

**DSWD OPINION NO. 12 S. 2024**

DRN: LS-L-LO-23-12-11032-C

**MEMORANDUM**

**FOR** : **DIRECTOR JENNIFER M. RIZO**  
Human Resource Management and Development Service  
(HRMDS)

**FROM** : **THE OFFICER-IN-CHARGE, LEGAL SERVICE<sup>1</sup>**

**SUBJECT** : **NON-ENDORSEMENT OF REQUEST FOR TRANSFER OF  
MS. DAISY B. LUCATEN**

**DATE** : **24 JANUARY 2024**

This refers to your office's **MEMORANDUM<sup>2</sup>** dated 10 November 2023 which was received by the Legal Service on 17 November 2023, requesting for a legal opinion on the non-endorsement of request of transfer of **MS. DAISY B. LUCATEN** (Ms. Lucaten), Internal Auditor II (SG-15) on permanent status from Department of Social Welfare and Development (DSWD) – Internal Audit Service to the Anti-Red Tape Authority (ARTA) due to her **promotional appointment** dated 23 August 2023 as Internal Auditor III (SG-18) on permanent status.

At the outset, it was stated in the aforesaid Memorandum and as reflected in the attached **ANNEX D** hereof that the ARTA has secured from Commission on Elections (COMELEC) an approved “**REQUEST FOR EXEMPTION FROM THE PROVISION OF SECTION 261 (H) OF THE OMNIBUS ELECTION CODE, AS AMENDED**” dated 04 September 2023, which includes Ms. Lucaten’s transfer, thus:

NAME OF PERSONNEL	PRESENT STATION	TRANSFER RED STATION	DATE OF EFFECTIVITY OF TRANSFER	JUSTIFICATION OF TRANSFER	NAME OF REQUESTING AUTHORITY, POSITION AND NAME OF AGENCY
4 Daisy B Lucaten	Department of Social Welfare and Development	Internal Audit Division	Not later than September 23, 2023	To fill up the vacancy of the Division; Essential manpower to implement comprehensive communication plan relative to the program and projects of the Authority's activities and its units.	Atty. Ernesto V. Perez Director General ARTA

This is in relation to the ban on *transfer* of officers and employees in the Civil Service, as well as *transfer incidental to promotion* from **28 August 2023 to 29 November 2023<sup>3</sup>**, in connection with the 30 October 2023 Barangay and Sangguniang Kabataan Elections (BSKE) pursuant to COMELEC Resolution No. 10924<sup>4</sup>.

<sup>1</sup> Special Order No. 6021 dated December 4, 2023

<sup>2</sup> Annex 1

<sup>3</sup> COMELEC Resolution No. 10905 promulgated on 03 May 2023

<sup>4</sup> COMELEC Resolution No. 10924 promulgated on 07 June 2023

HRMDS now seeks the Legal Service's opinion on whether its office's interpretation of Ms. Lucaten's case is correct, specifically on the following points:

1. *Approving Ms. Lucaten's transfer is a violation of the ban on transfer since the effectivity date would be 04 October 2023 – incongruent with the approval from COMELEC that her effective date of transfer shall not be later than 23 September 2023.*
2. *There is a condition in COMELEC Memorandum No. 23-05804 that the transfer of Ms. Lucaten “shall not involve promotion or the giving of any increase of salary or remuneration or privilege which is strictly prohibited during the forty-five (45)-day period before the October 20, 2023 BSKE, without any exemption whatsoever”. Hence, approving the transfer of Ms. Lucaten shall still constitute a violation of the ban on transfer even if the approval from COMELEC indicated that Ms. Lucaten is allowed to transfer 04 October 2023 instead of not later than 23 September 2023.*
3. *The fourth paragraph under c.(of Section 11 of 2017 ORAOHRA) Transfer shall prevail in the absence of an approved authority to transfer duly signed by the head of agency. Hence, despite the lack of the approved authority to transfer due to the non-endorsement of the undersigned (OIC Jennifer Rizo) and consequent inaction of the head of agency, the DSWD and the receiving agency, i.e. ARTA, shall deem Ms. Lucaten's transfer as effectively approved.*

#### *This Level's Opinion*

1. ***The “date of effectivity of transfer” shall pertain to the COMELEC's approved effectivity date of Ms. Lucaten's transfer from DSWD to ARTA, which should not be later than 23 September 2023 and not to the “date of assumption to duty” as indicated in her Certification of Assumption to Duty or on 04 October 2023.***

We note that it is imperative to first define the terms “date of effectivity of transfer” and “date of assumption to duty” in relation to pertinent provisions of COMELEC Resolution No. 10924 and 2017 Omnibus Rules on Appointments and Other Human Resource Actions (ORAOHRA)<sup>5</sup>

**“Date of effectivity of transfer”** pertains to COMELEC's approved date of transfer or deployment of Ms. Lucaten from DSWD to ARTA as **exemption** from the ban on transfer of government employee or official during the prohibitive period from 28 August 2023 to 29 November 2023 pursuant to COMELEC Resolution No. 10924.<sup>6</sup>

The phrase *“transfer or detail”* shall be construed in general terms. Any movement of personnel from one station to another, whether or not in the same office or agency, during the election is covered by the prohibition.<sup>7</sup>

<sup>5</sup> Civil Service Commission (CSC) Resolution No. 1800692 Re Amendments and Additional Provisions to CSC Resolution No. 1701009 promulgated on 03 July 2018

<sup>6</sup> **SEC. 376. Prohibited Act and Period of Prohibition.** – *No public official shall, make or cause any transfer or detail whatsoever of any officer or employee in the civil service, including public school teachers, within the election period, except upon prior written authority of the Commission.*

<sup>7</sup> *Ibid.*

Meanwhile, the ***“date of assumption to duty”*** refers to the date when the appointee must report for duty or physically appear at his/her place of office or workstation and assume the duties and responsibilities of the position appointed to, in connection with the issuance of the latter’s appointment. The date of assumption to duty of the concerned employee is reflected in his/her Certification of Assumption to duty pursuant to Sec. 23, Rule VI of the ORAOHRA, thus:

**RULE VI  
EFFECTIVITY AND SUBMISSION OF APPOINTMENTS**

*“Sec. 23. The date of the actual assumption of the appointee, as indicated in the Certification of Assumption to Duty (CS Form No. 4, Series of 2017), shall be the basis for the payment of his/her salary and determination of service rendered in the government. x x x”*

We can infer from the foregoing that the “date of effectivity of transfer” refers to the date of the movement of the personnel from one station to another pursuant to the approved COMELEC exemption from the ban on transfer. The same is different from the “date of assumption to duty” which pertains to the actual date when the appointee must report for duty or physically appear at his/her workplace. Thus, in Ms. Lucaten’s case, the “date of effectivity of transfer” should not be construed to be the same as the “date of assumption of duty”.

- 2. The transfer of Ms. Lucaten does not involve promotion or giving of any increase of salary or remuneration or privilege within the prohibited period of 45 days before the October 20, 2023 BSKE. Thus, approving the same will not constitute a violation of the ban on transfer.***

It is worthy to note that the ARTA requested for an exemption from the ban on transfer through its letter dated 24 August 2023. This request covers the authority to transfer or to detail Ms. Lucaten from DSWD to ARTA on a date that is not later than 23 September 2023.

On 24 September 2023, the COMELEC approved the above request through its Memorandum No. 23-05804 (**ANNEX D**). However, we emphasize that the aforesaid COMELEC APPROVAL is not without conditions. Item No. 2 of the COMELEC’s recommendations on the last page of the Memorandum states:

***“2. That the same shall not involve promotion or the giving of any increase of salary or remuneration or privilege which is strictly prohibited during the forty-five (45)-day period before the October 20, 2023 BSKE, without any exemption whatsoever.”***

The aforementioned condition is pursuant to Sections 366 and 372, Article XIV of COMELEC Resolution No. 10924 which provide:

***“Article XIV***

***PROHIBITION AGAINST APPOINTMENT OR HIRING OF  
NEW EMPLOYEES, CREATION OF NEW POSITIONS,***

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DSWD GENERAL ADMINISTRATION AND SUPPORT SERVICES GROUP | LEGAL SERVICE

**PROMOTION OR GIVING OF SALARY INCREASES, REMUNERATION OR PRIVILEGES; TRANSFER OR DETAIL OF CIVIL SERVICE EMPLOYEES; SUSPENSION OF ELECTIVE LOCAL OFFICIALS; AND FILING OF LEAVE OF ABSENCE OF LOCAL TREASURERS**

**SEC. 366. Prohibited Acts and Period of Prohibition.** - From September 15, 2023 (Friday) until November 29, 2023 and during the period of forty-five (45) days before the conduct of BSKEs:

- a. Except upon prior authority of the Commission, no head or appointing officer of any national or local government office, agency or instrumentality, including government-owned or controlled corporations shall:
  - i. Appoint or hire any new employee, whether permanent, provisional, temporary, substitute or casual.
  - ii. Create and fill any position.
  
- b. **No government official shall promote or give any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.**

x x x

**SEC. 372. Total Ban on Promotion, Salary increases, Grant of Privileges.** - For purposes of the October 30, 2023 BSKE, the promotion or giving of increases of salary or remuneration or privilege to any government official or employee including those in government-owned and controlled corporations, shall be strictly prohibited from September 15, 2023 (Friday) to October 29, 2023 (Sunday). For the succeeding BSKEs, the total ban on promotion or giving of increases of salary or remuneration or privilege shall be strictly implemented during the period of forty-five (45) days before election. (Emphasis and underscoring supplied)"

Based on the foregoing, two elements must concur before the transfer of the employee be considered as violation of the total ban on promotion, salary increases, or grant of privileges. These two elements are: [i] **that the appointment must involve promotion or giving of increases of salary or remuneration or privilege;** and [ii] **that the date of the appointment is within the prohibited period of 45 days before the October 30, 2023 BSKE.**

- a. On the first element, we note that Ms. Lucaten occupied the position of Internal Auditor II in DSWD with Salary Grade (SG) 15. She was then promoted on 23 August 2023 as Internal Auditor III in ARTA with SG 18. Considering that her appointment involves promotion from Internal Auditor II to III and salary increase from SG 15 to 18, her transfer to ARTA unequivocally involves promotion and giving of increase of salary or remuneration or privilege.

- b. As to the second element, we emphasize that the date of Ms. Lucaten's appointment was on **23 August 2023** as reflected in her appointment form (**ANNEX B.1**). Meanwhile, we note that the total ban on promotion, giving salary increase, remuneration or privileges are prohibited from **15 September 2023 to 29 October 2023 or 45 days before the October 30, 2023 BSKE**. Considering that Ms. Lucaten's promotion was dated 23 August 2023, the same does not fall within the 45-day period of the aforesaid prohibition.

Based on the foregoing, the first element was satisfied however, we found the second element to be wanting. Records show that the supposed transfer of Ms. Lucaten from DSWD to ARTA involved promotion and giving of increase of salary. However, such promotion was approved on 23 August 2023, a date that is not within the prohibited period of 45 days before the October 20, 2023 BSKE. Thus, the supposed transfer of the Ms. Lucaten from DSWD to ARTA would not constitute a violation of the conditions under COMELEC Memorandum No. 23-05804 and the total ban on transfer incidental to promotion under Sections 366 and 372, Article XIV of COMELEC Resolution No. 10924.

**3. Pursuant to Section 11 (c) of 2017 CSC ORAOHRA, despite the lack of the approved authority to transfer due to the non-endorsement of the HRMDS and consequent inaction of the head of agency, the DSWD and the receiving agency, i.e. ARTA, Ms. Lucaten's transfer shall be deemed as effectively approved. However, the same cannot be validly executed without prior approval of the COMELEC.**

It bears emphasis that Section 11 (c) of 2017 CSC ORAOHRA provides:

x x x

**"If the request to transfer an employee is not granted by the head of the department or agency where he/she is employed, it shall be deemed approved after the lapse of 30 days from the date of notice without the need to notify the employee concerned."**

Here, Ms. Lucaten notified the DSWD Secretary on her appointment to ARTA and requested for her transfer thereto as early as 19 September 2023 (**ANNEX B**). However, based on your Memorandum dated 10 November 2023, the request was not approved due to the non-endorsement of the HRMDS and consequent inaction of the head of agency, the DSWD and the receiving agency, ARTA. Thus, applying the above rule, Ms. Lucaten is deemed transferred effective 20 October 2023 after the lapse of 30 days from 19 September 2023 or of non-approval of her request for transfer due to the inaction of the Department.

Nevertheless, considering the **ban on transfer** during the prohibitive period from 28 August 2023 to 29 November 2023, Ms. Lucaten's actual assumption to duty is impracticable without prior exemption from COMELEC as it constitutes transfer or movement of personnel from one agency to another. Thus, it would be prudent to secure a prior exemption from COMELEC to validly execute her transfer to ARTA.

On a final note, the above comments are based solely on the information and representations made by your office in its MEMORANDUM dated 10 November 2023. A different or elaborated set of facts may result in a different legal opinion.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

For your consideration.

Thank you.



**ATTY. MARIA CASSANDRA M. URBIZTONDO-GONZALES**

MAQ/ABW/10065