

**COMMISSION ON AUDIT CIRCULAR NO. 98-002**  
**June 9, 1998**

- TO** : Provincial Governors, City and Municipal Mayors, Other Local Chief Executives, COA Directors, Regional Directors, Heads of Provincial, City, Municipal and Circuit Municipal Units, and All Others Concerned.; Chief Accountants/Heads of Accounting Units, and All Others Concerned.
- SUBJECT** : Prohibition against employment by local government units of private lawyers to handle their legal cases.

For the information and guidance of all concerned, quoted hereunder are excerpts from the letter of Hon. Silvestre H. Bello III, Solicitor General, dated January 27, 1997, to this Commission:

"January 27, 1997

HON. CELSO D. GAÑGAN  
Chairman  
Commission on Audit  
Commonwealth Avenue  
Quezon City

S i r:

This has reference to the numerous requests or deputation of private lawyers at the instance of local government units (LGUs) under a supposedly legal anchor on COA Circular No. 95-011 dated December 4, 1995.

COA Circular No. 95-011 provides in pertinent part:

"x x x x x. In the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall be first secured before hiring or employment of a private lawyer or law firm."

This part of the Circular is but a reiteration of an earlier one, COA Circular No. 86-255, dated April 22, 1986, x x x x x.

The Circular first quoted above would at first blush seem to include LGUs to be serviced by private lawyers or law firms when duly authorized or deputized by the Solicitor General. This posture, however, will run afoul of the Local Government Code of 1991, RA 7160, under which the authority of the Solicitor General to deputize such lawyers or firms is not recognized or is withdrawn.

x x x x x . Under Section 481 of RA 7160, it is the legal officer of a municipality who must handle its legal affairs, including representation in court.

In the absence of the Municipal Legal Officer, the Provincial Legal Officer also serves as the legal officer of the municipality. He is disqualified from being such only "in actions or proceedings where a component city or municipality is the party adverse to the provincial government or to another component city or municipality (see par. 3(1) of Section 481 of RA 7160). x x x x.

Aside from the Provincial Legal Officer, the municipality may secure the services of the Provincial Prosecutor. x x x except in cases in which original jurisdiction is vested in the Supreme Court or the adverse party is the province itself (Cf. Province of Cebu v. Intermediate Appellate Court, 147 SCRA 447 [1987]). x x x x.

The case of Municipality of Piliia, Rizal v. CA, et al., 233 SCRA 484 (1994), cited in Circular No. 95-011, would even lend support to the position that only the provincial Fiscal (Provincial Prosecutor) and the Municipal Attorney can represent a province or municipality in their lawsuits.

Finally, Section 481, third paragraph, of RA 7160 provides that "the appointment of a legal officer shall be mandatory for the provincial and city governments and optional for the municipal government. "Evidently, provincial and city governments have no choice but to appoint their respective legal officers, hence, they cannot under any condition be represented by a private lawyer or law firm.

In case of municipal governments, the law provides that the appointment of a legal officer is "optional." However, the permissiveness of such appointment must be construed only in cases of budgetary limitation. Thus, the municipality may opt not to appoint a municipal legal officer by reason of financial constraint. But it cannot at some point request the deputation of private lawyers to handle its cases. It is non sequitur. For it is well accepted that the fees of private lawyers are exorbitant. To make an antithetical construction would indirectly sanction what the law and jurisprudence directly prohibit.

To recapitulate, the OSG is not the legal counsel of the LGUs. Not being their lawyer, the OSG cannot also deputize private lawyers to handle their cases. x x x x x.

Very truly yours,

(SGD.) SILVESTRE H. BELLO III  
Solicitor General"

In view thereof, the last paragraph of COA Circulars Number 95-011 and 86-255, dated December 4, 1995 and April 2, 1986, respectively, are hereby amended insofar as LGUs are concerned, to read as follows:

"Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, Constitutional, public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies and instrumentalities, including government-owned or controlled corporations and local government units in court or to render legal services for them. In the event that such legal services cannot be avoided or is justified under extraordinary or

exceptional circumstances for government agencies and instrumentalities, including government-owned or controlled corporations, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case maybe, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm. With respect to local government units, only in those instances provided in par. 3(1), Section 481 of R.A. 7160, which states, thus:

"x x x: Provided, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;"

may public funds be utilized as payment for the services of a private legal counsel or law firm."

This circular shall take effect immediately.

**(Sgd.) CELSO D. GAÑGAN**  
Chairman

**(Sgd.) SOFRONIO B. URSAL**  
Commissioner

**(Sgd.) RAUL C. FLORES**  
Commissioner