



Republic of the Philippines  
Supreme Court  
Baguio City

EN BANC

CITY OF GENERAL SANTOS,  
represented by its Mayor, HON.  
DARLENE MAGNOLIA R.  
ANTONINO-CUSTODIO

Petitioner,

-versus

G.R. No. 199439

Present:

SERENO, C.J.,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, JJ.

COMMISSION ON AUDIT,  
Respondent.

Promulgated:

April 22, 2014

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DECISION

LEONEN, J.:

In order to be able to deliver more effective and efficient services, the law allows local government units the power to reorganize. In doing so, they

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should be given leeway to entice their employees to avail of severance benefits that the local government can afford. However, local government units may not provide such when it amounts to a supplementary retirement benefit scheme.

In this special civil action for certiorari,<sup>1</sup> the city of General Santos asks us to find grave abuse of discretion on the part of the Commission on Audit (COA). On January 20, 2011, respondent Commission on Audit affirmed the findings of its Legal Services Sector in its Opinion No. 2010-021 declaring Ordinance No. 08, series of 2009, as illegal. This was reiterated in respondent Commission's resolution denying the motion for reconsideration dated October 17, 2011.<sup>2</sup>

Ordinance No. 08, series of 2009, was enacted by the city of General Santos on August 13, 2009. It is entitled *An Ordinance Establishing the GenSan Scheme on Early Retirement for Valued Employees Security (GenSan SERVES)*.<sup>3</sup>

It is important to view this ordinance in its proper context.

Then mayor of General Santos City, Pedro B. Acharon, Jr., issued Executive Order No. 40, series of 2008, creating management teams pursuant to its organization development program. This was patterned after Executive Order No. 366 dated October 4, 2004 entitled *Directing a Strategic Review of the Operations and Organizations of the Executive Branch and Providing Options and Incentives for Government Employees who may be Affected by the Rationalization of the Functions and Agencies of the Executive Branch* and its implementing rules and regulations.<sup>4</sup>

Mayor Pedro B. Acharon, Jr. declared the city's byword of "Total Quality Service" in his state of the city address in 2005. This was followed by the conduct of a process and practice review for each department, section, and unit of the local government. The product was an organization development masterplan adopted as Executive Order No. 13, series of 2009.<sup>5</sup> This was followed by Resolution No. 004, series of 2009, requesting for the mayor's support for GenSan SERVES, an early retirement program to be proposed to the Sangguniang Panlungsod.

Consequently, Ordinance No. 08, series of 2009, was passed together with its implementing rules and regulations, designed *"to entice those*

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<sup>1</sup> This special civil action for certiorari was filed pursuant to Rule 64 in relation to Rule 65 of the 1997 Rules of Court.

<sup>2</sup> *Rollo*, p. 20.

<sup>3</sup> *Id.* at 4, petition.

<sup>4</sup> *Id.* at 184, petitioner's memorandum.

<sup>5</sup> *Id.*, petitioner's memorandum.

*employees who were unproductive due to health reasons to avail of the incentives being offered therein by way of early retirement package.”*<sup>6</sup>

This contextual background in the passing of Ordinance No. 08, series of 2009, was not contested by respondent Commission on Audit.

The ordinance, as amended, provides that qualified employees below sixty (60) years of age but not less than fifty (50) years and sickly employees below fifty (50) years of age but not less than forty (40) years may avail of the incentives under the program.<sup>7</sup> In other words, the ordinance “provides for separation benefits for sickly employees who have not yet reached retirement age.”<sup>8</sup> Section 5 of the ordinance states:

Section 5. *GenSan SERVES Program Incentives On Top of Government Service Insurance System (GSIS) and PAG-IBIG Benefits* – Any personnel qualified and approved to receive the incentives of this program shall be entitled to whatever retirement benefits the GSIS or PAG-IBIG is granting to a retiring government employee.

Moreover, an eligible employee shall receive an early retirement incentive provided under this program at the rate of one and one-half (1 ½) months of the employee’s latest basic salary for every year of service in the City Government.<sup>9</sup>

Also, the ordinance provides:

Section 6. *GenSan SERVES Post-Retirement Incentives* – Upon availment of early retirement, a qualified employee shall enjoy the following in addition to the above incentives:

- (a) Cash gift of Fifty Thousand Pesos (₱50,000.00) for the sickly employees;
- (b) Lifetime free medical consultation at General Santos City Hospital;
- (c) Annual aid in the maximum amount of Five Thousand Pesos (₱5,000.00), if admitted at General Santos City Hospital; and

<sup>6</sup> Id. at 187, petitioner’s memorandum.

<sup>7</sup> See Ordinance No. 8 attached as Annex K of the petition. Ordinance No. 8, Sec. 2, par. (a), as amended, defines “Applicants.” *Rollo*, p. 64.

<sup>8</sup> *Rollo*, p. 183, petitioner’s memorandum.

<sup>9</sup> Id. at 65-66. The first paragraph of Section 5 has been amended by Ordinance No. 11, series of 2009, as follows:

Section 5. *GenSan SERVES Program Incentives On Top of Government Service Insurance System (GSIS) and PAG-IBIG Benefits* – Any personnel qualified and approved to receive the incentives of this program shall be entitled to whatever retirement benefits the GSIS or PAG-IBIG is granting to a retiring government employee, ***except those benefits the payment of which are passed on to the employer. In which case, the benefits granted under this ordinance shall only be considered as one of the options available to a retiring city employee.***

(d) 14 karat gold ring as a token.<sup>10</sup>

As provided, payment would be made in two tranches: 50% paid in January 2010 and the remainder in July 2010.<sup>11</sup> Petitioner city alleged that out of its 1,361 regular employees, 50 employees applied, from which 39 employees qualified to avail of the incentives provided by the ordinance.<sup>12</sup> The first tranche of benefits was released in January 2010.<sup>13</sup>

In a letter dated February 10, 2010, the city's audit team leader, through its supervising auditor, sent a query on the legality of the ordinance to respondent Commission on Audit's director for Regional Office No. XII, Cotabato City.<sup>14</sup>

In his second indorsement dated March 15, 2010, respondent Commission's regional director agreed that the grant lacked legal basis and was contrary to the Government Service Insurance System (GSIS) Act. He forwarded the matter to respondent Commission's Office of General Counsel, Legal Services Sector, for a more authoritative opinion.<sup>15</sup>

The Office of General Counsel issued COA-LSS Opinion No. 2010-021 on March 25, 2010. The opinion explained that Ordinance No. 08, series of 2009, partakes of a supplementary retirement benefit plan. In its view, Section 28, paragraph (b) of Commonwealth Act No. 186, as amended, prohibits government agencies from establishing supplementary retirement or pension plans from the time the Government Service Insurance System charter took effect while those plans already existing when the charter was enacted were declared abolished.<sup>16</sup>

The opinion discussed that this prohibition was reiterated in *Conte v. Commission on Audit*.<sup>17</sup> *Laraño v. Commission on Audit*,<sup>18</sup> on the other hand, ruled that an early retirement program should be by virtue of a valid reorganization pursuant to law in order to be valid. The opinion concludes as follows:

In fine, since Ordinance No. 08 is in the nature of an ERP [Early Retirement Program] of the City Government of General Santos, a law authorizing the same is a requisite for its validity. In the absence, however, of such law, the nullity of Ordinance No. 08

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<sup>10</sup> Id. at 66, Ordinance No. 8, Sec. 6.

<sup>11</sup> Id., Ordinance No. 8, Sec. 10.

<sup>12</sup> Id. at 185, petitioner's memorandum.

<sup>13</sup> Id. at 8, petition.

<sup>14</sup> Id. at 34, COA decision.

<sup>15</sup> Id., COA decision.

<sup>16</sup> Id. at 24-25, COA-LSS opinion.

<sup>17</sup> 332 Phil. 20 (1996) [Per J. Panganiban, En Banc].

<sup>18</sup> 565 Phil. 271 (2007) [Per C.J. Puno, En Banc].

becomes a necessary consequence.

It is hoped that the foregoing sufficiently answers the instant query.<sup>19</sup>

Petitioner city, through then mayor, Pedro B. Acharon, Jr., filed a letter-reconsideration dated June 7, 2010. They followed through with two letters addressed to respondent Commission's chairman dated July 26, 2010 and October 6, 2010, respectively, for the reconsideration of COA-LSS Opinion No. 2010-021.<sup>20</sup>

Respondent Commission on Audit treated these letters as an appeal. On January 20, 2011, it rendered its decision denying the appeal and affirming COA-LSS Opinion No. 2010-021.<sup>21</sup> It also denied reconsideration by resolution dated October 17, 2011.<sup>22</sup> The dispositive portion of its decision reads:

**WHEREFORE**, premises considered, the instant appeal is hereby **DENIED** for lack of merit and COA-LSS Opinion No. 2010-021 dated March 25, 2010 of the OGC, this Commission is hereby **AFFIRMED**. Accordingly, the ATL of General Santos City is hereby directed to issue a Notice of Disallowance on the illegal disbursements made under the Gen[S]san SERVES.<sup>23</sup>

Respondent Commission on Audit agreed that Ordinance No. 08, series of 2009, partakes of the nature of a supplementary retirement benefit plan proscribed by Section 28, paragraph (b) of Commonwealth Act No. 186 as amended. It also cited *Conte v. Commission on Audit*<sup>24</sup> and *Laraño v. Commission on Audit*.<sup>25</sup>

In its opinion, respondent Commission on Audit observed that GenSan SERVES was not based on a law passed by Congress but on ordinances and resolutions passed and approved by the Sangguniang Panlungsod and Executive Orders by the city mayor.<sup>26</sup> Moreover, nowhere in Section 76 of Republic Act No. 7160, otherwise known as the Local Government Code, does it provide a specific power for local government units to establish an early retirement program.

Mayor Acharon, Jr. submitted that other local government units such as Cebu in 2005 and 2008 have adopted their own early retirement

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<sup>19</sup> *Rollo*, p. 25, COA-LSS opinion.

<sup>20</sup> *Id.* at 185-186, petitioner's memorandum.

<sup>21</sup> *Id.* at 33-39. A copy of the COA decision is attached as Annex E of the petition.

<sup>22</sup> *Id.* at 51-53. A copy of the COA resolution is attached as Annex G of the petition.

<sup>23</sup> *Id.* at 39, COA decision.

<sup>24</sup> 332 Phil. 20 (1996) [Per J. Panganiban, En Banc].

<sup>25</sup> 565 Phil. 271 (2007) [Per C.J. Puno, En Banc].

<sup>26</sup> *Id.* at 37, COA decision.

programs. The resolutions of the Sangguniang Panlungsod of Cebu invoked Republic Act No. 6683 dated December 2, 1988, which provided for early retirement and voluntary separation. The questioned decision mentioned that respondent Commission on Audit would look into this program supposedly adopted by Cebu.<sup>27</sup> Assuming Cebu's invocation of Republic Act No. 6683 was proper, respondent Commission on Audit explained that this has already been amended by Republic Act No. 8291, otherwise known as the GSIS Act of 1997. Moreover, Section 9 of Republic Act No. 6683<sup>28</sup> provides for limited application.<sup>29</sup>

The present petition raises this sole issue:

WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT CONSIDERED ORDINANCE NO. 08, SERIES OF 2009, IN THE NATURE OF AN EARLY RETIREMENT PROGRAM REQUIRING A LAW AUTHORIZING IT FOR ITS VALIDITY

I

This court has consistently held that findings of administrative agencies are generally respected, unless found to have been tainted with unfairness that amounted to grave abuse of discretion:

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. ***There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law*** as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.<sup>30</sup>

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<sup>27</sup> Id. at 37-38, COA decision.

<sup>28</sup> Sec. 9. Period of Applicability and Effectivity of the Incentive Benefits. – Applications for early retirement and voluntary separation benefits hereunder shall be entertained only if filed within a period of two (2) months from the issuance of the rules and regulations for the implementation of this Act pursuant to Section 13 hereof. The oldest employees who are the most senior in the service will be given priority in the payment of benefits.

<sup>29</sup> Id. at 38, COA decision.

<sup>30</sup> *Veloso v. Commission on Audit*, G.R. No. 193677, September 6, 2011, 656 SCRA 767, 777 [Per J. Peralta, En Banc], citing *Yap v. Commission on Audit*, G.R. No. 158562, April 23, 2010, 619 SCRA

(Emphasis supplied, citations omitted)

We have ruled that “not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.”<sup>31</sup> Grave abuse of discretion has been defined as follows:

By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. x x x.<sup>32</sup>

In *Yap v. Commission on Audit*,<sup>33</sup> this court explained that the Commission on Audit has the duty to make its own assessment of the merits of the disallowance and need not be limited to a review of the grounds relied upon by the auditor of the agency concerned:

x x x we rule that, in resolving cases brought before it on appeal, respondent COA is not required to limit its review only to the grounds relied upon by a government agency’s auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent COA is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render COA’s vital constitutional power unduly limited and thereby useless and ineffective.<sup>34</sup>

Moreover, Article IX-A, Section 7 of the Constitution provides that “unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.” Rule 64, Section 2 of the Revised Rules of Civil Procedure also provides that “a judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.”

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154, 174 [Per J. Leonardo-De Castro, En Banc]. See also *Villanueva v. Commission on Audit*, 493 Phil. 887 (2005) [Per J. Chico-Nazario, En Banc].

<sup>31</sup> *Dimapilis-Baldoz v. Commission on Audit*, G.R. No. 199114, July 16, 2013, 701 SCRA 318, 335 [Per J. Perlas-Bernabe, En Banc], citing *Tavera-Luna, Inc. v. Nable*, 67 Phil. 340, 344 (1939) [Per J. Laurel, En Banc].

<sup>32</sup> *Development Bank of the Philippines v. Commission on Audit*, 530 Phil. 271, 278 [Per J. Puno, En Banc], citing *Tañada v. Angara*, 338 Phil. 546, 604 (1997) [Per J. Panganiban, En Banc].

<sup>33</sup> G.R. No. 158562, April 23, 2010, 619 SCRA 154 [Per J. Leonardo-De Castro, En Banc].

<sup>34</sup> *Id.* at 169.

Thus, we proceed to determine whether respondent Commission on Audit acted with grave abuse of discretion in affirming the opinion of its Legal Services Sector and finding that the entire Ordinance No. 08, series of 2009, partakes of the nature of a proscribed supplementary retirement benefit plan.

## II

According to petitioner city, GenSan SERVES does not provide for supplementary retirement benefits, and *Conte* does not apply.<sup>35</sup>

Petitioner city explains that unlike the facts in *Conte*, Ordinance No. 08, series of 2009, was designed to entice employees who are unproductive due to health reasons to avail of the incentives by way of an early retirement package. In essence, the incentives are severance pay. Those who have reached retirement age are disqualified.<sup>36</sup>

Petitioner city adds that GenSan SERVES is a one-time offer. It is available only to qualified employees who applied within two months from the ordinance's effectivity. In fact, out of its 1,361 regular employees, 50 employees applied. Out of all that applied, only 39 employees qualified to avail of the incentives provided by the ordinance.<sup>37</sup>

These incentives are independent and distinct from the Government Service Insurance System retirement package.<sup>38</sup>

Section 5 of Ordinance No. 08, series of 2009, was amended by Ordinance No. 11, series of 2009, "to exclude those GSIS and PAG-IBIG benefits the payment[s] of which are passed on [to] the employer."<sup>39</sup> This was to remove any doubt as to its coverage and applicability and to ensure that no employee will be paid twice.<sup>40</sup> The amended provision reads:

Section 5. Gen[S]an SERVES Program Incentives On Top of Government Service Insurance System (GSIS) and PAG-IBIG Benefits – Any personnel qualified and approved to receive the incentives of this program shall be entitled to whatever retirement benefits the GSIS or PAG-IBIG is granting to a retiring government employee, *except those benefits the payment of*

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<sup>35</sup> *Rollo*, p. 187, petitioner's memorandum,

<sup>36</sup> *Id.* at 192, petitioner's memorandum.

<sup>37</sup> *Id.* at 185, petitioner's memorandum.

<sup>38</sup> *Id.* at 187-188, petitioner's memorandum.

<sup>39</sup> A copy of Ordinance No. 11 is attached as Annex M of the petition, *rollo*, pp. 73-76; Petitioner's memorandum, *rollo*, p. 192.

<sup>40</sup> *Rollo*, p. 18, petition.



*which are passed on to the employer.* In which case, the benefits granted under this ordinance shall only be considered as one of the options available to a retiring city employee.

Moreover, an eligible employee shall receive an early retirement incentive provided under this program at the rate of one and one-half (1 ½) months of the employee's latest basic salary for every year of service in the City Government. (Emphasis supplied)

According to petitioner city, GenSan SERVES is an initial step pursuant to its organization development masterplan,<sup>41</sup> which began with the city mayor's issuance of Executive Order No. 40, series of 2008, creating change management teams.<sup>42</sup>

Petitioner city cites Sections 16 and 76 of the Local Government Code as its authority to reorganize. It argues that these provisions necessarily imply the authority of petitioner city to provide retirement benefits, separation pay, and other incentives to those affected by the reorganization.<sup>43</sup>

Petitioner city also cites Republic Act No. 6656, otherwise known as *An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization*.<sup>44</sup> According to petitioner city, this not only requires good faith in the implementation of reorganization but mandates the payment of appropriate separation pay, retirement, and other benefits under existing laws within 90 days from effectivity date of separation.<sup>45</sup>

Even President Gloria Macapagal-Arroyo issued Executive Order No. 184 entitled *Directing the Reorganization and Streamlining of the National Development Company* on March 10, 2003. In Section 4, it provides for a separation package anchored on Republic Act No. 6656.<sup>46</sup> Petitioner city submits that if the President can reorganize in the absence of any law authorizing her to do so and provide compensation based on Republic Act No. 6656, with more reason that a local government unit can reorganize as its power to reorganize is expressly provided in the Local Government Code.<sup>47</sup>

Respondent Commission on Audit counters that it correctly found Ordinance No. 08, series of 2009, as invalid in the absence of a law passed by Congress specifically authorizing the enactment of an ordinance granting

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<sup>41</sup> Id. at 7, petition; *rollo*, pp. 184-185, petitioner's memorandum.

<sup>42</sup> A copy of Executive Order No. 40, series of 2008, is attached as Annex H of the petition, *rollo*, pp. 54-57.

<sup>43</sup> *Rollo*, pp. 189-190, petitioner's memorandum.

<sup>44</sup> This was approved on June 10, 1988.

<sup>45</sup> *Rollo*, p. 191, petitioner's memorandum.

<sup>46</sup> Id., petitioner's memorandum.

<sup>47</sup> Id., petitioner's memorandum.

an early retirement scheme.<sup>48</sup>

Respondent Commission on Audit contends that Sections 16 and 76 of the Local Government Code do not confer authority upon any local government unit to create a separate or supplementary retirement benefit plan.<sup>49</sup> As for Republic Act No. 6656, this contemplates situations where a government position has been abolished, or rendered redundant, or a need to merge, divide or consolidate positions for lawful causes allowed by the Civil Service Law exists.<sup>50</sup>

According to respondent Commission on Audit, petitioner city failed to demonstrate arbitrariness on its part as it merely observed the proscription under Section 28, paragraph (b) of Commonwealth Act No. 186 when it found the ordinance a nullity.<sup>51</sup>

We agree with respondent Commission on Audit but only insofar as Section 5 of the ordinance is concerned. We declare Section 6 on post-retirement incentives as valid.

### III

The constitutional mandate for local autonomy supports petitioner city's issuance of Executive Order No. 40, series of 2008, creating change management teams<sup>52</sup> as an initial step for its organization development masterplan.

Local autonomy also grants local governments the power to streamline and reorganize. This power is inferred from Section 76 of the Local Government Code on organizational structure and staffing pattern, and Section 16 otherwise known as the general welfare clause:

Section 76. *Organizational 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.

Section 16. *General Welfare.* - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental

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<sup>48</sup> Id. at 168, respondent's memorandum.

<sup>49</sup> Id. at 174, respondent's memorandum.

<sup>50</sup> Id. at 175, respondent's memorandum.

<sup>51</sup> Id. at 176, respondent's memorandum.

<sup>52</sup> A copy of Executive Order No. 40, series of 2008, is attached as Annex H of the petition, *rollo*, pp. 54-57.

for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

Section 5, paragraph (a) of the Local Government Code states that “any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt, any question thereon shall be resolved in favor or devolution of powers x x x.”

Section 5, paragraph (c) also provides that “the general welfare provisions in this Code shall be liberally interpreted to give more powers to local government units in accelerating economic development and upgrading the quality of life for the people in the community.” These rules of interpretation emphasize the policy of local autonomy and the devolution of powers to the local government units.

Designing and implementing a local government unit’s own “organizational structure and staffing pattern” also implies the power to revise and reorganize. Without such power, local governments will lose the ability to adjust to the needs of its constituents. Effective and efficient governmental services especially at the local government level require rational and deliberate changes planned and executed in good faith from time to time.

This was implied in *Province of Negros Occidental v. Commissioners, Commission on Audit*.<sup>53</sup> In that case, this court declared as valid the ordinance passed by the province granting and releasing hospitalization and health care insurance benefits to its officials and employees. This court held that Section 2 of Administrative Order No. 103<sup>54</sup> requiring the President’s

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<sup>53</sup> G.R. No. 182574, September 28, 2010, 631 SCRA 431 [Per J. Carpio, En Banc].

<sup>54</sup> Section 2. All heads of government offices/agencies, including government owned and/or controlled corporations, as well as their respective governing boards are hereby enjoined and prohibited from authorizing/granting Productivity Incentive Benefits or any and all forms of allowances/benefits without prior approval and authorization via Administrative Order by the Office of the President. Henceforth, anyone found violating any of the mandates in this order, including all officials/agency found to have taken part thereof, shall be accordingly and severely dealt with in accordance with the applicable provisions of existing administrative and penal laws.

Consequently, all administrative authorizations to grant any form of allowances/benefits and all forms of additional compensation usually paid outside of the prescribed basic salary under R.A. 6758, the Salary Standardization Law, that are inconsistent with the legislated policy on the matter or are not covered by any legislative action are hereby revoked.

prior approval before the grant of any allowance or benefit is applicable only to offices under the executive branch.<sup>55</sup> Section 2 does not mention local government units, thus, the prohibition does not apply to them.<sup>56</sup> This court then referred to the policy of local autonomy as follows:

Thus, consistent with the state policy of local autonomy as guaranteed by the 1987 Constitution, under Section 25, Article II and Section 2, Article X, and the Local Government Code of 1991, we declare that the grant and release of the hospitalization and health care insurance benefits given to petitioner's officials and employees were validly enacted through an ordinance passed by petitioner's *Sangguniang Panlalawigan*.<sup>57</sup>

Local autonomy allows an interpretation of Sections 76 and 16 as granting petitioner city the authority to create its organization development program.

Petitioner city's vision in 2005 of "Total Quality Service" for "the improvement of the quality of services delivered by the city to the delight of its internal and external customers"<sup>58</sup> is a matter within its discretion. It then conducted a process and practice review for each and every unit within the city, resulting in the formulation of an organization development masterplan adopted as Executive Order No. 13, series of 2009.<sup>59</sup>

Resolution No. 004, series of 2009, was later passed requesting for the mayor's support for GenSan SERVES. The third preambular clause states that in order "to transform the bureaucracy into [an] effective and result[s]-oriented structure, redounding to improved governance, there is a need to entice employees aged 50-59 years old, to retire earlier than [age] 65 for them to enjoy their retirement while they are still healthy."<sup>60</sup> Consequently, Ordinance No. 08, series of 2009, was passed creating the GenSan SERVES program.

In *Betoy v. The Board of Directors, NAPOCOR*,<sup>61</sup> this court explained that a streamlining of organization for a more efficient system must pass the test of good faith in order to be valid:

A reorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy

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<sup>55</sup> *Province of Negros Occidental v. Commissioners, Commission on Audit*, G.R. No. 182574, September 28, 2010, 631 SCRA 431, 441 [Per J. Carpio, En Banc].

<sup>56</sup> *Id.* at 441.

<sup>57</sup> *Id.* at 444.

<sup>58</sup> *Rollo*, p. 184, petitioner's memorandum.

<sup>59</sup> *Id.*, petitioner's memorandum.

<sup>60</sup> *Id.* at 63, Resolution No. 004, series of 2009.

<sup>61</sup> G.R. Nos. 156556-57, October 4, 2011, 658 SCRA 420 [Per J. Peralta, En Banc].

or redundancy of functions.<sup>62</sup> It could result in the loss of one's position through removal or abolition of an office. However, ***for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith; otherwise, it is void ab initio.***<sup>63</sup> (Emphasis supplied)

There are indicia of bad faith, none of which are present in this case.

Republic Act No. 6656 invoked by petitioner city as authority for the creation of GenSan SERVES, for example, enumerates situations considered as bad faith when employees are removed as a result of any reorganization:

SECTION 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. ***A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:***

- a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
- b) Where an office is abolished and another performing substantially the same functions is created;
- c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
- d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices; and
- e) Where the removal violates the order of separation provided in Section 3 hereof. (Emphasis supplied)

None of these badges of bad faith exist in this case.

Petitioner city followed the order of priority under Section 4 of its

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<sup>62</sup> Id. at 439, citing *Canonizado v. Aguirre*, 380 Phil. 280, 296 (2000) [Per J. Gonzaga-Reyes, En Banc].

<sup>63</sup> Id., citing *Dario v. Mison*, 257 Phil. 84 (1989) [Per J. Sarmiento, En Banc]; *Vide: Dytiapco v. Civil Service Commission*, G.R. No. 92136, July 3, 1992, 211 SCRA 88 [Per J. Nocon, En Banc]; *Domingo v. Development Bank of the Philippines*, G.R. No. 93355, April 7, 1992, 207 SCRA 766 [Per J. Regalado, En Banc]; and *Pari-an v. Civil Service Commission*, 279 Phil. 835 (1991) [Per Griño-Aquino, En Banc].

ordinance.<sup>64</sup> It required applicants to undergo medical examination with the local hospital and considered the hospital chief's recommendations.<sup>65</sup>

Unfortunately, these allegations showing good faith is not enough to declare the program created by petitioner city as a reorganization that justifies the creation of a retirement benefit plan.

Petitioner city alleged that the positions occupied by those who qualified for GenSan SERVES remained vacant, and it would neither hire replacements nor promote employees *earlier than June 30, 2011*.<sup>66</sup> This means the positions left by those who availed of the program will eventually be filled up by others. Their positions were not abolished or merged with other positions for streamlining in the service.

#### IV

The assailed decision by respondent Commission on Audit was anchored on Section 28, paragraph (b) of Commonwealth Act No. 186, otherwise known as the Government Service Insurance Act,<sup>67</sup> as amended by Republic Act No. 4968.<sup>68</sup> This proscribes all supplementary retirement or pension plans for government employees:

(b) Hereafter no insurance or retirement plan for officers or employees shall be created by any employer. All supplementary retirement or pension plans heretofore in force in any government office, agency, or instrumentality or corporation owned and controlled by the government, are hereby declared inoperative or abolished: Provided, That the rights of those who are already eligible to retire thereunder shall not be affected.

Jurisprudence has discussed the nature and purpose of retirement benefits and pension plans as follows:

***Retirement benefits*** are, after all, a form of reward for an employee's loyalty and service to the employer, and are intended to help the employee enjoy the remaining years of his life, lessening the burden of worrying about his financial support or upkeep. On the other hand, a ***pension*** partakes of the nature of "retained wages" of the retiree for a dual purpose: to entice competent people to enter the government service, and to permit them to retire from the service with relative security, not only for those who have retained their vigor, but more so for those who have been

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<sup>64</sup> *Rollo*, p. 192, petitioner's memorandum.

<sup>65</sup> *Id.*, petitioner's memorandum.

<sup>66</sup> *Id.*, petitioner's memorandum.

<sup>67</sup> The Government Service Insurance Act was approved on November 14, 1936.

<sup>68</sup> Republic Act No. 4968 was approved on June 17, 1967.

incapacitated by illness or accident.<sup>69</sup> (Emphasis supplied)

In *Conte v. Commission on Audit*,<sup>70</sup> this court discussed the purpose behind the proscription found in Section 28, paragraph (b), as amended. It was to address the need to prevent the proliferation of inequitable plans:

x x x Sec. 28 (b) as amended by RA 4968 in no uncertain terms bars the creation of any insurance or retirement plan – other than the GSIS – for government officers and employees, in order to prevent the undue and inequitable proliferation of such plans. x x x. To ignore this and rule otherwise would be tantamount to permitting every other government office or agency to put up its own supplementary retirement benefit plan under the guise of such “financial assistance.”<sup>71</sup>

Section 2 of the ordinance, as amended, defined “applicants” as referring to “qualified employees below sixty (60) years of age but not less than fifty (50) years and sickly employees below fifty (50) years of age but not less than forty (40) years old from the effectivity of this Ordinance and shall have rendered service in the City government for at least 15 years.”

This means that even employees other than those who are unproductive due to health reasons may apply under the ordinance. Albeit last in priority, they may still qualify to avail of the incentives pursuant to Section 4, paragraph (d), as amended:

Section 4. *Prioritization.* – The following applicants shall be prioritized in availing the program:

- a) *First* – Employees below sixty (60) years of age but not less than fifty (50) years who are determined by the Chief of General Santos City Hospital to be qualified to avail of the program;
- b) *Second* – Employees below sixty (60) years of age but not less than fifty (50) years who are under continuous medication as determined by the Chief of General Santos City Hospital;
- c) *Third* – Employees below fifty (50) years of age but not less than forty (40) years who are determined by the Chief of General Santos City Hospital to be physically or mentally incapacitated to further continue rendering service with the City Government and recommended to avail of the program; and

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<sup>69</sup> See *GSIS v. De Leon*, G.R. No. 186560, November 17, 2010, 635 SCRA 321, 334 [Per J. Nachura, Second Division], citing *Conte v. Commission on Audit*, 332 Phil. 20, 34-35 (1996) [Per J. Panganiban, En Banc].

<sup>70</sup> *Conte v. Commission on Audit*, 332 Phil. 20 (1996) [Per J. Panganiban, En Banc].

<sup>71</sup> *Id.* at 35.

- d) *Fourth* – Employees below sixty (60) years of age but not less than fifty (50) years who are desirous to avail of the program.

Moreover, Section 3 of the ordinance, as amended, enumerates those who are covered by the program and may thus apply under the ordinance:

Section 3. Coverage. – GenSan SERVES program covers the following employees of the City Government:

- (a) personnel occupying permanent positions;
- (b) those who are below sixty (60) years of age but not less than fifty (50) years on the date of application;
- (c) those who are below fifty (50) years of age but not less than forty (40) years on the date of application but confirmed by the Chief of General Santos City Hospital to be sickly and recommended to avail early retirement; and
- (d) those who must have served the City Government of General Santos a minimum of fifteen (15) continuous years.

Under paragraph (d), employees should have served for a minimum of 15 years to qualify. This requirement is consistent with the definition of a retirement plan as a form of reward for an employee's loyalty and service to the employer. Moreover, pension plans as defined permit employees to retire with relative security, especially for those who have been incapacitated by illness.<sup>72</sup>

Section 5 states that "an eligible employee shall receive an early retirement incentive provided under this program at the rate of 1 ½ months of the employee's latest basic salary for every year of service in the City Government." This may be more than the amount of annuity provided in Section 11, paragraph (a) of Commonwealth Act No. 186 as amended,<sup>73</sup>

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<sup>72</sup> Id.

<sup>73</sup> Sec. 11, par. (a). Amount of annuity. — Upon retirement after faithful and satisfactory service a member shall be automatically entitled to a life annuity guaranteed for at least five years and thereafter as long as he lives. The amount of the monthly annuity at the age of fifty-seven years shall be thirty pesos, plus for each year of service after the sixteenth of June, nineteen hundred and fifty-one, two per centum of the average monthly salary received by him during the last three years of service, plus for each year of service rendered prior to the sixteenth of June, nineteen hundred and fifty-one, one and two-tenths per centum of said average monthly salary: Provided, That this amount shall be adjusted actuarially if retirement be at an age other than fifty-seven years: Provided, further, That the maximum amount of monthly annuity at age fifty-seven shall not in any case exceed three-fourths of said average monthly salary: And provided, finally, That retirement benefit shall be paid not earlier than one year after the approval of this Act. In lieu of this annuity, he may prior to his retirement elect one of the following equivalent benefits:

(1) Monthly annuity during his lifetime;

(2) Monthly annuity during the joint-lives of the employee and his or her spouse guaranteed for at least five years, which annuity, however, shall, upon the death of either and after the five-year guaranteed period, be reduced to one-half and be paid to the survivor;



considering that an applicant must have rendered at least 15 years of service in the city government to qualify.<sup>74</sup>

Section 5 refers to an “early retirement incentive,” the amount of which is pegged on the beneficiary’s years of service in the city government. The ordinance provides that only those who have rendered service to the city government for at least 15 years may apply.<sup>75</sup> Consequently, this provision falls under the definition of a retirement benefit. Applying the definition in *Conte*, it is a form of reward for an employee’s loyalty and service to the city government, and it is intended to help the employee enjoy the remaining years of his or her life by lessening his or her financial worries.

## V

In any case, those who availed of the GenSan SERVES were separated from the service. Those who are separated from the service, whether compulsorily for lawful cause,<sup>76</sup> or voluntarily when incentivized to retire early for streamlining purposes,<sup>77</sup> should consequently be entitled to a form of separation or severance pay.

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(3) For those who are at least sixty-three years of age, lump-sum payment of present value of annuity for first five years, and for those who are at least sixty but below sixty-three years of age, lump-sum payment of the present value of the annuity for the first three years, with the balance of the five-year guaranteed annuity payable in lump sum upon reaching sixty-three years of age, and annuity after the guaranteed period to be paid monthly: Provided, That said lump-sum payment of annuity may be made to a retired employee only if the premiums paid by and for him are sufficient to cover said payment or payments: Provided, further, That it shall be compulsory for an employer to pay on the date of retirement in preference to all other obligations, except salaries and wages of its employees, its share of at least the premiums required to permit an employee to enjoy this option;

(4) Such other benefits as may be approved by the System. (Emphasis supplied)

<sup>74</sup> See Sec. 2, par. (a) of Ordinance No. 08, series of 2009, which defines “Applicants.” *Rollo*, pp. 64-65.

<sup>75</sup> Ordinance No. 08, series of 2009, Sec. 2, par. (a).

<sup>76</sup> See Republic Act. No. 6656. Section 9 provides as follows:

Section 9. All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation. ***Unless also separated for cause, all officers and employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency.*** Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned. (Emphasis supplied)

<sup>77</sup> See *GSIS v. Commission on Audit*, G.R. No. 162372, October 19, 2011 [Per J. Leonardo-De Castro, En Banc], available at the Supreme Court website: <<http://sc.judiciary.gov.ph/jurisprudence/2011/october2011/162372.htm>>. This court made a distinction between plans that augment retirement benefits under existing laws and early retirement incentives plans. The latter may be adopted for government employees if authorized by a law that streamlines the organization and encourages employees to retire early.

Petitioner city invoked Republic Act No. 6656, which provides that employees separated from the service as a result of any reorganization shall be entitled to separation pay, retirement, and other benefits:

Section 9. All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation. *Unless also separated for cause, all officers and employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency.* Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned. (Emphasis supplied)

Separation or severance pay has been defined as “an allowance usually based on length of service that is payable to an employee on severance x x x, or as compensation due an employee upon the severance of his employment status with the employer.”<sup>78</sup>

Section 6 of the ordinance on post-retirement incentives provides for benefits that are not computed based on years of service. They are lump sum amounts and healthcare benefits:

Section 6. *GenSan SERVES Post-Retirement Incentives* – Upon availment of early retirement, a qualified employee shall enjoy the following in addition to the above incentives:

- (e) Cash gift of Fifty Thousand Pesos (₱50,000.00) for the sickly employees;
- (f) Lifetime free medical consultation at General Santos City Hospital;
- (g) Annual aid in the maximum amount of Five Thousand Pesos (₱5,000.00), if admitted at General Santos City Hospital; and
- (h) 14 karat gold ring as token.

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<sup>78</sup> See *E. Razon, Inc. v. Secretary of DOLE*, G.R. No. 85867, May 13, 1993, 222 SCRA 1, 7 [Per J. Melo, Third Division], citing *Marcopper Mining Corporation v. NLRC*, G.R. No. 83207, August 5, 1991, 200 SCRA 167 [Per J. Cruz, First Division].

The text of the ordinance indicates its purpose of encouraging employees, especially those who are unproductive due to health reasons, to avail of the program even before they reach the compulsory retirement age. Section 6 provides for a form of severance pay to those who availed of GenSan SERVES, which was executed in good faith.

We should not be misled by the use of the term “retirement” in Section 6 in determining the nature of the benefits it provides. Labels are not determinative of substantive content. It is the purpose behind these incentives, as read from the text of the ordinance and as inferred from the effect of the ordinance as applied, which must govern.

The purpose of Section 6 is also different from the benefits proscribed in *Conte v. Commission on Audit*,<sup>79</sup> and the nature of its benefits must be taken in the context of its rationale. The benefits provided in Section 6 serve its purpose of inducing petitioner city’s employees, who are unproductive due to health reasons, to retire early. Respondent Commission on Audit’s observation that the benefit provided is broader than that provided in *Conte v. Commission on Audit* fails to take this rationale into consideration. Furthermore, the benefits under GenSan SERVES were only given to a select few—the sickly and unproductive due to health reasons. Certainly, this negates the position that the benefits provide for supplementary retirement benefits that augment existing retirement laws.

In *Conte v. Commission on Audit*<sup>80</sup> cited by respondent Commission on Audit, this court held that the “financial assistance” option for the difference of benefits under Republic Act No. 660 and Republic Act No. 1616 violated Section 28, paragraph (b) as amended. Social Security System (SSS) Resolution No. 56 subject of that case provides in part:

NOW, THEREFORE, BE IT RESOLVED, That all the SSS employees who are simultaneously qualified for compulsory retirement at age 65 or for optional retirement at a lower age be encouraged to avail for themselves the life annuity under R.A. 660, as amended; x x x.<sup>81</sup>

The fifth preambular clause of Resolution No. 56 also states that “it is the policy of the Social Security Commission to promote and to protect the interest of all SSS employees, with a view to providing for their well-being during both their working and retirement years.”<sup>82</sup> The financial assistance provides benefits to *all* Social Security System employees who are retireable

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<sup>79</sup> 332 Phil. 20 (1996) [Per J. Panganiban, En Banc].

<sup>80</sup> Id.

<sup>81</sup> Id. at 28.

<sup>82</sup> Id.

under existing laws and who are qualified to apply. It is available to all present and future Social Security System employees upon reaching retirement age.<sup>83</sup>

Without doubt, this financial assistance of *Conte* augments the retirement benefits provided under existing laws, in violation of Section 28, paragraph (b), as amended.

On the other hand, Section 3 of Ordinance No. 08, series of 2009 limits its coverage. Only qualified employees below sixty (60) years of age but not less than fifty (50) years and sickly employees below fifty (50) years of age but not less than forty (40) years from the effectivity of the ordinance, with at least 15 years of service, are considered. Out of 1,361 regular employees of petitioner city, only 50 employees applied, from which only 39 employees qualified to avail of the ordinance benefits.<sup>84</sup> Petitioner city alleged that there was one more applicant who was supposed to qualify, but she had died of acute renal failure secondary to diabetes nephropathy before her application was acted upon.<sup>85</sup>

Furthermore, unlike in *Conte*, Ordinance No. 08, series of 2009, was a one-time limited offer.<sup>86</sup> The availment period was only within two months from the ordinance's effectivity.<sup>87</sup>

In any case, petitioner city is authorized by the Local Government Code to approve ordinances to provide for the care of the sick:

SECTION 458. – Powers, Duties, Functions and Compensation. –  
(a) The Sangguniang Panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under section 22 of this Code, and shall:

x x x x

(5) Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for

<sup>83</sup> *Rollo*, p. 188, petitioner's memorandum.

<sup>84</sup> *Id.* at 185 and 191, petitioner's memorandum.

<sup>85</sup> *Id.* at 191, petitioner's memorandum.

<sup>86</sup> *Id.* at 66, Ordinance No. 08, series of 2009, Sec. 8.

Section 8. Availment of *GenSan Serves*. – The *GenSan Serves* shall be a one-time offer only.

<sup>87</sup> *Id.*, Ordinance No. 08, series of 2009, Sec. 7.

Section 7. *Availment Period*. – The *GenSan SERVES* shall be offered to and may be availed of by qualified applicants starting from the effectivity of this Ordinance and within a period of two (2) months from its effectivity. All applications filed to the Human Resource Management and Development Office beyond the aforesaid period shall not be honored and be denied due course.

under Section 17 of this Code, and in addition to said services and facilities, shall:

x x x x

(xiv) *Provide for the care of* disabled persons, paupers, the aged, *the sick*, persons of unsound mind, abandoned minors, juvenile delinquents, drug dependents, abused children and other needy and disadvantaged persons, particularly children and youth below eighteen (18) years of age; and, subject to availability of funds, establish and provide for the operation of centers and facilities for said needy and disadvantaged persons[.] (Emphasis supplied)

This is also consistent with the constitutional mandate for a comprehensive approach to health development, with priority for the needs of the sick:

ARTICLE XIII  
Social Justice and Human Rights

HEALTH

Section 11. The State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost. There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children. The State shall endeavor to provide free medical care to paupers.


Thus, the cash gift for the sickly employees, lifetime free medical consultation in petitioner city's hospital, and other similar benefits under Section 6 of the ordinance are valid.

The proscription under Section 28, paragraph (b) of Commonwealth Act No. 186, as amended, does not apply to Section 6 of the ordinance. Consequently, the Commission on Audit acted with grave abuse of discretion when it declared the entire ordinance void and of no effect.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The assailed Commission on Audit decision dated January 20, 2011 and resolution dated October 17, 2011 are **AFFIRMED** with **MODIFICATION** insofar as Section 6 of Ordinance No. 08, series of 2009, as amended by Ordinance No. 11, series of 2009, is declared as **VALID**.


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**SO ORDERED.**


  
**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

**WE CONCUR:**


  
**MARIA LOURDES P. A. SERENO**  
Chief Justice


  
**ANTONIO T. CARPIO**  
Associate Justice

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

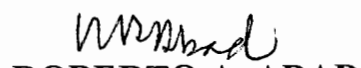
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**ARTURO D. BRION**  
Associate Justice


  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice


  
**ROBERTO A. ABAD**  
Associate Justice

  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice


  
**JOSE CATRAL MENDOZA**  
Associate Justice

  
**BIENVENIDO L. REYES**  
Associate Justice

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

### CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the court.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice