

**PUBLIC FUNDS AND INCIDENTAL
RELIGIOUS BENEFIT: THE CONSTITUTIONAL ISSUE**

By

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(Statement at the public hearing on alleged PCSO anomalies
held by the blue ribbon committee on 13 July 2011)

The Facts

It appears from the 2009 report by the Commission on Audit that the Philippine Charity Sweepstakes Office charged to its Charity Fund the total amount of ₱6.94 million for five utility vehicles granted to certain dioceses of the Catholic church.

On the face of each check, in so many words, the following explanation was typed: “Purchase of one unit 4 x 4 service vehicle to be used by the diocese in its various community and health programs.”

Each of the bishops involved used the PCSO grants to purchase the following utility vehicles: a secondhand ten-year-old Nissan Pathfinder pickup; a Mitsubishi Strada pickup; a Toyota Grandia Hi-Ace; a Mitsubishi Montero; and an Isuzu Crosswind.

The COA report said that this action was a violation of the constitutional provision that no public money should be appropriated, directly or indirectly, for the use of any church.

The Law

The Constitution contains at least three specific provisions concerning the relationship of church and state.

The first provision is found in Article 2, Declaration of Principles, which states in Section 6: “The separation of Church and State shall be inviolable.”

The second provision is found in Article 3, Bill of Rights, which states in Section 5: “No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.”

And the third provision is found in Article 6, the Legislative Department, which states in Section 29 paragraph 2: “No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion. . . .”

The Issue

The issue is whether the 2009 COA report is correct, in finding that the grant of ₱6.49 million to certain dioceses of the Catholic church violates the Constitution.

I humbly submit that the COA report is wrong, and that there was no constitutional violation. Under the Constitution, the power of the COA is to audit government funds, not to settle questions of constitutional law. That power is granted only to the Supreme Court. COA should have recommended that the constitutional issue should be raised with the Department of Justice, which is the official legal adviser of the executive branch of the government.

Constitutional Analysis

Constitutional law consists, not only of the Constitution, but also of the cases decided by the Supreme Court on constitutional grounds. So far, the only case decided by the Supreme Court that has some bearing on the present issue is the 1937 case of *Aglipay v. Ruiz*.^[1]

The post office issued postage stamps commemorating an international eucharistic congress of the Catholic church. The issue was whether the stamps used public money for religious purposes, thus violating the Constitution. The Supreme Court ruled that there was no violation:

It is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government. We are of the opinion that the Government should not be embarrassed in its activities simply because of **incidental results**, more or less religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation. The main purpose should not be frustrated by its subordination to mere incidental results not contemplated. (Emphasis added.)

Thus, the test is the **basic purpose**, and not the mere **incidental result**, of the use of public funds. The basic purpose of the grant of public funds is clearly stated on the face of the checks themselves: “purchase of service vehicles to be used by the diocese in its various community and health programs.” If there is any benefit to the bishop and the diocese, it is merely incidental.

The Threefold Test:

Purpose, Effect, Entanglement

The provision in our Bill of Rights consists of two clauses:

- The Establishment Clause, prohibiting Congress from establishing a state religion; and
- The Free Exercise Clause, denying to Congress the power to prohibit the free exercise of religion.

Under the Establishment Clause, the general guide is the concept of “neutrality.” This means that government should act to achieve only goals which are secular, meaning goals which are worldly; as distinguished from goals which are spiritual. Government should achieve secular goals in a religiously neutral manner.

To determine what is a religiously neutral act, the U.S. Supreme Court has adopted a threefold test called purpose, effect, entanglement. To determine whether a law that is religiously neutral on its face violates the Establishment Clause, the Court will consider three factors, which I shall now apply to the pending PCSO case:

1. Does the law have a secular purpose?

Answer: Yes, because the PCSO law (R.A. No. 1169, as amended) authorizes the PCSO “to engage in health and welfare-related investments, programs, projects, and activities,” by itself or in collaboration with others.

2. Does the law have the primary effect of advancing or inhibiting religion?

Answer: No, the PCSO law does not even mention religion.

3. Does the law create an excessive entanglement between government and religion?

Answer: No, as I shall now explain.

The threefold test was laid down in the 1971 case of *Lemon v. Kurtzman*^[2] decided by the US Supreme Court. It is not binding, but it is authoritative in our jurisdiction. In *Lemon*, the Court said that in determining whether a law involves excessive entanglement between government and religion, we must conduct the following analysis:

1. Consider the nature of the institution that received the benefit from the government.
2. Consider the nature of the aid that the government gave to the bishops.
3. Consider the resulting relationship between the government and the bishops.

The donations pass the threefold legal test under jurisprudence. However, during the hearing, PCSO management apparently admitted that it has not given similar donations to any other religion. If so, then PCSO management appears to be giving preference to the Catholic religion, and that would be a violation of the Establishment Clause.

Repeal the PCSO Charter

As chair of the Senate committee on revision of laws, I shall call a public hearing this August on a new PCSO charter, as well as a new Pagcor charter. Both the PCSO and Pagcor funds constitute the President's Social Fund, which has served as a black budget, meaning a budget insulated from public scrutiny, confined to the dark and insulated from sunshine, sneaked through the back door instead of undergoing the open process of congressional budgetary authorization.

Under existing law, PCSO generates revenues from the sale of sweepstakes and lotto tickets. The resulting revenues are allocated, as follows:

- 55% to the Prize Fund
- 30% to the Charity Fund
- 15% to the Operating Fund

The Charity Fund and the Operating Fund – or in other words, 45% of the revenues – are allocated by the PCSO Board, apparently with the approval of the President. According to the 2009 COA report, the total deposits to the bank's current account for the three Funds were in the aggregate amount of ₱7.603 BILLION.

To give to the PCSO Board the power to allocate the galactic sum of ₱7.603 BILLION A YEAR is to excavate a yawning democratic deficit. The present situation is feudal and contrary to best international practice. The best practice is the one-fund concept, under which all government revenues are remitted to the Treasury, and disbursed only as authorized by Congress. There should be no President's Social Fund, because the entire government budget is already his budget. This is why we call it the President's Budget.

The new law will repeal not only the PCSO charter, but also all the various republic acts that seek to allocate certain PCSO funds to alphabet-soup national programs. The new law will limit the PCSO Board only to the function of regulating and supervising sweepstakes and lotto operations.

The entire revenues for the year will be remitted to the national treasury. Only the President and Congress will prioritize and allocate the fund, except that 5% of the lotto earnings shall be given to local government units, and only 10% shall be allocated for administrative expenses. The PCSO bureaucracy shall be slashed, their allowances and privileges abolished, and the public relations budget removed.

And while this process of building on the ashes takes place, I respectfully move that this blue ribbon committee should immediately recommend to the Ombudsman the criminal prosecution of all

PCSO officials responsible for depositing in 2009 with a private commercial bank the sum of ₱1.548 BILLION without the prior approval of the Department of Finance, as required under DOF Order No. 27-05.

By the process of lateral thinking, I respectfully move to investigate the source of the false report about the so-called “Pajero bishops,” when it turns out that no Pajeros were involved. Who is this maleficent twisted genius? Was this media spin designed to cover up the crime of depositing without authorization in a private bank the sum of ₱1.548 BILLION? Was this media spin further designed to call public attention away from the annual sum of some ₱ 7.603 BILLION made available to the sticky fingers of the PCSO Board?

Like the wanton world-class theft of public funds and conspicuous consumption generated by the road user’s tax, the PCSO anomaly is bodaciously corrupt. Keep the bishops out of it.

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