Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila

Certificate Number: AJA18-0159

Legal Opinion (LO) No.:	2020 - 09
Date:	26 August 2020

DIR. MARIO A. AVENIDO
President and CEO
Public Safety Mutual Benefit Fund, Inc.
PSMBFI Building
No. 318-320 Santolan Road, cor. 1st and 2nd West Streets
San Juan, Metro Manila 1500

SUBJECT: **Validity of Deductions of MBA Member-Borrower's Outstanding Obligations from Post-Service Benefits**

Dear **Dir. Avenido**:

This refers to your letter dated 10 March 2020 requesting the Insurance Commission to issue a Legal Opinion on whether the members of Public Safety Mutual Benefit Fund, Inc. (PSMBFI) can authorize their respective employers to deduct outstanding obligations from their post-service benefits.

Per your letter, the pertinent facts are as follows:

> "As a background, Public Safety Mutual Benefit Fund, Inc. (PSMBFI) is a Mutual Benefit Association (MBA) with majority of its membership consisting of active Philippine National Police (PNP) Personnel and employees of other public safety agencies. It was incorporated as a non-stock non-profit domestic corporation and was issued License to Operate by the Insurance Commission.
> x x x
>
> PSMBFI provides insurance coverage and extends loans to its members pursuant to Section 411 of the Insurance Code x x x
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> In the course of its operations, PSMBFI, as a licensed insurance company, has been consistently accredited by the PNP Committee on Accreditation for Automatic Deduction (CAAD) in its Salary Deduction and Loan Information System (SDLIS) where payment of contributions and loan amortizations are effected by way of

automatic salary deduction. This salary deduction scheme is based on the provision of the General Appropriations Act, which on a yearly basis provides:

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Authorized deductions from salaries and benefits accruing to any government employee against the appropriations for Personnel Services, may be allowed for the payment of an individual employee's contributions due to the following:

a. BIR, Philhealth, GSIS, HDMF;
b. NSSLAIs and MBAs operating under existing laws and managed by and/or for the benefit of government Employees;
c. Associations/Provident Funds managed by and/or for the benefit of government Employees;
d. GFIs authorized/accredited by government regulatory bodies to engage in lending;
e. Licensed Insurance companies; and
f. BSP accredited Thrift Banks or rural banks;

xxxxxxx'

There are instances, however, wherein PNP Personnel optionally retires from service and at the time of their retirement, has outstanding obligation with PSMBFI. The payments due to PSMBFI after retirement could not be effected against the personnel's post service benefits for lack of any legal provision in the Insurance Code which expressly authorizes the deductions. Please note that the PNP Personnel (member-borrower), at the time of loan availment, executes a Deed of Undertaking and a Special Power of Attorney authorizing the PNP to deduct his outstanding obligation from his post-service benefits such as Commutation of Accumulated Leave (CAL), Lump Sum/Retirement Benefits, and/or Pension."

Upon careful consideration, the Insurance Commission finds that **the employer of PSMBFI's member-borrower may deduct the member-borrower's outstanding obligations from the said member-borrower's post-service benefits in accordance with the Deed of Undertaking and Special Power of Attorney executed by the member-borrower at the time of loan availment which authorizes the employer to make such deductions.**

PSMBFI operates as a Mutual Benefit Association pursuant to Sections 403 to 423 of the Insurance Code, as amended by Republic Act No. 10607. As such, it may grant loans to its members pursuant to Section 411 of the Insurance Code, as amended. Section 403 of the Insurance Code, as amended, defines an MBA as follows:

> ***"Section 403. Any society, association or corporation, without capital stock, formed or organized not for profit but mainly for the purpose of paying sick benefits to members, or of furnishing financial support to members while out of employment, or of paying to relatives of deceased members of fixed or any sum of money, irrespective of whether such aim or purpose is carried out by means of fixed dues or assessments collected regularly from the members, or of providing, by the issuance of certificates of insurance, payment of its members of accident or life insurance benefits out of such fixed and regular dues or assessments x x x shall be known as a mutual benefit association within the intent of this Code."***

This Commission issued a license in favor of PSMBFI to operate as an MBA pursuant to Section 404 of the Insurance Code, as amended. In this regard, PSMBFI provides insurance coverage and extends loans to its members in accordance with Section 411 of the Insurance Code, as amended, to wit:

> ***"Section 411. A mutual benefit association may invest such portion of its funds as shall not be required to meet pending claims and other obligations in any of the classes of investments or types of securities in which life insurance companies doing business in the Philippines may invest.***
>
> **It may also grant loans to members on the security of a pledge or chattel mortgage of personal properties of the borrowers, or in the absence thereof, on the security of the membership certificate of the borrowing members, in which event such loan shall become a first lien on the proceeds thereof**."

Please note that PSMBFI, being an MBA, is governed by the Insurance Code, as amended, and subject to the regulatory powers of the Insurance Commission. It is thus immaterial whether or not PSMBFI performs both savings and loans functions similar to Non-Stock Non-Profit Savings and Loan Associations

(NSSLAIs) and Cooperatives considering that Republic Act No. 8367 or the "Revised Non-Stock Savings and Loan Association Act of 1997" and Republic Act No. 6938 or the "Cooperative Code of the Philippines" do not govern the operations of MBAs. Moreover, the Insurance Commission is not the concerned regulatory body under both R.A. No. 8367 and R.A. No. 6938. Accordingly, the Commission is without authority to make a determination of whether the members of PSMBFI can authorize their respective employers to deduct outstanding obligations from their post-service benefits pursuant to R.A. No. 8367 and/or R.A. No. 6938.

Notwithstanding the foregoing and notwithstanding the lack of a specific provision in the Insurance Code, as amended, expressly allowing the employer of member-borrowers to deduct outstanding obligations from the concerned member-borrower's post-service benefits, please note that there is no provision in the Code which prohibits the employer from making such deductions. In addition, a loan being a contract between the lender and the borrower, in this case between PSMBFI and its member-borrowers, the contracting parties can therefore make stipulations provided that such stipulations are not in contravention of Title XI of the Civil Code on Loan and other relevant laws and regulations. Hence, **considering that the member-borrower has given their employer express authority to deduct outstanding obligations from their post-service benefits, as evidenced by the Deed of Undertaking and Special Power of Attorney executed at the time of loan availment, there is therefore no legal impediment to the employer making such deductions.**

Further, under Section 408 of the Amended Insurance Code, it mandates that dues and/or assessments are made and collected must be in accordance with the Constitution and By-Laws of the Mutual Benefit Association, as expressly provides that:

> ***Section 408. The constitution or by-laws of a mutual benefit association must distinctly state the purpose for which dues and/or assessments are made and collected and the portion thereof which may be used for expenses.***

Accordingly, one of the primary aims of the PSMBFI is "to manage and administer a sustainable and viable fund in the pursuit and accomplishment of the purpose for which it has been established."[1] Thus, the collection of dues and assessment for obligation must be fulfilled by a member in order to achieve said purpose.

[1] Par. (d), Section 3, Article II of the Amended By-Laws of the Public Mutual Benefit Fund Incorporated

A salary deduction to fulfill the obligation of member to PSMBFI is in line with express provision of By-Laws which provides that "all members of the Equity Plan shall pay in cash thru their own initiative or be deducted payment of their monthly contribution from their salary thru the automatic salary deduction scheme."[2]

It is clear that PSMBFI has the authority to collect dues and assessment in accordance with the purpose of the association's Constitution and By-Laws. The PSMBFI must create a scheme to collect the dues and assessment in order to maintain a viable fund for its mutual benefit association. Said scheme must not be defeated by the mere retirement of any member.

Section 408 of the Amended Insurance Code and the primary aim of the By-Laws of the PSMBFI necessitates to allow the deduction to fulfill the obligation of a certain member to PSMBFI and to accomplish the purposes of PSMBFI to which it has been established.

Please note that the above opinion rendered by this Commission is based solely on the particular facts disclosed in the query and relevant solely to the particular issue raised therein and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

For your information and guidance.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner

[2] Section 6, Article IV of the Amended By-Laws of the Public Mutual Benefit Fund Incorporated