



Republic of the Philippines
Sandiganbayan
Quezon City

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0152


- versus -

Present:

Gomez-Estoesta, J.
Chairperson
Trespeses, J.
Hidalgo, JJ.

ISIDRO LEBRILLA HEMEDES, JR.,
Accused.

Promulgated:

February 1, 2019 

x-----x

DECISION

TRESPESSES, J.:

Submitted for the Court's decision is the charge for violation of Section 3 (h) of Republic Act No. 3019 ("R.A. No. 3019"), otherwise known as the Anti-Graft and Corrupt Practices Act, against accused Isidro Lebrilla Hemedes, Jr. (hereafter referred to as "accused") when he held the position as member of the Board of Directors of Luzon Development Bank ("LDB"), while then serving as Mayor of Cabuyao City, Laguna.

THE CASE

On 9 March 2018, an Information dated 10 January 2018¹ was filed with the Sandiganbayan alleging:

¹ Record, p. 1-3.

7.
7
1

X-----X

That between the period 30 June 2007 and 05 February 2014, or sometime prior or subsequent thereto, in Cabuyao City, Laguna, Philippines and within the jurisdiction of this Honorable Court, the abovenamed accused, a public official, being the City Mayor of Cabuyao, Laguna, committing the crime in relation to office, did then and there willfully, unlawfully and criminally, having direct financial and pecuniary interest in Luzon Development Bank by serving as a member of its Board of Directors, despite being prohibited by law under Section 1 of Presidential Decree No. 119, to the prejudice of public interest.

CONTRARY TO LAW.

On 16 March 2018, accused personally appeared and posted cash bond for his provisional liberty.²

On 3 April 2018, the Court found that probable cause exists for the issuance of a warrant for accused's arrest. However, the actual issuance of the warrant was withheld due to accused's prior posting of bail.³

On 13 April 2018, accused pleaded not guilty during his arraignment. On the same day, pre-trial proceeded. Upon motion, the parties were granted additional preliminary conference dates to enable them to further study their respective proposals for stipulation of facts.⁴

In due course, the parties signed and submitted their Joint Stipulation of Facts dated 15 August 2018, which the Court noted and approved on 17 August 2018.⁵ The Pre-Trial order embodying the parties' Joint Stipulation of Facts was thereafter issued by the Court.⁶

The parties made the following stipulation of facts:

1. Accused Isidero Lebrilla Hemedes, Jr. (Hemedes, Jr.) is the same person charged in and arraigned under the Information.
2. During the time material to this case, the accused was a public officer, being the municipal/city mayor of Cabuyao, Laguna from 2007 to 2016.
3. Accused Hemedes, Jr. was a member of the Board of Directors of Luzon Development Bank, a private bank from 2007 to February 6, 2014.

² Record, p. 160.

³ Id. at 169

⁴ Id. at 186.

⁵ Id. at 275.

⁶ Id. at 281.

X-----X

4. From 2007 up to February 2014, accused Hemedes, Jr. served both as member of the Board of Directors of Luzon Development Bank, a private development bank and as Municipal/City Mayor of Cabuyao, Laguna.
5. Accused Hemedes, Jr. tendered his resignation from the Board of Directors of Luzon Development Bank on February 6, 2014.
6. The complaint was filed before the Office of the Ombudsman on February 18, 2015, or one (1) year after accused Hemedes, Jr. resigned as member of the Board of Directors of Luzon Development Bank.
7. During the stint as City Mayor of accused Hemedes, Jr. (2007-2016), the City of Cabuyao received several awards in public service.
8. That accused only had seven (7) common shares with a total par value of ₱700.00 with the Luzon Development Bank.
9. That the said shares were only given to the accused by his father and not through any transaction by the accused with the bank in securing the said shares of stock to hold a seat as Independent Director.⁷

The Pre-Trial Order states that accused admitted the existence, authenticity and due execution of the prosecution's documentary exhibits.⁸ In the same manner, the prosecution admitted the existence, authenticity and due execution of accused's documentary exhibits.⁹

During the pre-trial on 24 August 2018, the parties manifested that they are willing to submit the case for judgment on the basis of the Joint Stipulation of Facts and records of the case. Accordingly, on the same date, the Court set the promulgation of judgment on 1 February 2019.¹⁰

On 6 September 2018, the prosecution moved for reconsideration¹¹ of the 24 August 2018 Resolution of the Court. In response, accused opposed this motion.¹²

⁷ Record, pp. 281-282.

⁸ Id. at 283.

⁹ Id. at 290.

¹⁰ Id. at 280.

¹¹ Id. at 298-301.

¹² Id. at 308-310.

X-----X

In a Resolution dated 10 October 2018, the Court denied the prosecution's motion for reconsideration and reiterated the order for the parties to file their respective memoranda, after which the case shall be submitted for judgment.¹³

MEMORANDUM FOR THE PROSECUTION

In its Memorandum, the prosecution begins with an enumeration of the stipulation of facts made by the parties during preliminary conference, as well as the documentary exhibits admitted by the parties.

The prosecution points out that the elements of Section 3(h) of R.A. No. 3019 are the following:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction;
3. He either (a) intervenes or takes part in his official capacity in connection with such interest; or (b) is prohibited from having such interest by the Constitution or by any law.

The prosecution alleges that the first element is indisputably present, considering that, at the time he committed the act complained of, accused was the municipal mayor of Cabuyao, Laguna from 2007 to 2016.

The prosecution argues that the second element is also present because accused admitted that, while he was mayor of Cabuyao, he has a direct or indirect financial or pecuniary interest in LDB, a private development bank. The prosecution alleges that accused's financial or pecuniary interest in LDB is shown not only by being a stockholder and board member thereof. It further alleges that accused also actively participated in LDB's management, as he was a member of its executive committee from 2007 to 2013. More particularly, accused was a member of LDB's audit committee in 2006,¹⁴ 2008,¹⁵ and 2009¹⁶. In addition, accused served as chairman of LDB's audit committee in 2013.¹⁷

The prosecution expounded that accused necessarily received and enjoyed material benefits, privileges and remuneration from LDB in the form of per diems or otherwise for serving as a member of the board of

¹³ Record, pp. 324-330.

¹⁴ Exhibit "A", p.3 of 8, Id. at 376.

¹⁵ Exhibit "B", p.3 of 8, Id. at 384.

¹⁶ Exhibit "C", p.3 of 8, Id. at 392.

¹⁷ Exhibit "G", p.4 of 8, Id. at 428.

7.
1
k

X-----X

directors and of the executive committee of LDB. Also, accused directly or indirectly benefited from LDB's declaration of cash and stock dividends.

As for the third element, the prosecution reiterates that there are two modes by which a public officer violates Section 3(h) of R.A. No. 3019 when he has a direct or indirect financial or pecuniary interest in any business, contract, or transaction. The first mode is when he intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.

The prosecution cites Section 4 of P.D. No. 119 that "no full-time appointive or elective public official shall at the same time serve as officer, director, legal counsel, or consultant of any private development bank, except in cases where such service is incident to financial assistance provided by the government or a government-owned or controlled corporation to the bank ..." The prosecution notes that accused served as member of the Board of Directors of LDB in his private capacity, and not as an incident to financial assistance provided by the government or government-owned or controlled corporation to the bank. It then concludes that, not fitting the exception to the rule, accused is covered by the prohibition of P.D. No. 119.

Finally, the prosecution contends that accused's stint as LDB director is tantamount to engagement in an occupation other than the exercise of his function as city mayor, which is likewise prohibited under Section 20 of the Local Government Code, which reads:

Sec. 90. Practice of Profession. – (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

MEMORANDUM FOR THE ACCUSED

In his Memorandum, accused claims that the only issue herein is whether P.D. No. 119 qualifies as a law that prohibits a public official like him from having an interest in a private business (such as LDB) as to make him liable under Section 3(h) of R.A. No. 3019.

Accused alleges that it was on 28 December 2004 when he acquired seven (7) common shares of LDB with a total par value of ₱700.00.¹⁸

¹⁸ Stipulation #8 of the parties, Record, p. 282.

7.
1
f

X-----X

Meanwhile, accused was elected as municipal, and later, city mayor of Cabuyao from 2007 to 2016. Accused moreover claims that his stint as mayor of the city yielded various awards in public service.

Accused further alleges that by virtue of the LDB shares, he was elected as independent director of LDB. Accused adds that he resigned as LDB director on 6 February 2014.

Accused argues that Section 8 of Republic Act No. 6713 ("R.A. No. 6713"), which requires public officers to include in their Statement of Assets, Liabilities and Networth ("SALN") is proof that public officers are not, *per se*, prohibited from having pecuniary interest in any business. He further alleges that the only time public officers are prohibited from having such business interest is in Section 3(h) of R.A. No. 3019 and Section 7(a) and (b) of R.A. No. 6713.

Accused proceeds to claim that Section 7 of R.A. No. 6713 does not apply to the present case. He also asserts that he is not liable under Section 3(h) of R.A. 3019.

Accused cites *Domingo v. Sandiganbayan*,¹⁹ where it was clarified that there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. No. 3019, to wit:

In other words, there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.

Accused continues on to argue that the first mode does not apply to him because he did not become a member of the Board of Directors of LDB through his official capacity as mayor. Meanwhile, he adds that during his incumbency as mayor and independent director of LDB, said bank never had any transaction with the City of Cabuyao.

As for the second mode, accused contends that Section 1 of P.D. No. 119 is not a law or provision of the Constitution that prohibits him as city mayor from having interest in Luzon Development Bank. Accused cites a portion of Section 1 of P.D. No. 119, which provides that "no full-time appointive or elective public official shall at the same time serve as officer, director, legal counsel, or consultant of any private development bank,

¹⁹ 510 Phil. 691-708 (2005).

7
1

X-----X

except in cases where such service is incident to financial assistance provided by the government or a government-owned or controlled corporation to the bank." Accused concludes that P.D. No. 119 does *not* qualify as the law referred to in Section 3(h) of R.A. No. 3019 because the former only prohibits directorship in a private rural bank, not having an interest therein.

PROSECUTION'S REPLY

In its Reply, the prosecution contradicts accused's claim that P.D. No. 119 does not prohibit him from having an interest in LDB and that what said law prohibits is only becoming the bank's director.

The prosecution counters that P.D. No. 119 prohibits full-time appointive and elective public officials from holding positions of officers, directors, legal counsels or consultants of any private development bank because the financial and pecuniary interest of the said banks run counter to the interest of the government.

It emphasizes that P.D. No. 119 prohibits a full-time appointive or elective public official from occupying the following positions in a private development bank: (1) officer, (2) director, (3) legal counsel or (4) consultant. It notes that the law did not include in the prohibition those positions which are not significant in managing and operating a private development bank. The prosecution theorizes that this is because the financial or pecuniary interest of an officer, director, legal counsel or consultant in a private development bank is different from that of a mere stockholder. It posits that the enumerated bank officials are actively engaged in the management and operation of the bank.

In fact, it adds, it is through the said positions that the corporate powers of the bank are exercised, its business conducted, and its properties controlled. The prosecution concludes that by the nature of these positions and the financial and pecuniary interest they have in the bank, these bank officials are expected to pursue with fervor the business and financial interest of the bank in all of its financial dealings.

The prosecution elucidates that private development banks like LDB may transact business with the government or any of its political subdivisions. This is because under Section 7 of Republic Act No. 4093 ("R.A. No. 4093"),²⁰ private development banks may accept savings and

²⁰ SECTION 7. Any private development bank may, with the approval of the Monetary Board:

(a) Accept savings and time deposits;
(b) Act as correspondent for other financial institution and as collection agent whenever there is no rural or commercial bank existing in the locality;

7.
7

X-----X

time deposits and act as correspondent for other financial institution and as collection agent whenever there is no rural or commercial bank existing in the locality. Meanwhile, Section 8 thereof permits the Development Bank of the Philippines to extend loans to private development banks in order to augment and supplement the latter's capital.²¹

The prosecution clarifies that accused is charged with the second mode of violating Section 3(h) of R.A. No. 3019 – i.e.; when a public official is prohibited from having financial or pecuniary interest by the Constitution or by law.

The prosecution differentiates that unlike the first mode, it is enough that while in public office, accused possesses and maintains pecuniary interest which the Constitution or any law prohibits. Thus, the prosecution claims it does not need to prove that accused intervened or took part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction.

The prosecution admits that P.D. No. 119 does not prohibit a full-time elective or appointive public official from being a mere stockholder of a private development bank, such as LDB. What P.D. No. 119 prohibits is said public official obtaining financial or pecuniary interest in the private development bank, if such interest is anchored on his position as officer, director, legal counsel or consultant thereof.

ISSUE

The only issue in this case is whether or not the law, the evidence on record and the parties' stipulations sufficiently show that accused committed a violation of Section 3(h) of R.A. No. 3019.

(c) Rediscount paper with the Central Bank, Philippine National Bank or other Banks and their branches or agencies. The Central Bank shall specify the nature of papers deemed acceptable for rediscount as well as the rediscount rate to be charged by any of these institutions.

²¹ SECTION 8. To augment and supplement the capital of any private development bank, the Development Bank of the Philippines shall be permitted to extend to the private development banks a loan or loans from time to time repayable in ten years with interest at the rate that may be agreed upon against security which may be offered by the private development bank or any stockholders of the private development bank: Provided, That

(a) The Development Bank of the Philippines is convinced that the resources of the private development bank are inadequate to meet the legitimate credit requirements of the locality wherein the private development bank is established;

(b) There is a dearth of private capital in the said locality;

(c) It is not possible for the stockholders of the private development bank to increase the paid-up capital thereof.

7. 7 8

OUR RULING

We find that, taken together, the law, admitted evidence and stipulations prove beyond reasonable doubt that accused is **guilty** of violating Section 3(h) of R.A. No. 3019, when he occupied the position of member of the Board of Directors of LDB, a private development bank, during his incumbency as city mayor of Cabuyao, Laguna.

Accused is charged with violation of Section 3(h) of R.A. No. 3019, which provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) xxxx

xxxx

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The following are the elements of this crime:

1. Respondent is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and
3. He either
 - a. intervenes or takes part in his official capacity in connection with such interest; or
 - b. is prohibited from having such interest by the Constitution or by any law.²²

We discuss as follows how these elements fit in relation to the circumstances in the instant case:

I. The first element of the offense

The presence of the first element of the offense is undisputed, as the parties earlier stipulated that accused was the municipal/city mayor of Cabuyao, Laguna from 2007 to 2016.

²² *Teves v. Commission on Elections*, 604 Phil. 717-752 (2009).

7
1

The stipulation as to the position of accused is binding to the parties. In *Alano v. Court of Appeals*,²³ the Supreme Court ruled that:

.....(T)here is no question that a stipulation of facts by the parties in a criminal case is recognized as declarations constituting judicial admissions, hence, binding upon the parties and by virtue of which the prosecution dispensed with the introduction of additional evidence and the defense waived the right to contest or dispute the veracity of the statement contained in the exhibit.

II. The second element of the offense

The second element of the offense is the public officer's possession of direct or indirect financial or pecuniary interest in any business, contract or transaction.

The business in question is LDB, a private development bank. It is undisputed that accused, at the time material to the case, was a shareholder, as well as a member of the board of directors of LDB. Common exhibits of the parties, particularly the General Information Sheets ("GIS") of LDB for the years 2006 to 2013, also reflect this. Further, the said LDB's GIS for the years 2006,²⁴ 2008,²⁵ and 2009²⁶ show that accused was a member of LDB's audit committee and that he even served as chairman of said audit committee in 2013.²⁷

For the purpose of ascertaining whether the second element of the crime is present herein, the pertinent question, then, is whether accused's involvement as member of the board of directors of LDB constitutes an "indirect or direct financial or pecuniary interest."

The prosecution argues that by being a member of the board of directors of LDB, accused may be considered to have direct or indirect financial or pecuniary interest therein as he necessarily received and enjoyed material benefits, privileges and remuneration from LDB in the form of per diems or otherwise for serving as a member of the board of directors and of the executive committee of LDB. The prosecution adds that accused directly or indirectly benefited from LDB's declaration of cash and stock dividends.

There is merit to the prosecution's argument.

²³ *Alano v. Court of Appeals*, 347 Phil. 549-555 (1997).

²⁴ Exhibit "A", p.3 of 8, Record, p. 376.

²⁵ Exhibit "B", p.3 of 8, Id. at 384.

²⁶ Exhibit "C", p.3 of 8, Id. at 392.

²⁷ Exhibit "G", p.4 of 8, Id. at 428.

7
/

X-----X

The court observes that the prosecution has not been able to present the actual remuneration or material benefits which accused has received by virtue of his interest in LDB.

Still, we hold that there is sufficient basis to rule that accused had a direct or indirect financial or pecuniary interest in LDB during the pertinent period.

Accused admits that at the time material to the case, he was a stockholder of LDB.²⁸ By itself, stock ownership is proof of direct pecuniary interest in the corporation. In fact, in *Republic v. Tuvera*,²⁹ the Court went so far as to hold that, for the purpose of determining the existence of the second element of violation of Section 3(h) of R.A. No. 3019, indirect pecuniary interest is established where it was shown that accused's son was the principal stockholder of the corporation with whom the transaction was made.³⁰

The fact that accused only has seven common shares of stock in LDB does not necessarily negate the presence of the second element of the offense. Section 3(h) of R.A. No. 3019 simply requires the public officer to have a "direct or indirect financial or pecuniary interest in any business, contract or transaction." It does not indicate any further qualification regarding the nature of the said interest.

More importantly, the Court is not prepared to consider that accused has a mere nominal financial or pecuniary interest in LDB, considering that accused is a member of the latter's board of directors.

For being a member of LDB's board of directors, it can be concluded that accused received compensation, or, at the very least, *per diems*, because this is provided by law.³¹

Moreover, as a member of the board of directors of LDB, accused is tasked with ensuring the profitability of LDB's business. This is because the board of directors of the corporation exercise all of its corporate powers. The board also conducts all of the corporation's business and controls all of the latter's property.³² In short, the board of directors of LDB, which counts

²⁸ Stipulation #8 of the parties, Record, p. 282.

²⁹ 545 Phil. 21-61 (2007).

³⁰ The crime charged in *Tuvera* was violation of Section 3(h) of R.A. No. 3019 under the second mode. Nonetheless, the second element of the offense in both the first and second modes is identical. Hence, the Supreme Court's ruling in *Tuvera* on what constitutes indirect or direct financial or pecuniary interest is noteworthy.

³¹ Section 30, THE CORPORATION CODE.

³² Section 23. The board of directors or trustees. - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.

7.
1 8

X-----X

accused as one of its members, is the main instrumentality by which LDB achieves its goal.

Meanwhile, LDB's Articles of Incorporation³³ confirm that it is a private development bank. As such, LDB belongs to the classification of banks known as thrift banks. Thrift banks may exercise similar powers as those of a commercial bank, but with prior approval of the Monetary Board for particular activities.³⁴ They are engaged in accumulating savings of depositors and investing them. They also provide short-term working capital and medium and long-term financing to businesses engaged in agriculture, services, industry and housing, and diversified financial and allied services, and to their chosen markets and constituencies, especially small and medium enterprises and individuals.³⁵

It is clear in the Manual for Operations of Banks issued by the *Bangka Sentral Ng Pilipinas (BSP)*³⁶ what the powers and duties of a board of directors of a bank are, to wit:

§ X141.3 Powers/responsibilities and duties of directors.

- a. *Powers of the board of directors.* The corporate powers of a bank shall be exercised, its business conducted and all its property controlled and held, by its board of directors. The powers of the board of directors as conferred by law are original and cannot be revoked by the stockholders. The directors hold their office charged with the duty to exercise sound and objective judgment for the best interest of the bank.
- b. *General responsibility of the board of directors.* The position of a bank director is a position of trust. A director assumes certain responsibilities to different constituencies or stakeholders, i.e., the bank itself, its stockholders, its depositors and other creditors, its management and employees, the regulators, deposit insurer and the public at large. These constituencies or stakeholders have the right to expect that the institution is being run in a prudent and sound manner. The board of directors is primarily responsible for approving and overseeing the implementation of the bank's strategic objectives, risk strategy, corporate governance and corporate values. Further, the board of directors is also responsible for monitoring and overseeing the performance of senior management as the latter manages the day to day affairs of the institution.
- c. *Specific duties and responsibilities of the board of directors*

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

³³ Exhibit "H," Record, pp. 435-441.

³⁴ Section 1, REPUBLIC ACT NO. 7906 (THE THRIFT BANKS ACT).

³⁵ <<http://www.bsp.gov.ph/banking/bspsup.asp>> (last visited on 17 January 2019).

³⁶ <<http://www.bsp.gov.ph/downloads/Regulations/MORB/MORB1.pdf>> (last visited 22 January 2019).

X-----X

- (1) *To approve and monitor the implementation of strategic objectives.* Consistent with the institution's strategic objectives, business plans shall be established for the bank including its trust operations, and initiatives thereto shall be implemented with clearly defined responsibilities and accountabilities. These shall take into account the bank's long-term financial interests, its level of risk tolerance and its ability to manage risks effectively.

The board shall establish a system for measuring performance against plans through regular monitoring and reviews, with corrective action taken as needed. The board shall likewise ensure that *the bank has beneficial influence on the economy* by continuously providing services and facilities which will be supportive of the national economy.

XXXX

Also, being organized as a stock corporation,³⁷ LDB has capital stock divided into shares and are authorized to distribute to the holders of such shares, dividends or allotments of the surplus profits on the basis of the shares held.³⁸

Moreover, a stock corporation like LDB is engaged in income generating activities and is authorized to declare dividends.³⁹ This income-generating objective is even more pronounced because LDB is a bank. As one of LDB's directors, accused is manifestly duty-bound to ensure the bank's profitability.

As member of the board of directors of LDB, it begs credulity to assume that accused does not take active part in the management of LDB affairs as a corporate entity, since he was a member of said board from 2006 to 2014 or a total of eight years. In addition, accused also admitted that aside from being a member of its board of directors, he was also a member of the bank's audit committee on various years.

Under the same Manual of Operations for Banks of the BSP,⁴⁰ an audit committee of a bank is comprised of a bank's board of directors and is constituted to serve the following purpose:

XXXX

(d) The board of directors shall constitute, at a minimum, the following committees:

- (i) *Audit committee.* The audit committee shall be composed of at least three (3) members of the board of directors, wherein two (2) of whom shall be independent directors, including the chairperson, preferably with

³⁷ Section 1, P.D. NO. 119.

³⁸ Section 23, THE CORPORATION CODE.

³⁹ <<http://www.sec.gov.ph/faqs-2/>> (last visited 20 January 2019).

⁴⁰ <<http://www.bsp.gov.ph/downloads/Regulations/MORB/MORB1.pdf>> (last visited 22 January 2019).

Handwritten initials or marks in the bottom right corner of the page.

X-----X

accounting, auditing, or related financial management expertise or experience commensurate with the size, complexity of operations and risk profile of the bank. To the greatest extent possible, the audit committee shall be composed of a sufficient number of independent and non-executive board members. Further, the chief executive officer, chief financial officer and/or treasurer, or officers holding equivalent positions, shall not be appointed as members of the audit committee.

The audit committee provides oversight over the institution's financial reporting policies, practices and control and internal and external audit functions. It shall be responsible for the setting up of the internal audit department and for the appointment of the internal auditor as well as the independent external auditor who shall both report directly to the audit committee. In cases of appointment or dismissal of external auditors, it is encouraged that the decision be made only by independent and non-executive audit committee members. It shall monitor and evaluate the adequacy and effectiveness of the internal control system.

The audit committee shall review and approve the audit scope and frequency. It shall receive key audit reports, and ensure that senior management is taking necessary corrective actions in a timely manner to address the weaknesses, non-compliance with policies, laws and regulations and other issues identified by auditors. The audit committee shall have explicit authority to investigate any matter within its terms of reference, full access to and cooperation by management and full discretion to invite any director or executive officer to attend its meetings, and adequate resources to enable it to effectively discharge its functions. The audit committee shall ensure that a review of the effectiveness of the institution's internal controls, including financial, operational and compliance controls, and risk management, is conducted at least annually.

The audit committee shall establish and maintain mechanisms by which officers and staff shall, in confidence, raise concerns about possible improprieties or malpractices in matters of financial reporting, internal control, auditing or other issues to persons or entities that have the power to take corrective action. It shall ensure that arrangements are in place for the independent investigation, appropriate follow-up action, and subsequent resolution of complaints.

XXXX

Clearly, based on the above defined functions of an audit committee of a bank, which accused was a member of for three years (and in 2013, was even the chairperson thereof), he was actively involved in the management of the daily affairs of LDB.

It would be absurd to assume that accused did not ensure the viability and profitability of LDB during those years when he was a member of its board of directors and audit committee, considering that he actively participated in the running of its daily business.

7
/

Hence, accused's direct financial or pecuniary interest in LDB is undeniable.

III. *The third element of the offense*

The third element of the offense refer to either of two possible modes of committing a violation of Section 3(h) of R.A. No. 3019.

The two modes were distinguished by the Supreme Court in *Teves v. Sandiganbayan*⁴¹ as follows:

Under the First Mode, the element considered is simply that the public official maintains a financial or pecuniary interest, whether or not prohibited by law. This contrasts to the Second Mode, wherein such interest is particularly qualified as one prohibited by the Constitution or by any other statute. Thus, while the pecuniary interest of a town mayor who possesses an ownership share in a real estate firm may be cause for liability under the First Mode if the other requisites thereof concur, it is not cause for liability under the Second Mode as such ownership is not prohibited either by the Constitution or by any other law. (Italics in the original.)

Evidently, both modes require that the public officer possess direct or indirect financial or pecuniary interest in a business, contract or transaction (i.e.; the second element). However, the **first mode** transpires when the *public officer intervenes* or takes part in his official capacity in connection with a business, contract or transaction. Meanwhile, the **second mode** occurs when the *Constitution or any law prohibits* the public officer from having financial or pecuniary interest in the business, contract or transaction.

Of the alternative modes of committing a violation of Section 3(h) of R.A. No. 3019, accused is charged with having financial or pecuniary interest in any business, contract or transaction which is prohibited by the Constitution or any law.

As accused is being charged under the second mode, it is not necessary to show that he intervened in his official capacity in connection with the business, contract or transaction. Accordingly, there is little value in accused's assertion that there was never a transaction between the LDB and the City of Cabuyao throughout the years when he was concurrently occupying the position of city mayor and LDB director.

In determining whether the third element is satisfied under the second mode, the focus is on whether the public officer's direct or indirect financial

⁴¹ 488 Phil. 311-349 (2004) separate opinion penned by J. Tinga.

7.
1

X-----X

or pecuniary interest in any business, contract or transaction is prohibited by either the Constitution or any law.

In the present case, the Information identifies P.D. No. 119 as a law, which allegedly prohibits accused's possession of financial or interest in LDB. Section 1 of P.D. No. 119 provides:

Section 1. Section four of Republic Act Numbered Four thousand ninety-three, as amended, is hereby amended to read as follows:

"Sec. 4. A private development bank shall be organized in the form of a stock corporation and its paid-up capital shall not be less than four million pesos for Class A, two million pesos for Class B, and one million pesos for Class C: Provided, That at least seventy per cent of the voting stock subscribed by the private sector shall be owned and held by citizens of the Philippines, except where a new bank is established as a result of the consolidation of existing private development banks in any of which there are foreign-owned voting stocks at the time of consolidation: Provided, however, That the Monetary Board may, with the approval of the President of the Philippines, reduce the required minimum percentage of Philippine ownership prescribed herein from seventy per cent (70%) to sixty per cent (60%): Provided, further, That if said subscription of private shareholders to the initial capitalization of a private development bank cannot be secured or is not available, the Development Bank of the Philippines on representation of the said private shareholders and with the approval of its Board of Governors shall, within thirty days from date of approval by the Board of Governors, and after compliance by the private stockholders with the conditions of said approval, subscribe to the capital stock of such development banks, which shall be paid in full at the time of subscription out of the trust fund provided in section three, paragraph three, of Republic Act Numbered Two thousand eighty-one, in an amount equal to the difference between the required paid-up capital and to the fully-paid subscribed capital of the private stockholders but not exceeding the latter: Provided, furthermore, That the Board of Governors shall act, on the representation made by the private shareholders within thirty days from the date it is filed: Provided, still further, That such shares of stock subscribed by the bank shall be preferred shares entitled to cumulative dividends at the yearly rate of one per cent during the first five years, two per cent during the following five years, and three per cent thereafter, shall be preferred as against common and other preferred stockholders in the distribution of assets in the event of liquidation, and shall be entitled to voting privileges: Provided, finally, That such preferred shares of the bank may be sold at any time at par to private individuals who are citizens of the Philippines, and in the sale thereof, the qualified registered stockholders shall have the right of preemption within one year from the date of offer in proportion to their respective holdings, but in the absence of such buyers, preference shall be given to residents of the province or city where the development bank is located. All members of the board of directors of the private development bank shall be citizens of the Philippines: Provided, however, That **no full-time appointive or elective public official shall at the same time serve as officer, director, legal counsel, or consultant of any private development bank**, except in cases where such service is incident to financial assistance provided by the government or a government-owned or controlled

2. 1

X-----X

corporation to the bank: Provided, further, That, in case of merger or consolidation of private development banks duly approved by the Monetary Board, the limitation on the maximum number of corporate directors in a corporation, as provided for in section twenty-eight of the Corporation Law (Act No. 1459) shall not be applied so that membership in the new board may include up to the total number of directors provided for in the respective articles of incorporation of the merging or consolidation private development banks." (Emphasis supplied.)

As expressly stated, P.D. No. 119 prohibits full-time appointive or elective public officials from concurrently serving as officer, director, legal counsel, or consultant of any private development bank. Meanwhile, as established in the preceding section, LDB is a private development bank and accused can be considered to have direct financial or pecuniary interest therein as a member of its board of directors.

A presidential decree like P.D. No. 119 is considered a law that was "promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution."⁴²

The law is clear and thus, we interpret it according to its plain meaning. In *Republic v. Lacap*,⁴³ we are guided by the plain meaning rule in interpreting statutes:

The "plain meaning rule" or *verba legis* in statutory construction is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule derived from the maxim *Index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. (Italics in the original.)

Hence, P.D. No. 119⁴⁴ is a law prohibiting public officers from having direct or indirect financial or pecuniary interest in a business, contract or transaction.

It is quite perplexing for accused to admit that he has interest in LDB by virtue of his shareholdings therein, while arguing that he is not liable

⁴² *Tañada v. Tuvera*, 230 Phil. 528-540 (1986).

⁴³ 546 Phil. 87-101 (2007).

⁴⁴ Section 1 of P.D. No. 119 generally prohibits public officials from concurrently serving as "officer, director, legal counsel, or consultant of any private development bank." The only exception provided in the same section of PD. No. 119 (which is inapplicable to the present case) is where the public official's service in the bank in said capacity is incidental to "financial assistance provided by the government or a government-owned or controlled corporation to the bank."

X-----X

under the cited decree because PD 119 allows “such pecuniary interest; only that the one holding pecuniary interest is barred from becoming a director.”⁴⁵ This admission by accused did not help his case as it was an admission that he violated the provision of the law. Simply put, Section 1 of PD 119 prohibits his being a member of the board of directors. The documentary evidence presented by the prosecution and the stipulations made by the parties clearly established that accused was a member of the board of directors of LDB and, as such, violated the express prohibition of PD 119.

Thus, considering that the elements constituting the crime under the second mode of Section 3(h) of R.A. No. 3019 have all been satisfied, this Court concludes that there is sufficient basis in law and on record to convict accused of the crime charged.

IV. Penalty

Having determined accused’s guilt of the crime charged, the Court now discusses the corresponding penalty to be imposed upon him.

Sections 9 of R.A. No. 3019 (as amended)⁴⁶ provides:

Section 9. Penalties for violations.

(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

(b) Any public officer violating any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos, or by imprisonment not exceeding one year six months, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public

⁴⁵ Record, p. 351.

⁴⁶ As amended by *BATAS PAMBANSA BLG. 195* dated 16 March 1982 - Amending Certain Sections OF R.A. NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT).

7.
1 1

X-----X

officer, even if no criminal prosecution is instituted against him.
(Underscoring supplied.)

Thus, Section 9(a) of R.A. No. 3019 punishes a public officer who violates Section 3 thereof with imprisonment for not less than six (6) years and one (1) month to not more than fifteen (15) years, with perpetual disqualification from public office.

On the other hand, Section 1 of the Indeterminate Sentence Law or Act No. 4103, as amended by Act No. 4225, provides that if the offense is punished by a special law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

Pursuant to the above, the Court sentences accused with imprisonment for a minimum period of six (6) years and one (1) month and a maximum period of eight (8) years. As provided by law, the accessory penalty of perpetual disqualification from public office is likewise imposed.

WHEREFORE, in view of the foregoing, accused **ISIDRO LEBRILLA HEMEDES, JR.** is found **GUILTY** beyond reasonable doubt of violating Section 3(h) of Republic Act No. 3019, and is sentenced to imprisonment for a *minimum* of **six (6) years and one (1) month** to a *maximum* of **eight (8) years, with perpetual disqualification from public office.**

SO ORDERED.


ZALDY X. TRESPESES
Associate Justice

WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson


GEORGINA D. HIDALGO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Seventh Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE-TANG
Presiding Justice

7.





REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

Seventh Division

24 January 2019

IN RE: ***PP vs. ISIDRO LEBRILLA HEMEDES, JR.***
SB-18-CRM-0152

The Honorable Presiding Justice:

We hereby transmit pursuant to Article VIII, Section 13 of the 1987 Constitution, the attestation and certification (page 20) of the DECISION in the above-entitled case, which is due for promulgation. We attest that the conclusions in the said Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Very truly yours,

MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Chairperson, Associate Justice

ZALDY V. TRESPESES
Associate Justice

GEORGINA D. HIDALGO
Associate Justice