Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

OFFICE OF THE GENERAL COUNSEL

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SEC-OGC Opinion No. 10-29

Transacting with a corporation whose charter has been revoked

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ATTENTION: Atty. Rita Linda V. Jimeno

Madam:

This refers to your 17 September 2010 letter requesting our opinion on whether your client, Solid Megatrends Enterprises, Incorporated (hereafter referred to as SMEI for brevity) had a right to sell its corporate assets after its certificate of registration was revoked.

The Commission revoked the certificate of registration of SMEI on 30 September 2003 for non-filing of reportorial requirements. SMEI petitioned the Commission to lift the revocation order. However, the Commission denied the petition, and affirmed the revocation order with finality on 17 June 2008.

You represent that the National Transmission Corporation's (hereafter referred to as Transco for brevity) 230 KV Biñan-Calaca Transmission Lines project affected certain real properties registered under TCT Numbers T-124509 and T-124510 in the name of SMEI. Thus, SMEI sought compensation for these properties. And in response, Transco, with full knowledge of the infirmity of SMEI's corporate registration, entered into two Deeds of Absolute Sale with SMEI covering the affected real estate properties. Now, when SMEI demanded payment from Transco for the sales, the latter refused to pay citing the supposed lack of juridical personality of SMEI to conclude the sale of its assets because of its revoked status.

And thus, you pose the present query of whether SMEI had a right to transact with Transco for the sale of its corporate assets during the time its Certificate of Registration was revoked.

Section 122 of the Corporation Code[1] provides:

> "Section 122. Corporate liquidation. - Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established. xxx"

Based on this provision, we opine that a corporation whose registration has been revoked maintains its juridical personality for a further period of three (3) years for purposes of winding up its affairs. During this winding up period, the corporation may validly enter into any agreement or transaction involving its assets for as long as it is consistent with the purpose of settling its affairs, and preparing for its eventual liquidation. Thus, for as long as the subject Deeds of Sale were executed within the three (3) year winding up period, there can be no doubt that the SMEI had legal capacity to execute such agreements considering that such sales are not inimical to the settlement of the affairs of the revoked corporation.

Be that as it may, we emphasize that Section 21 of the Corporation Code expressly provides that: "One who assumes an obligation to an ostensible corporation as such, cannot resist performance thereof on the ground that there was in fact no corporation." Thus, it is quite clear that Transco, having executed the Deeds of Sale with SMEI despite being fully aware of the existing revocation order, cannot now deny the juridical personality of SMEI in order to escape its liability arising from the said contracts.

Finally, we advise that this *Opinion* is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issues raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases whether of similar or dissimilar circumstances. If, upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

Please be guided accordingly.

VERNETTE G. UMALI-PACO
General Counsel

[1] Batas Pambansa bilang 68 (1980).