Republic of the Philippines
Department of Finance
Securities and Exchange Commission

OFFICE OF THE GENERAL COUNSEL

SECURITIES AND EXCHANGE COMMISSION
Information and Communication
Technology Department (ICTD)
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SEC-OGC Opinion No. 18-01

Re: Corporate Term of Educational Institutions registered under the Corporation Law

24 January 2018

POLICARPIO & ACORDA LAW OFFICE
Unit 903 Richmonde Plaza,
San Miguel Avenue cor. Lourdes Drive
Ortigas Center, Pasig City 1605

Attention: ATTY. RUFINO L. POLICARPIO III
ATTY. GEORGE FRANZ NICO F. PATRIARCA

Attorneys:

This refers to your letter dated 14 September 2017 requesting for the Commission's opinion as to the status of St. Peter's College, Inc. ("SPCI") as a corporate entity.

At the outset, you stated in your letter that the name of the corporation is St. Peter's College, Iligan; however, the Articles of Incorporation (AOI) which you attached reflects that the name of the corporation is actually, St. Peter's College, Inc.

You stated in your letter that SPCI was incorporated on 05 November 1962 and until now, there has been no endeavor to renew or extend its corporate term. Also, there has been no amendment of its AOI for its dissolution.

You further stated that the Commission's Corporate Filing and Records Division issued a certification showing SPCI's compliance with the reportorial requirements for the last five years. Thus, you are requesting the Commission's opinion on the following:

1. SPCI's status as a corporate entity; and,

2. If SPCI had been legally dissolved, what is the recourse available for the purpose of continuing its corporate existence, other than to reincorporate.

It is worthy to note that SPCI is a non-stock, non-profit educational institution which was registered with the Commission under the provisions of the Corporation Law, Act No. 1459 ("Corporation Law"), and no corporate term was specified in its AOI submitted to the Commission. Further, SPCI has not filed an Amended AOI amending its corporate term.

In a previous Opinion[1], the Commission had already held that:

> Under the Corporation Law, no maximum corporate term of existence was prescribed for educational institutions, thus in cases where the AOI does not specify a term, the corporate term of such institution is deemed perpetual.
>
> Subsequently, Batas Pambansa Blg. 68 (the "Corporation Code") took effect on 01 May 1980, and a maximum period of fifty (50) years was provided for corporate existence[2].
>
> In connection with this, Section 148 provides the rule on the application of the Corporation Code to existing corporations, to wit:
>
> > "Section 148. Applicability to existing corporation. - All corporations lawfully existing and doing business in the Philippines on the date of the effectivity of this Code and heretofore authorized, licensed and registered by the Securities and Exchange Commission, shall be deemed to have been authorized, licensed or registered under the terms and conditions of its license, and shall be governed by the provisions hereof: **Provided, that where any such corporation is affected by the new requirements of this Code, said corporation shall unless otherwise herein provided be given a period of not more than <u>two (2) years</u> from the effectivity of this Code within which to comply with the same.**" (Emphasis and underscoring supplied.)
>
> In previous opinions, the Commission had already opined that in case an affected educational corporation fails to amend its AOI to comply with the applicable provisions of the Corporation Code on or before 01 May 1982, the expiry date of the two (2) year period mentioned in Section 148, the respective provisions will be considered written into the articles of incorporations as of the date of the effectivity of the Corporation Code or on 01 May 1980.

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[1] SEC-OGC Opinion No. 16-24 dated 13 October 2016 addressed to Ma. Lerma M. Reyes.

[2] Section 11. Corporate Term – A corporation shall exist for a period **<u>not exceeding fifty (50) years from the date of incorporation unless sooner dissolved or unless said period is extended</u>**. The **<u>corporate term</u>** as originally stated in the articles of incorporation **<u>may be extended for periods not exceeding fifty (50) years in any single instance</u>** by an amendment of the articles of incorporation, in accordance with this Code; Provided, That **no extension can be made earlier than five (5) years prior to the original or subsequent expiry dates(s)** unless there are justifiable reasons for an earlier extension as may be determined by the Securities and Exchange Commission.

> Applying the said interpretation, since you have not disclosed any subsequent amendment made by the SCA of its AOI pursuant to Section 148, the maximum 50-year term prescribed by the Corporation Code was deemed written on the AOI of SCA on 01 May 1980.
>
> In conclusion, although originally registered with the Commission in 1967 with a perpetual corporate term, SCA is now deemed to exist only for a period of fifty (50) years reckoned from 01 May 1980. xxx

In a separate Opinion[3], the Commission, in explaining the application of Section 148 of the Corporation Code, has elucidated that:

> xxx.. to avoid unjust results and in order to be consistent with the abovementioned previous ruling of the Commission on the application of Section 148 of the Corporation Code, it would be appropriate to reckon the 50-year period from the date of effectivity of the Corporation Code. This interpretation will not prejudice public interest, rather, it would enable educational corporations registered under the Corporation Law to continue serving the needs of the locality where the schools are located. For the Commission to rule otherwise would lead to manifest injustice which is not within the intent and purpose of the Legislature in enacting the Corporation Code.

Thus, while originally registered with the Commission in 1962 with a perpetual term, SPCI is now deemed to exist for a period of fifty (50) years reckoned from 01 May 1980, the date of effectivity of the Corporation Code, unless sooner dissolved or extended within the prescribed period[4].

In view of the foregoing, your second query is deemed moot and academic.

It shall be understood, however, that the foregoing opinion is rendered based solely on the facts and circumstances disclosed and relevant solely to the particular issue raised therein and shall not be used in the nature of a standing rule binding upon the Commission in other cases or upon the courts whether similar or dissimilar circumstances. If, upon further inquiry and investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered void.[5]

Please be guided accordingly.

Very truly yours,

CAMILO S. CORREA
General Counsel

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[3] SEC-OGC Opinion No. 13-01 dated 21 March 2013 addressed to Fernandez & Associates.
[4] See Note 2.
[5] SEC Memorandum Circular No.15, Series of 2003