

**SOLIVEN, Santiago D.**

Re: Disallowance by the Department of  
Budget and Management; Appeal

X-----X

**RESOLUTION NO. 030098**

Santiago D. Soliven, Officer-in-Charge, Internal Audit Service Office (IASO), Provincial Government of Nueva Vizcaya, appeals the disallowance by the Department of Budget and Management Regional Office (DBMRO) No. II of the position of Provincial Government Department Head (IAS Officer), and the Representation and Transportation Allowance (RATA) attached thereto.

Pertinent portions of the assailed decision of DBMRO No. II read, thus:

*"Pursuant to Section 326 of the Local Government Code of 1991 (RA 7160) and Local Budget Circular No. 52, our review of the FY 2000 Annual Budget of your Province involving an appropriation of P277,073,461.50 approved by the Sangguniang Panlalawigan on March 20, 2000 under Appropriation Ordinance (AO) No. 2000-056, shows substantial compliance with the provisions of the Local Government Code and its implementing rules and regulations, except for the following items which would require conformance with existing budgetary and compensation policies:*

X X X

"6. X X X

*"The position of Provincial Government Department Head (SG-24) in the Internal Audit Service Office (IASO) is not allowed inasmuch as it is only a support staff to the Office of the Governor."*

The Decision of DBMRO No. II on the motion for reconsideration of then Nueva Vizcaya Governor Rodolfo Q. Agbayani reads, thus:

*"Based on established standards under RA 6758, the classification of the head of a department/office in the LGUs is dependent on the level of organization of the new office. If the newly created office is a department as*

*envisioned under CSC MC No. 19, then the head could appropriately be classified as Provincial Government Department Head.*

*"As clearly indicated in the Local Budget Preparation Form No. 153, the Internal Audit Service Office is only one of the divisions under the Office of the Governor. It is not a separate department in the LGU. As such, it does not warrant the creation of PGDH."*

Records show that the Internal Audit Service Office (IASO) was created pursuant to Ordinance No. 46, s. 1994 (1994 Reorganization Ordinance) of the Sangguniang Panlalawigan of Nueva Vizcaya. Said office, considered as a separate department in the Office of the Provincial Governor, is headed by an IAS Officer with a salary grade of 26 and has ten (10) support staff.

In 1998, the Sangguniang Panlalawigan of Nueva Vizcaya enacted Ordinance No. 98-002, revising the organizational structure of the Office of the Provincial Governor except the IASO, which as earlier mentioned is treated as a separate office.

In its review of the 1999 Annual Budget of the Provincial Government of Nueva Vizcaya, DBMRO No. II found that *"the Internal Audit Service Office is not within the classification standards of a department per CSC Memorandum Circular No. 19, s. 1992 as it is only a support staff to the Office of the Provincial Governor"*.

Likewise, in its review of the 2000 Annual Budget of the Provincial Government of Nueva Vizcaya, DBMRO No. II declared that *"the position of Provincial Government Department Head (SG26) in the IASO is not allowed in as much as it is only a support staff to the Office of the Governor"*. As a result of such review, DBMRO No. II issued a notice to appellant Soliven disallowing the payment of his RATA as Officer-in-Charge of IASO. Governor Agbayani filed a motion for reconsideration but the same was denied by DBMRO No. II.

Thereafter, Soliven appealed<sup>1</sup> to the Office of DBM Secretary Emilia T. Boncodin praying for the reversal of the decisions of DBMRO No. II. Secretary Boncodin referred<sup>2</sup> said appeal to the Civil Service Commission (CSC) arguing that under **Section 24 of CSC Memorandum Circular No. 19, s. 1992**, the Commission has jurisdiction on appeals regarding the implementation of organizational structures and staffing patterns of local government units.

Pursuant to **Section 6-B (3)<sup>3</sup>, Rule I of the Uniform Rules on Administrative Cases in the Civil Service**, the Commission referred<sup>4</sup> the appeal of Soliven to the Civil Service Commission Regional Office (CSCRO) No. II for appropriate action. Thereafter, CSCRO No. II submitted<sup>5</sup> its position on said appeal.

The sole issue to be resolved in the instant case is whether the creation of the position Internal Audit Service Officer (Provincial Government Department Head) in the province of Nueva Vizcaya is legal.

For purposes of clarity and convenience, it is imperative to review the legal history relative to the creation of IASO.

On June 16, 1962, then President Diosdado Macapagal approved **Republic Act (RA) No. 3456**, which provides for the creation, organization and operation of IAS in all departments, bureaus and offices of the national government. Said law provides, as follows:

*"Sec. 2. There shall be created, organized and operated in all departments, bureaus and offices of the National Government, internal audit services which shall assist management to achieve an efficient and effective fiscal administration and performance of agency affairs and functions.*

*"Sec. 3. The Internal Audit Service shall be under the direct administrative supervision and control of the chief and/or assistant chief of the agency. It shall be organized as an independent staff unit and shall correspondingly perform staff functions. It shall be responsible for instituting and conducting a program of internal audit for the agency. The chief of internal audit service shall have the rank and salary equivalent to the third ranking official of the agency. He shall report directly to the chief or assistant chief of agency."*  
(Underlining supplied)

Thereafter or on March 26, 1965, President Macapagal approved **RA No. 4177**, which amended Sections 2, 3 and 4 of the abovementioned law. Said law provides, to wit:

*"SEC. 2. There shall be created, organized and operated in all branches, subdivisions and instrumentalities of the government, including government-owned and controlled corporations to be known as agency for purposes of this act, internal audit services which shall assist management to achieve an efficient and effective fiscal administration and performance of agency affairs and functions.*

*"SEC. 3. The Internal Audit Service shall be under the direct administrative supervision and control of the heads and/or assistant heads of the agency. It shall be organized as an independent staff unit and shall correspondingly perform staff functions. It shall be responsible for instituting and conducting a program of internal audit for the agency. The chief of the Internal Audit Service shall have the rank and salary equivalent to the third ranking official of the agency. He shall report directly to the head or assistant head of the agency."*  
(Underlining supplied)

On August 21, 1989, the **Salary Standardization Law<sup>6</sup> (SSL)** was approved, repealing **Section 3 of RA Nos. 3456 and 4177** that equated heads of IAS to the rank and salaries of the third ranking official of an agency. **Section 16** of the SSL provides, thus:

**"Section 16. Repeal of Special Salary Law and Regulations.** – *All laws, decrees, executive orders, corporate charters and other issuances or parts thereof, that exempt agencies from the coverage of the system, or that authorize and fix position classification, salaries, pay rates or allowances or specified positions or groups of officials and employees or of agencies which are inconsistent with the System, including the*

*proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed."*

Notwithstanding the abovementioned repeal, then President Corazon C. Aquino issued **Administrative Order (AO) No. 278<sup>7</sup>** on April 28, 1992 directing the organization of IAS in all agencies of the bureaucracy. Said AO provides, thus:

*"Section 1. In addition to the provisions of Section 1 of Administrative Order No. 119, series of 1989, all heads of government offices, agencies, government-owned and controlled corporations, including government financial institutions and local government units shall organize Internal Audit Services (IAS) in their respective offices, as follows:*

*1.1 The Internal Audit Services (IAS) shall be an integral part of the office/organization and shall assist the institution management in the effective discharge of its responsibilities insofar as the same would not encroach on or be adversarial with those of the auditors of the Commission on Audit. It shall function in accordance with the policies established by the provisions of Republic Act No. 3456, as amended by Republic Act No. 4177, and shall perform staff functions with primary responsibilities encompassing the examination and evaluation of the adequacy and effectiveness of internal control and the quality of performance. x x x"*

There is no question that the IAS shall be established and form part of the organization of all agencies in the bureaucracy since the same was mandated by RA Nos. 3456 and 4177 and reiterated in AO No. 278. What is not clear, and this is the crux of the instant controversy, is whether the head of IAS should be given the position equal to that of the third ranking official of the agency, in this case the provincial government department head.

The Commission believes that despite the repeal by the SSL of the provision of RA Nos. 3456 and 4177, said rule is still applicable and in existence since the same was cured by the **Local Government Code of 1991 (RA No. 7160)**. **AO No. 278** and **CSC Memorandum Circular No. 19, s. 1992<sup>8</sup>** further reinforce and affirm the mandate of RA 7160 regarding this issue.

**The Local Government Code of 1991** specifically grants local government units (LGUs) the power to create offices and positions under the Local Government Code of 1991, thus:

*"Section 76. Organization Structure and Staffing Pattern. Every local government unit shall design and implement its own organizational structure and staffing pattern taking into consideration its service requirements and financial capability, subject to the minimum standards and guidelines prescribed by the Civil Service Commission."*

Also, AO No. 278 directs the organization of IAS in all National Government Agencies (NGAs), Government-Owned and Controlled Corporations (GOCCs), Government Financial Institutions (GFIs) and LGUs and the same shall function in

accordance with the policies established in RA Nos. 3456 and 4177.

Additionally, **Section 9 of CSC Memorandum Circular No. 19, s. 1992** expressly authorizes LGUs to create offices, thus:

*"Section 9. Other Offices and positions in the organizational structure and staffing pattern not provided under Sections 3 and 4 of these guidelines may be created by local government units: Provided, That they are the priority needs as identified by the local chief executive, the sanggunian and/or the local development councils concerned consistent with Section 17 of the Code . . ."*

Thus, in accordance with said provisions, the Provincial Government of Nueva Viscaya enacted Ordinance No. 46 which created, among other positions, the position of Provincial Government Department Head (IAS Officer).

**WHEREFORE**, the appeal of Santiago D. Soliven is hereby **GRANTED**. Accordingly, the creation of the position of Provincial Government Department Head (Internal Audit Service Officer) in the Provincial Government of Nueva Vizcaya by virtue of Ordinance No. 46, s. 1994 is legal.

Quezon City, JAN 21 2003

(Original Signed)  
**JOSE F. ERESTAIN, JR.**  
Commissioner

(Original Signed)  
**KARINA CONSTANTINO-DAVID**  
Chairman

(Original Signed)  
**J. WALDEMAR V. VALMORES**  
Commissioner

Attested by:

(Original Signed)  
**ARIEL G. RONQUILLO**  
Director III

JJC/FPG/KPZ/X4/Y6(L)/rco/rad95  
NDC-01-1082/soliven

<sup>1</sup> Appeal dated March 28, 2001 and received by DBM on April 18, 2001

<sup>2</sup> Letter dated September 20, 2001 and received by the Commission on September 28, 2001

<sup>3</sup> "Decisions of national agencies and local government units within their geographical boundaries relative to personnel actions and non-disciplinary cases brought before it on appeal."

<sup>4</sup> Memorandum dated November 13, 2001

<sup>5</sup> Letter-Opinion dated January 28, 2002

<sup>6</sup> Republic Act No. 6758

<sup>7</sup> Directing the Strengthening of the Internal Control Systems of Government Offices, Agencies, Government-Owned and/or Controlled Corporations, Including Government Financial Institutions and Local Government Units, In Their Operations

<sup>8</sup> Guidelines and Standards in the Establishment of Organizational Structures and Staffing Patterns in Local Government Units