Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

30 April 2007
SEC-OGC Opinion No. 07-08
Hold-Over Term of Directors

MR. RUBEN B. ENCINAS
General Manager
Royale Tagaytay Country Club, Inc.
Buck Estate, Aguinaldo Highway
Alfonso, Cavite

Dear Mr. Encinas:

This refers to your letter dated 31 January 2007 wherein you inquired if the outgoing directors can serve in hold-over capacities until the next election of the Club scheduled on 03 June 2007.

The hold-over principle is sanctioned under Section 23 of the Corporation Code:

> *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 corporation 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 and until their successors are elected and qualified**.*(Emphasis supplied)*

We observed that the By-Laws of the Club, under Article VII, Section 1, specifically provides for the hold-over of the incumbent directors in case of failure to elect their successors.

It has to be emphasized however that a hold-over situation arises only when no successors are elected due to ***valid and justifiable reasons***. The Commission considered the resolution of an election protest[1] or a political

[1] SEC Opinion dated 24 June 1998 addressed to Mr. Alfredo P. Palmery.

upheavals which barred the holding of an election[2] as valid and justifiable reasons for the hold-over term of the incumbent directors. However, the Commission ruled that to give the incumbent more time to learn[3] and to extend indefinitely the term of the incumbent[4] were invalid reasons for hold-over.

You stated in your letter that the Club held its Annual Election of Directors on the date fixed by its By-Laws. However, there was a failure of election because of lack of quorum. Thus, the Club is constrained to schedule another election because of its limited funds and the proximity of the next election set on 03 June 2007. Under these circumstances, the Commission believes that the hold-over by the present members of the board is legal and valid.

It shall be understood that the opinion rendered is based solely on the facts disclosed in the query and relevant solely to the particular facts raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other case whether of similar or dissimilar circumstances.[5]

Very truly yours,

VERNETTE G. UMALI-PACO
General Counsel

---

[2] SEC Opinion dated 05 June 1986 addressed to Dr. Virgilio R. Oblepias.
[3] SEC Opinion dated 3 July 1989 addressed to Ms. Maria Francisca Viado.
[4] SEC Opinion dated 23 March 1993 addressed to Pacis and Reyes.
[5] SEC Memorandum Circular No. 15 (2003).

(21)