

CHAPTER 133

RECOVERY OF MISAPPROPRIATED GOVERNMENT FUNDS AND PROPERTY LAW

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CHAPTER 133

RECOVERY OF MISAPPROPRIATED GOVERNMENT FUNDS AND PROPERTY LAW

A Law to make provisions for the constitution of a panel to recover misappropriated government funds and property and for connected purposes.

ENSI. 1996
No 1

[1st August 1995]

1. This Law may be cited as the Recovery of Misappropriated Government Funds and Property Law.

Short title

2. In this Law—

interpretation

"Agency of State" means a State Statutory Corporation or other body created by or under any Edict, Law, or other enactment of the State Government and includes a company or enterprise in which the State Government, the corporation, or other body has controlling shares or interest;

"Government" means the Government of Enugu State;

"Government funds" means any money belonging to or forming part of the revenue of the State or of an agency of the State;

"Government property" means property, whether movable or immovable, in which the Government or an agency of the State has any right or interest whatsoever;

"Governor" means the Governor of the State;

"Panel" means the Panel on the Recovery of Government Funds and Property constituted or deemed to have been constituted under Section 3;

"public contract" means any contract entered into for and on behalf of the Government or an agency of the State by a public officer or other person with any other person or body of persons, whether corporate or unincorporated, at any time after the 27th day of August 1991;

"public officer" means any person who holds or has held a public office in the State at any time from the 27th day of August 1991;

"salaries" include allowances and other emoluments paid to a public officer;

"State" means Enugu State of Nigeria.

3. (1) The Governor may, by instrument published in the State Official Gazette, constitute a special panel to be known as the Panel on Recovery of Misappropriated Government Funds and Property which shall consist of a chairman and other members as the Governor may deem fit.

Government
funds and
property
recovery

- (2) The Governor shall appoint an officer in the Public Service of the State to be Secretary to the Panel.

- (3) Any panel appointed by the Governor in any manner whatsoever which as at the date of coming into force of this Law carried out functions and exercises powers conferred by this Law is deemed to have been duly constituted in accordance with the provisions of subsection (1).

4. (1) The main functions of the Panel shall be to recover from any person or body of persons (corporate or unincorporated) as it deems appropriate:

Functions of
Panel

(a) any Government property and funds accruing as losses or deemed by the Panel to be losses to the Government or to an agency of the State from payment of salaries, allowances, or other emoluments of public officers, and from a public contract where such losses have arisen or deemed by the Panel to have arisen from:

(i) any negligence, malpractice, unjust enrichment, or other fraud or misconduct on the part of a public officer;

(ii) any malpractice, fraud, or undue advantage by any other party to a public contract;

(iii) improper, irregular, or illegal payment of public funds to any person or body of persons whether corporate or unincorporated; and

(iv) improper payment of mobilization fees;

(b) any money improperly, irregularly, or illegally paid out of the revenue of the State or out of the revenue of any agency of the State, to a public officer as salary, or to any person or body of persons, whether corporate or unincorporated or to the account of any person, whether an existing or a fictitious person, in any bank or other financial or investment institution;

(c) the equivalent in money of the value of Government funds which, in accordance with the findings of any committee, board of inquiry, or other investigating panel or person on payment of salaries, a public contract or any matter relating to Government funds, has been improperly or illegally appropriated or fraudulently taken by that person or body of persons or otherwise fraudulently.

converted to the use of that person or body of persons or to the use of any other persons, whether corporate or unincorporate.

(2) For the effectual carrying out of its functions under subsection (1), the Panel shall implement such findings and recommendations of any committee, board of inquiry, or other investigating panel or person on payment of salaries within the State public service, a public contract, or on any matter relating to Government funds, as the Governor or the State Attorney-General may direct; and may without prejudice to the generality of the foregoing -

- (a) implement such other findings or recommendations of the committee, board of inquiry, or other investigating panel or person as the Panel deems necessary;
- (b) initiate and carry out any investigations on any matter relating to payment of salaries within the State public service, a public contract, or Government funds;
- (c) initiate and carry out any investigations in relation to the conduct of any public officer or other person or body of persons whether corporate or unincorporated, respecting payment of salaries within the State public service, a public contract, or Government funds.

(3) For the more effectual performance of its functions under subsection (1), the Panel may recover in any manner it deems fit from any public officer, contractor, guarantor, consultant, or other person as it deems appropriate; any money, fee, or other consideration given, received, or furnished in respect of salaries, a public contract, or other transaction involving Government funds in each of the following cases —

(a) in the case of a mobilization fee —

- (I) where the obligations under a public contract have not been performed by the contractor, his agent, consultant, or guarantor,
- (II) where the amount of work actually performed by the contractor or his agent is less in value than the fee paid;
- (III) where the contractor, his agent, or assignee has abandoned the contract;

(b) in the case of money irregularly or illegally paid to or received by any person or body of persons, corporate or unincorporated, in the course of or in connection with negotiations or execution of a public contract;

(c) in the case of salaries, allowances, or other emoluments purportedly paid to or received by a non-existent or unascertainable public officer;

(d) in the case of money payable to the revenue of an agency of the State, where such money has been paid or received by any person who cannot satisfy the Panel as to his entitlement thereto; and

(e) in any other case where the Panel considers that any money has been improperly paid out of or received from:

- (i) the revenue of the State, or
- (ii) the revenue of an agency of the State.

5. (1) For the most effectual performance of its functions under section 4 and the realization of the general purpose of this Law, the Panel may make any order on or against any person or body of persons, whether corporate or unincorporated, as it deems fit, in respect of any matter relating to payment of salaries, public contracts, Government funds, or Government property.

(2) Without prejudice to the generality of the provisions of subsection (1), the Panel may make an order:

- (a) for the refund by any person or body of persons, corporate or unincorporated, of any money which, in the opinion of the Panel, has been improperly or fraudulently paid to or received by that person or body of persons as salary or under a public contract or from Government funds;
- (b) for forfeiture and sale of any property, whether movable or immovable:

Powers of
panel

- (I) which, in the opinion of the Panel, has been unjustly or improperly obtained by way of salary or acquired in relation to a public contract or with Government funds; and
- (II) for purposes of satisfying any earlier order made by the Panel against the owner of the property;
- (c) for declaration by any person or body of persons,(whether corporate or unincorporated) of his or its assets in any manner as the Panel may require.
- (d) for doing or refraining from doing anything with respect to payment of salaries, public contracts, Government funds, or Government property; and
- (e) for the arrest of any person and detention of that person:
 - (i) in such places as it may specify;
 - (ii) upon such conditions as it may prescribe; and
 - (iii) for such time as it deems just.

(3) Where any property is sold pursuant to an order of the Panel under paragraph (b) of subsection (2), the purchaser shall be issued with an official revenue collector's receipt or other document as evidence of the purchase by that person of the property.

(4) A revenue collector's receipt or other document issued under the hand of the Secretary to the Panel to a purchaser of any property sold pursuant to this section shall be conclusive evidence of such purchase by the purchaser; and shall without further assurance confer upon the purchaser absolute title to the property.

6. (1) Any sale, mortgage, or other disposition of any property which is made by any person or body of persons, whether corporate or unincorporated, for the purpose of defeating or adversely affecting an order of the Panel under this Law shall be null and void; and no person shall acquire title or other interest in such property by virtue of such sale, mortgage, or other disposition.

Sale of
property for
defeating
order of
panel

(2) For the purpose of subsection (1) of this section, a sale, mortgage, or other disposition of any property is deemed to be made for the purpose of defeating or adversely affecting an order of the Panel in any of the following cases, that is to say:

- (a) where it is made by or on behalf of any person, whether corporate or unincorporated, who has not fully carried out an order of the Panel requiring that person to refund any money or restitute any property under this Law;
- (b) where it is made by or on behalf of any person who has not declared his assets in accordance with any order of the Panel made under section 5(2)(c);
- (c) Where it is made by or on behalf of any person, whether corporate or unincorporated, against whose property an Order of forfeiture and sale under section 5(2)(b) of this Law is subsisting; or
- (d) Where the Panel is of the view that such sale, mortgage, or other disposition has been made for the purpose of defeating or adversely affecting its order.

7. All funds recovered pursuant to the provisions of this Law shall be paid into the State Government's Special Account with the Central Bank of Nigeria, Enugu Branch, and

Banking of
recovered
funds

the bank teller for each payment shall be submitted to the State Commissioner for Finance and Economic Planning.

- 8.** (1) Where the Panel considers that the evidence of any person may be relevant in establishing any facts relating to payment of salaries, a public contract, or Government funds, it may summon that person to appear before it at a date and time to be specified in the summons. Powers to summon witnesses

(2) The summons referred to in subsection (1) may or may not be in writing, and may be communicated or deemed to be communicated to the person to whom it is directed if it is:

- (a) mentioned orally to that person;
- (b) delivered to a radio or television station in the State for radio, television, or other wireless transmission; or
- (c) published in a newspaper that ordinarily circulates in the State.

9. Any person who:

- (a) having been summoned to appear before the Panel, fails to appear before it at the date and time specified in the summons;
- (b) makes to or before the Panel a false declaration or statement of his assets or of the assets of a body of which he is a member or officer;
- (c) makes to or before the Panel any other declaration or statement whatsoever which in the opinion of the Panel is false or misleading;
- (d) abuses, insults, or otherwise conducts himself in a manner disrespectful to the Panel or any member of the Panel; or
- (e) fails or refuses to comply with an Order of the Panel,

Functions of Panel

is guilty of an offence of contempt of the Panel and liable, upon an order of the Panel, to be arrested and detained in such a place, upon such conditions, and for such time as the Panel may prescribe.

- 10.** (1) Any person aggrieved by any order made by the Panel under this Law may apply to the Governor for a review of the order not later than twenty-one days after the Panel has made the order. Powers of review by government

(2) An application for a review of an order of the Panel shall not operate as a stay of execution of the order, but a person wishing to apply to the Governor for a review of an order of the Panel may apply to the Panel for a stay of execution of its order.

(3) The Panel may refuse an application for a stay of execution of its order made pursuant to subsection (2) without giving reasons for the refusal and may grant the same upon such conditions as it may prescribe.

(4) The Governor may upon the review of an order of the Panel pursuant to subsection (1) dismiss the application, vary or modify the order of the Panel, and make any order

as he deems fit.

(5) Any order of the Panel granting or refusing an application for a stay of execution made pursuant to subsection (2) shall be final and shall not be subject to any review whatsoever.

11. (1) No action shall be instituted or shall lie against a member of the Panel for any act done pursuant to any provision of this Law.

Immunity of
members
and other
persons

(2) No person enforcing an order of the Panel or of the Chairman of the Panel shall be liable in an action for anything done by him in good faith in enforcing the order.

12. (1) Where any matter relating to payment of salaries, a public contract, government funds, or government property has been referred to the Panel in accordance with the provisions of this Law, or is pending before or has been determined or concluded by the Panel, no action shall be instituted or shall lie in any court or other tribunal in respect of the same matter. If such an action has been pending in a court or tribunal prior to the coming into force of this Law or pending before the Panel after the coming into force of this Law, the action shall be discontinued or abate.

Proceeding
of court to
abate

(2) Subsection (1) does not apply to an action instituted or lying or otherwise pending in a court pursuant to an Act.

13. The Panel may regulate its proceedings in any manner it considers fit for a just and speedy determination of any matter relating to payment of salaries, a public contract, government funds, or government property under this Law.

Panel to regulate
its proceedings