Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

05 April 2006

SEC Opinion No. 06-23
"Election of the Board of Trustees"

MR. MARCELINO T. DELSON
Board of Trustees
Baguio-Benguet Association of
Retired Persons Foundation, Inc.
Otek Square, Otek Street, Baguio City

Sir:

This refers to your letter dated 08 March 2006 requesting opinion on the proposed amendment of your Constitution and By-laws which reads, thus:

> "The selection of the members of the Board shall be done through a screening by a Search Committee and those selected shall be confirmed by the incumbent Board of Trustees."

Relative thereto, please be advised that [T]he manner and procedure to be followed in the election of officers and members of the board of directors of a corporation are usually embodied in the by-laws xxx. This procedure, as thus embodied in the by-laws shall govern the members in all their election proceedings, provided that the same is not contrary to the provisions of the Corporation Code.[1]

Equally applicable are Sections 24 and 89 of the Corporation Code which provide as follows:

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[1] SEC Opinion addressed to Ison, Medel and Liwag dated March 18, 1981.

"SECTION 24. Election of directors or trustees. – At all elections of directors or trustees, there must be present, either in person or by representative authorized to act by written proxy, the owners of the majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote. xxx. Any meeting of the stockholders or members called for an election may adjourn from day to day or from time to time but not *sine die* or indefinitely, if for any reason, no election is held, or if there are not present or represented by proxy, at the meeting, the owners of a majority of the outstanding capital stock, or if there be no capital stock, a majority of the members entitled to vote."

"SECTION 89. Right to vote - The right of the members of any class or classes to vote may be limited, broadened or denied to the extent specified in the articles of incorporation of the by-laws. Unless so limited, broadened or denied, each member, regardless of class, shall be entitled to one vote."

The aforequoted provisions of the Code mandate that all members of a non-stock corporation are entitled to one vote in the election of the members of the Board and officers of the association. Moreover, it is necessary that the presence of the majority of the members entitled to vote in person or by proxy must be attained in order to conduct a valid election at the meeting held for its purpose. Thus, in the absence of the required quorum, there can not be a valid election of the Board.

While a corporation is allowed to provide in its by-laws matters which may be necessary or convenient in its operation or corporate affairs, the same must not be inconsistent with Corporation Code.[2]

In view thereof, we find the proposed amendment to your by-laws not in accord with the aforecited provision of the Code.

Please be guided accordingly.

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

cc: Dir. Annie G. Tesoro
SEC- Baguio Extension Office, Baguio City

[2] SEC Opinion addressed to Angara Abello Concepcion Regalla & Cruz dated 30 October 1995.

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