

2014 to 2016, 2017 up to May 2018 Cases

Administrative Law and Administrative Agencies

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Administrative Law

- **Definition:** All the laws and policies that regulate or control the administrative organization and operations of the government
- **Classifications:**
 1. Internal and External Administration
 2. Law that Controls and those made by Administrative Agencies
 3. Substantive or Procedural Administrative Law
 4. General or Special Administrative Law

Administrative Agencies (AAs)

- An agency which exercises some significant form or combination of executive, legislative or judicial powers (“4th Branch”)
- All AAs are Public Offices
- Include boards, commissions, departments, bureaus, offices, authorities, government corporations, government instrumentalities, and local governments
- Rationale: complex, diverse and specialized concerns

Creation of AAs

- Constitution
- Congress (Law; GOCCs - economically viable and common good; LGUs - plebiscite)
- President (Executive Order; by authority under the Constitution or of law)
- Supreme Court (classifies; confirms)
- AAs themselves (Articles of Incorporation; by authority of law)
- Local Governments (Ordinance; by authority of law)

Government Bureaucracy

- Administrative Agency/
Government Agency
- Government-Owned and –
Controlled Corporation –
(special charter/ non-
chartered)
- Government
Instrumentality
- Government Financial
Institution
- State Universities and
Colleges
- Public Corporation
- Public Office
- National Government
Agency
- Quasi-Corporation
- Quasi-Public Corporation
- Municipal Corporation
Proper/ Local Government
Unit
- Quasi-Municipal
Corporation

GOCC vs. GI

GOCC

1. Organized as stock or non-stock corporation
2. Public character of its function
3. Government ownership over the same
4. Created by law or under Corporation Code
5. Created for common good and must be economically viable

GI

1. Agency of the national government
2. Not integrated within the department framework
3. Vested with special functions or jurisdiction by law
4. Endowed with some if not all corporate powers
5. Administering special funds
6. Enjoying operational autonomy, usually through a charter
7. Not a corporation
8. Neither stock nor non-stock
9. Created by law only (not under Corporation Code)

Recent Jurisprudence

| Entity | Characterization |
|--|---|
| Manila Int'l Airport Authority | Created under an Executive Order GI; not a GOCC since neither stock nor non-stock |
| Manila Economic and Cultural Office | Created under Corporation Code as non-stock corporation Not a GOCC (not owned by Government); Not a GI (since incorporated under Corporation Code) Sui Generis Funds subject to COA |
| Boy Scouts of the Philippines | Created as corporation under Special Law (Commonwealth Act) Juridical person under Civil Code (other corporations with public purpose) Public function - vital role of the youth GOCC and GI – attached agency; need not meet twin test (economic viability and control/ ownership test) - Sui Generis |
| Veterans Federation of the Philippines | Created under RA 2640 and registered with the SEC “Public corporation” per Charter; Adjunct of government; Classified as GOCC to be privatized Sovereign function; Control and supervision of DND; DBM can in the future allocate funds |

Recent Jurisprudence

| Entity | Characterization |
|--|---|
| Philippine Fisheries Development Authority | Created under PD 977 as amended by EO 772 GI; not a GOCC (has capital stock, but not divided into shares) |
| Leyte Metropolitan Water District | Created pursuant to PD 198 GOCC with an original charter (since not under Corporation Code, not a private corporation) Quasi-Public under Charter |
| Philippine Economic Zone Authority | GI since not integrated within the department framework but is an agency attached to the DTI |
| Philippine Reclamation Authority | Incorporated GI Not a GOCC since not a stock nor a non-stock corporation; has capital stock but not divided into shares Not a GOCC since while established for common good, it need not meet test of economic viability, not created to compete in market place |

Rules

1. All AAs are POs, not all POs are AAs (e.g. Congress, Courts)
2. All AAs are GAs, All GAs are AAs (under GCG Act)
3. All PCs are AAs, not all AAs are not PCs (e.g. Departments, GIs and Commissions)
4. GOCCs are Corporations, GIs are not; GOCCs cannot be GIs (except BSP)
5. GOCCs, not GIs, must meet twin constitutional test of economic viability and ownership/ control
6. There are chartered and non-chartered GOCCs

Rules

7. All Quasi-Corporations are GOCCs, All GOCCs are Quasi-Corporations; GIs are not QCs since they are not corporations
8. GOCC-GI distinction matters:
 - a. Local taxation (PFDA, MIAA and PRA – GIs exempt)
 - b. COA jurisdiction (BSP, WD and MECO – subject to COA)
 - c. Relationship either attachment, control or supervision (VFP – control and supervision; and BSP, PRA, PEZA – attached)

Charter: Enabling Instrument

1. Name
2. Principles
3. Mandate and Purpose
4. Powers
5. Duties and Responsibilities
6. Relationships
7. Jurisdiction
8. Structure
9. Budget
10. Dissolution

Characteristics of AAs

1. Size
2. Specialization/
Functions
3. Territory
4. Responsibility for
Results
5. Variety of
Administrative Duties
6. Delegated
Authorities
7. Accountability
8. Relationships
9. Capitalization/
Funding

Types of AAs

1. Offers gratuities, grants or privileges (*PAO*)
2. Performs specific governmental functions (*BIR*)
3. Undertakes public service (*MWSS*)
4. Regulates businesses affected with public interest (*NTC*)
5. Exercises police power to regulate private businesses (*SEC*)
6. Resolves controversies (*NLRC*)

Administrative Relationship

- Areas: policies, operations, budget, decisions, day-to-day, policy and program coordination
- Types:
 1. Supervision and Control (*substitute judgment; rules on how to execute act; alter-ego; e.g. President and DOTC*)
 2. Administrative Supervision (*oversight, reports, proper performance; not over appointments and contracts, not reverse decisions; e.g. Department and Regulatory Agencies; Province and Component City/ Municipality*)
 3. Attachment (*may sit in Board; reporting; not day-to-day; e.g. DPWH and MWSS*)

Powers

- AAs possess Delegated, not Inherent, Powers
- Subordinate, not Superior, to Enabling Instrument
- Liberal, not Strict, Interpretation of Powers
- AAs cannot prohibit what law does not prohibit
- Basic Powers
 1. Investigative
 2. Rule-Making or Quasi-Legislative
 3. Adjudicative or Quasi-Judicial

Delegation of Powers

- *Potestas delegata non potest delegari*
- Exceptions:
 - President – tariff and emergency
 - Local Governments
 - People’s Initiative
 - Administrative Agencies
- Tests of Valid Delegation:
 - Completeness (the ‘what’); *and*
 - Sufficient Standards (may be broad; need not be stated in law); not vague (Cybercrime Law complete [formulate plan] and has standards [law and order])

Investigative Powers

- partakes of judicial discretion, not judicial function
- Express Grant
 1. Contempt (can be adjunct of IP, if law provides, not exclusive to courts)
 2. Subpoena
 3. Search
(If not delegated, apply before courts)
- Express or Implied
 1. Clearance
 2. Fact-Finding
 3. Ocular Inspection
 4. Visitorial
(Presence of counsel not required)

Rule-Making

- Definition: Power to Issue Rules/ Fill in details/ ‘How’ (not ‘What’) a Law will be implemented
- Nature: Inferior/ Subordinate, i.e., cannot change, amend or conflict with charter or law (cannot: abortifacient [law] – “primarily” induces abortion [rules]; “shall” use name of father [law] to “may” use [rules]; media campaign limits “per station” [law not distinguish] “overall” [rules])
- Rationale:
 1. regulation highly complex
 2. future situations cannot be fully anticipated
 3. practicability
 4. expediency

Rule-Making

Effects

1. Force and effect of law
2. Interpretations persuasive (not controlling)
3. Presumed legal and constitutional
4. Mandatory to issue rules if “shall” used (2018)
5. Operative effect
6. Subject to judicial review
7. Subject to repeal and amendment
8. Prospective application

Rule-Making

Requisites

1. Authority: by authority of law
2. Nature: Executive (Congress cannot, for instance, limit or take over the President's power to adopt IRR for a law it has enacted; self-executory by virtue of its being inherently executive in nature; falls under Faithful Execution Clause 2016)
3. Substance: not contrary to law
4. Procedure: properly promulgated; publication and hearing, if required by law (Circular/ not Administrative Regulation [internal rule] so not require hearing, publication and consultation)
5. Issuer: Issued by proper authority (FDA can issue circular based on AO of SoH; CSC cannot issue rules on positions exempt from classification since outside jurisdiction)

Rule-Making

Standard: Reasonable

- Relation to purpose
- Supported by good reasons
- Not arbitrary
- Free from legal infirmities

Types of Rules (PIPICS)

| <i>Type</i> | <i>Grant</i> | <i>Publication</i> |
|-----------------------|-------------------------------|---------------------|
| Supplementary | Express (E) or Implied (I) | Required |
| Interpretative | E or I | Not Required |
| Contingent | E | Required |
| Penal | E | Required |
| Procedural | E or I | Required |
| Internal | E or I | Not Required |

Invalid Exercise: Rule-Making

Law

Creates

Strict Requirements

No Requirement

Stated Requirement

Enumeration Exclusive

No Classification

Limited Application

Fixed Period

Continue Practice

Grant Power

Rule

Abolishes

Liberalizes Requirements

Imposes Requirement

Alters/ Deletes Requirement

Adds/ Deletes Requirement

Discriminates/ Classifies

Expands Application

Changes Period

Discontinues Practice

Nullifies Power

Quasi-Judicial Power

- Grant of Power: Express
- Definition: Deciding controversies, resolving conflicting claims and positions
- Extent: Typically, only questions of fact (questions of law or mixed if expressly permitted under the Charter/ law)
- Limitation: Subject to Judicial Review

Classes: Quasi-Judicial Power

1. Directing (corrective/ award), e.g., *backwages*
2. Enabling (grant/ permit), e.g., *grant of franchise*
3. Dispensing (exempt/ relieve), e.g., *amnesty*
4. Summary (compel/ force), e.g., *cease and desist*
5. Equitable

Quasi-Legislative or -Judicial

1. Application for rate increase by a particular public utility (*QJ*)
2. Increase rates for all buses (*QL*)
3. Setting qualification standards (*QL*)
4. Disqualifying a candidate (*QJ*)
5. Procedures for applying for a franchise (*QL*)
6. Revoking a specific franchise (*QJ*)
7. Issuance of Resolution on Reinvestment Fund for Sustainable Capital Expenditures (*QL*) (2016)

Quasi-Legislative and -Judicial

| <i>Topic</i> | <i>Quasi-Judicial</i> | <i>Quasi-Legislative</i> |
|------------------------|-----------------------|--|
| Grant | E | E or I |
| Parties | Particular | All/ Sectors |
| Adversarial | Yes | No |
| Controversy | Exists | None |
| Notice and Hearing | Required | Not Required (unless law requires; radical change) (Circular - internal) |
| Primary/ Exhaustion | Applicable | Not Applicable |
| Time | Past/ Present | Future |
| Publication | Not Required | Depends |
| Res Judicata | Applicable | Not Applicable |

QJ Administrative Proceedings

- Character: Adversarial, quasi-judicial, civil
- Jurisdiction: Defined by Law/ Charter (not by AA or parties)
- Nature: Power to Adjudicate Not Delegable (power to hear/ receive evidence can be delegated)
- Due Process (DINA): Decision, Impartial Tribunal, Notice and Appear/ Defend
- Procedure: reasonable, due process, meet ends, published

QJ Administrative Proceedings

- Notice and Hearing
 - Required (actual or constructive)
 - Subject to waiver and estoppel
 - Curable (i.e., subsequently heard, filing of motion of reconsideration, oral arguments)
 - Position papers allowed
 - Not required when privilege, abatement, conditional right, legislative or administrative
- Right to counsel not imperative
- Full Hearing: All Claims, Rebuttal, Evidence and Cross-Examination (dispensable)

QJ Administrative Proceedings

- Evidence
 - Substantial (unless law provides different quantum; **need not be overwhelming or preponderant, 2016**)
 - Ocular allowed (when relevant)
 - Adoption of reports allowed
- Decision: Bases, Form (need not be full-blown like court decisions), Parties, All Issues and Evidence
- Deliberative Process (arbitral proceedings): **excepted, provided predecisional and deliberative, from constitutional right to information (2016)**
- Enforcement: by AA if authorized by law (if not, courts)

Administrative Findings

- AA findings **must be accorded great respect if supported by substantial evidence (2016)**; not conclusive and final before courts
- AA business judgments/ **policy matters/ purely administrative matters (e.g. increase in SSS premiums) cannot be interfered with by Courts (2016)**
- Given weight, not disturbed unless:
 1. Not based on substantial evidence
 2. Fraud, mistake, collusion
 3. Palpable errors
 4. Grave abuse of discretion
 5. Mis-appreciation of evidence
 6. Conflict in factual findings

Judicial Review

1. Certiorari
2. Prohibition
3. Injunction
4. Mandamus
5. Declaratory Relief
6. Appeal

Scenarios

AA

Higher/
Level 2

Lower/
Level 1

Courts

1. No actual injury, filed case in AA or Court
2. Instead of filing case before AA, filed directly with Court
3. While case pending before AA Level 2, filed case in Court
4. After AA Level 1 decides case, filed case before Court

Defenses: Judicial Review Premature

1. Doctrine of **Finality of Administrative Action**: Decision of AA must be final before Judicial Review; Exceptions:
 - interlocutory orders
 - protect rights
 - violate Constitution
 - excessive use of power
2. Doctrine of **Primary Jurisdiction**: AA concurrent with courts; needs administrative discretion and expertise of AA

Defenses: Judicial Review Premature

3. Doctrine of **Ripeness for Review**: Controversy must be real, present or imminent (not future/ imaginary/ remote)
3. Doctrine of **Exhaustion of Administrative Remedies**: exhaust all administrative remedies before recourse to courts (reassignment – Governor; failure of bidding – BAC; rate adjustment with ERC, 2016; security of tenure of water district employees with LWUA Board then CSC, 2016; reconsideration of DND memorandum, 2016; mixed questions of law and fact indispensable to resolution of case, 2017; validity of tax ordinance with DOJ, 2017; personnel action against PAGC employee with CSC, 2017), condition precedent, with some 19 exceptions, namely: **JPLCS DRIED DARN CLRNT**

Exceptions: Non-Exhaustion

JPLCS

- Questions essentially **Judicial**
- Administrative Remedy is **Permissive**
- Pure question of **Law**
(facts not disputed, 2016)
- **Constitutionality**
(impairment; freedom of speech)
- **Small amount that exhaustion will be costly**

DRIED

- Utter disregard for **Due Process**
- No plain speedy **Remedy**
- Strong public **Interest**
- **Estoppel**
- Continued and unreasonable **Delay/ Urgency** (impending maturity if bonds; elections nearing)

Exceptions: Non-Exhaustion

DARN

- Irreparable **D**amage by party
- **A**lter Ego Bears approval of President
- No administrative **R**eview is provided
- Insistence on exhaustion will lead to **N**ullification of claim

CLRNT

- **C**ivil action for damages
- **L**and not part of public domain
- **S**pecial **R**easons demanding immediate judicial relief
- No **D**ecision rendered
- **T**ranscendental issues

Compare/ Contrast the Defenses

| Defenses/ Aspects | Finality of Admin. Action | Primary Jurisdiction | Non-Exhaustion of Admin. Remedies | Ripeness for Review |
|------------------------|--|---|--|--|
| Concept | AA not yet final (pending) | Concurrent AA and court; AA 1 st instance | AA process (all levels) not yet completed | No controversy (future, imaginary, remote) |
| What has to be done | Await decision of AA | Allow AA to assume jurisdiction | Complete whole process (all levels) | Await matter to become real/ present or imminent |
| Pendency before AA | While pending in an AA level, go to court | No AA case yet; filed with court directly | Process complete at 1 level, not elevate to next level, then file with court | Pending or no pending AA case |
| w/ exceptions | Yes | Yes | Yes | No |
| Exceptions | Interlocutory Preserve status quo Protect rights Violate Constitution Great damage Excess power | Judicial discretion Question of law AA has no jurisdiction | Pure question of law Transcendental issue Constitutional issue No adequate remedy Alter-ego Public interest | None (Declaratory Relief) |
| Applicability | QJ | QJ | QJ | QJ and QL |

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THANK YOU. GOOD LUCK.