

DSWD OPINION NO. 06 S. 2024

DRN: LS-L-LO-23-09-64160-C

MEMORANDUM

FOR : ATTY. VANESSA B. GOC-ONG
Regional Director, DSWD Field Office XI

FROM : THE ASSISTANT SECRETARY FOR GENERAL ADMINISTRATION
AND SUPPORT SERVICES GROUP AND CONCURRENT OFFICER-
IN-CHARGE, LEGAL SERVICE

SUBJECT : REQUEST FOR THE AUTHORITY OF THE REGIONAL DIRECTOR
TO SIGN A DEED OF DONATION

DATE : 12 DECEMBER 2023

This pertains to your MEMORANDUM dated 12 September 2023, received by the Legal Service on 22 September 2023, which refers to the offer of the DMI MEDICAL SUPPLY COMPANY, INC. to donate seven (7) parcels of land in Indangan, Buhangin, Davao City to the DSWD Field Office XI. The donation is intended for the construction of a Reception and Study Center for Children.

Relative thereto, the Regional Director of DSWD Field Office XI is requesting a letter of authority confirming the following:

1. The Regional Directors in the Field Offices have the authority to sign and enter into a Memorandum of Agreement (MOA) and a Deed of Donation (DOD) based on existing DSWD guidelines, policies, and regulations; and
2. The Regional Directors in the Field Offices have the authority to accept real property donations with onerous conditions.

After careful review of the draft Memorandum of Agreement, please consider the following:

1. **The Regional Directors in the Field Offices do not have the authority to sign and enter into a MOA and a DODA involving real properties.**

Pursuant to Administrative Order (AO) No. 16 series of 2019¹ or the Manual of Delegation and Delineation of Authority in the DSWD, Item II (Administrative, Procurement, and Financial Matters) letter J, as amended by Administrative Order (AO) No. 12 series of 2023, on *Contracts not involving Procurement*, under the subject of contract labeled as "***Others***" the **Regional Director** is the recognized approving

¹ Page 20, 2019 Manual of Delegation and Delineation of Authority in the DSWD

authority/authorized signatory on contracts not involving procurement for Field Offices, thus:

Contracts not involving procurement: (based from AO No. 16, series of 2019)

	Subject of Contract	Certifying Authority	Recommending Authority	Approving Authority / Authorized Signatory	
C O	Acceptance of foreign and local donations	DC accounting Division Concerned	HOBS	Up to P100M	USEC for GASSG
				>P100M	Secretary
	Transfer of funds to NGAs, LGUs, NGOs and POs		USEC Concerned	Up to 100M	USEC for GASSG
				>P100M	Secretary
	Acceptance of Foreign and Local Donations		USEC Concerned	Up to 100M	USEC for GASSG
>P100M		Secretary			
Data Sharing Agreements	Data Privacy Officer	USEC Concerned	Secretary		
F O	Project Implementation, regardless of source of Funds, not involving transfer of funds	Head accounting Section Concerned	DC Concerned	Up to 50M	RD
			RD	50 M but below 100 M	USEC SWD
			USEC for SWD	P100M	Secretary
	Others		DC Concerned	RD	

As amended by AO No. 12, series of 2023:

Letters – B, E, F, G, H, and J

Requesting	Approving Authority	
DC or Center Head Concerned	Up to P50M	RD
	> P50M to P100M	ASEC for Community Engagement (ACE)
	> P100M	Secretary

That is, in so far as the Field Offices are concerned, there are only two categories namely, *[i]* Project implementation, regardless of source of Funds, not involving transfer of funds; and *[ii]* Others. Here, the document under review does not cover either subject. It cannot be qualified as a “Project implementation” as it does not implement in any way programs and/or projects under Field Office XI. Further, the term “Others” will necessarily refer to other administrative and financial matters not relating to procurement.

Consequently, the Regional Directors in the Field Offices do not have the express authority to sign and enter into a Memorandum of Agreement (MOA) and a Deed of Donation and Acceptance (DODA) involving real properties as the Administrative Order (AO) No. 16 series of 2019, as amended by Administrative Order (AO) No. 12, series of 2023. In fact, the DSWD Manual of Delegation and Delineation of Authority failed to mention the authorized signatory for legal documents pertaining to donation of real properties in the regional level. Thus, we opine that it is still the DSWD Secretary, as

head of agency, that has the requisite authority to execute a contract or Deed of Donation and Acceptance of real properties, with or without onerous conditions.

Since the donation of the seven (7) parcels of land involves an onerous condition, the rules on contracts, not the rules on donations, shall govern the subject matter. The Secretary, as Head of the Department, is authorized to sign for and in its behalf. Further, if the Secretary should decide to delegate this authority to sign and enter into a contract involving donation of real properties, he may do so through the issuance of a Delegated Authority for this purpose.

As to the matter of accepting real property donations with onerous conditions, the case of *Tito R. Lagazo vs. CA²* provided a discussion on **onerous donations**, to wit:

*“xxx an **onerous donation** is one which is subject to burdens, charges or future services equal to or more in value than the thing donated. Under **Article 733 of the Civil Code, donations with an onerous cause shall be governed by the rules on contracts; hence, the formalities required for a valid simple donation are not applicable. xxx” (emphasis supplied)***

2. For purposes of enriching the draft MOA, kindly consider our additional recommendations below.

PROVISION	COMMENTS	RECOMMENDATION
<p>1. The parties: DMI Supply Company, Incorporated, a domestic corporation organized and existing under and by virtue of the laws of the Republic of the Philippines</p>	<p>The said corporation is the registered owner of the seven (7) parcels of land intended to be donated as reflected in the Transfer Certificate of Titles (TCTs).</p>	<p>We recommend that the party for the Deed of Donation is the DMI Supply Company Incorporated, since, DMIRIE Foundation Inc. is not privy to the Deed of Donation.</p> <p>Also, for the DSWD, it is the DSWD Secretary who is the authorized signatory for this MOA.</p>
<p>2. THE DONATION: 1.1 The properties. Subject to the conditions set forth under section 1.2 hereof, DMI hereby agrees to donate, transfer, and convey</p>	<p>The subject realty to be donated is under the name of a private corporation. Please secure a copy of the Secretary's Certificate authorizing the President or Representative from the Corporation, to donate the land</p>	<p>We recommend that DMI present their Secretary's Certificate so it can be verified that George D. Espejo and Gina Maria M. Espejo are indeed the</p>

² G.R. No. 112796, 5 March 1998

<p><i>unto DSWD, said seven (7) parcels of land owned by DMI xxx</i></p>	<p>otherwise the Deed of Donation is invalid pursuant to Republic Act No. 11232 otherwise known as "Revised Corporation Code of the Philippines" to wit:</p> <p>SEC. 43. Power to Enter into Management Contract. – No corporation shall conclude a management contract with another corporation unless such contract is approved by the board of directors and by stockholders owning at least the majority of the outstanding capital stock, or by at least a majority of the members in the case of a nonstock corporation, of both the managing and the managed corporation, at a meeting duly called for the purpose.</p> <p>Pursuant to said provision, any decision of a Corporation must be decided by the majority of the board directors coupled by the Corporate Secretary's certificate to prove the decision specifically called for the said meeting.</p>	<p>authorized representatives.</p>
<p>SIGNATORIES</p>		<p>Kindly fill out the blank parts in the DSWD portion. Indicate the full name of the DSWD Secretary and the office address.</p>
<p>3. OBLIGATIONS OF DSWD 3.1. The DSWD shall issue a Certificate of Donation based on the Deed of Donation as described in Section 2.1. hereof.</p>	<p>1. Kindly edit the typographical errors; and</p> <p>2. Kindly clarify what assistance will DSWD lend to DMI in order for the Certificate of Donation be recognized by the Bureau of Internal Revenue.</p> <p>Please be informed that the Donor DMI is a corporation,</p>	<p>Please revisit this provision and revise.</p>

<p>Furthermore, DSWD shall give its assistance to DMI in order for such Certificate of Donation to be recognized by the Bureau of Internal Revenue and the amount thereon to be fully deductible from the tax payable of DMI.</p>	<p>that should be registered in the Securities and Exchange Commission unlike the Foundation. This should be considered in identifying who may be able to claim a tax exemption.</p>	
<p>3.2. The DSWD hereby agrees to shoulder all applicable taxes on the donation of the Property and thereafter, to also pay for all taxes, fees, and other assessments that the Government may impose on the Property</p>	<p>Section 135 of the Local Government Code speaks of the requirements for registration of deeds on transfer of real property and the corresponding duty of the notary public who will notarize the deed. It states, thus:</p> <p><i>“SECTION 135. Tax on Transfer of Real Property Ownership. - (a) The province may impose a tax on the sale, donation, barter, or on any other mode of transferring ownership or title of real property at the rate of not more than fifty percent (50%) of one percent (1%) of the total consideration involved in the acquisition of the property or of the fair market value in case the monetary consideration involved in the transfer is not substantial, whichever is higher. The sale, transfer or other disposition of real property pursuant to R.A. No. 6657 shall be exempt from this tax.</i></p> <p><i>(b) For this purpose, the Register of Deeds of the province concerned shall,</i></p>	<p>Please revisit this provision and revise.</p>

	<p><i>before registering any deed, require the presentation of the evidence of payment of this tax. The provincial assessor shall likewise make the same requirement before canceling an old tax declaration and issuing a new one in place thereof. Notaries public shall furnish the provincial treasuries with a copy of any deed transferring ownership or title to any real property within thirty (30) days from the date of notarization.</i></p> <p><i>It shall be the duty of the seller, donor, transferor, executor or administrator to pay the tax herein imposed within sixty (60) days from the date of the execution of the deed or from the date of the decedent's death."</i> <i>(emphasis supplied)</i></p> <p><u>Based from the foregoing, it should be the donor (DMI Medical Supply Company Inc.) who shall pay the applicable taxes on the donation of the property, contrary to what is stated in item 3.2. on the obligations of DSWD that the Department will shoulder all applicable taxes on the donation of the property and to also pay for all taxes, fees, and other assessments that the Government may impose on the Property.</u></p>	
<p>3.3. The DSWD should DMI be the owner of or acquire the lots surrounding the</p>	<p>1. The provision is vague; 2. Kindly fix typographical errors; and</p>	<p>Please revise.</p>

<p>Property, DSWD shall give DMI perpetual Road Right-Of-Way or access to the DMI's adjacent properties.</p>	<p>3. Clarify the purpose of this provision.</p>	
<p>3.4.2. xxx then ownership of the parcels of land shall revert to DMI in accordance with paragraph 3.5.4.</p>	<p>Change paragraph 3.5.4 to <u>paragraph 3.4.4.</u></p>	<p>Please revise.</p>
<p>3.4.3 DSWD undertakes to have the building constructed and finished including the parking area, in accordance with the schedule of construction as determined by DMI shall cause automatic, revocation of donation without need of court action. In such, all permanent improvements on the said drop-off point shall inure to the benefit of DMI without need to reimburse or pay DSWD.</p>	<p>Pursuant to Administrative Order No. 013 series of 2020 item no. VI states that:</p> <p style="padding-left: 40px;">xxx</p> <p style="padding-left: 40px;">4. It shall be advantageous to the government</p> <p style="padding-left: 40px;">xxx</p> <p>This provision of the contract is disadvantageous to the government since the government funds are always subject to the availability and Special Allotment Release Order SARO from the Department of Budget and Management. The budget for capital outlay has a tendency to shift and the DSWD may not be able to observe the schedule as required by DMI.</p>	<p>Please revisit the said provision.</p> <p>Note that an onerous donation entails costs on the part of DSWD. Also, since the intended donation of land has onerous conditions, and includes the subsequent construction of a building for abandoned children, then preparatory works as well as coordination activities with concerned offices such as Financial Management Service for the funds to be utilized, the Administrative Service for the logistical and building concerns, and Human Resource Management and Development Service for the assignment of personnel tasked to implement the task, among others, are necessary. Hence, we suggest the creation of an ad hoc committee or a Technical Working Group to further study</p>

		the feasibility of accepting the donation.
<p>4. RIGHT OF DMIRIE 4.1. DMIRIE shall have the right to teach the children and the staff for the development of their moral character and spiritual foundation, in accordance with the Declaration of Policy as stated in RA 11163, and in accordance with the mission and vision of DMIRIE. DMIRIE may also be allowed to conduct moral and spiritual development activities in other centers of the DSWD.</p>	<p>This provision should be deleted as the present agreement should be limited to the parcels of land donated; and this may be a possible violation of the constitutional provision on the separation of the church and state because it appears that DSWD, as a national government agency, is favoring a religion. The provision would circumvent the law which indirectly violates the constitutional provision.</p>	<p>For deletion.</p>
<p>ACKNOWLEDGMENT</p>	<p>We noticed that there are two (2) portions on acknowledgment, kindly provide for only one (1). Furthermore, we also observed that the Government issued ID provided by George D. Espejo and Gina Maria M. Espejo are already expired. May we recommend to provide an updated Government issued ID.</p> <p>Finally, also include the complete name of the Secretary in this legal document as the authorized signatory.</p>	

We recommend that our observations and recommendations be incorporated in the Memorandum of Agreement so that everything will be in order.

In further compliance with the DSWD policy under Administrative Order No. 13, series of 2020, kindly submit one (1) original copy of the Memorandum of Agreement and the corresponding Deed of Donation and Acceptance for recording and safekeeping purposes.

Lastly, please fill out the attached Customer Feedback Form and return the same to the Legal Service.

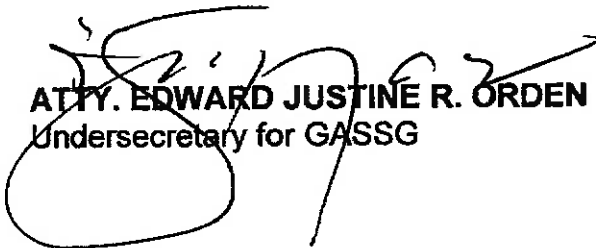
For your consideration.

Thank you.


ATTY. GINA V. WENCESLAO


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Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG