Sgd.) HILARIO G. DAVIDE, JR."

For your information and guidance.

(Sgd.) GUILLERMO N. CARAGUE
Chairman

(Sgd.) RAUL C. FLORES
Commissioner

(Sgd.) EMMANUEL M. DALMAN
Commissioner