

**DSWD OPINION NO. 13 S. 2024**

DRN: LS-L-LO-23-11-95109-C

**MEMORANDUM**

**FOR** : JENNIFER M. RIZO  
Director IV, Human Resource Management and Development Service

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

**SUBJECT** : LEGAL GUIDANCE RE THE HIRING OF CONTRACT OF SERVICE WORKERS DURING THE SYNCHRONIZED BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS

**DATE** : 24 JANUARY 2024

This pertains to your office's MEMORANDUM<sup>2</sup> dated 13 October 2023, which was officially transmitted to and received by the Legal Service on 27 October 2023, seeking for legal guidance whether the **hiring of new employees under Contract of Service (COS) is included in the prohibitions under the COMELEC Resolution No. 10924<sup>3</sup>**, given that the said positions were already created and vacated prior to the election ban.

After careful review, we note that Sections 366 and 370, Article XIV (*Prohibition against Appointment or Hiring of New Employees, Creation of New Positions, 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*) of Commission on Elections (COMELEC) Resolution No. 10924, state that:

**Section 366. Prohibited Acts and Period of Prohibition.** –  
*From September 15, 2023 (Friday) until October 29, 2023 (Sunday) 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.*

<sup>1</sup> Special Order No. 6021, s. of 2023

<sup>2</sup> Annex "A"

<sup>3</sup> GENERAL GUIDELINES AND OTHER RELATED RULES AND REGULATIONS FOR THE OCTOBER 30, 2023, BARANGAY AND SANGGUNIANG KABATAAN ELECTIONS (BSKE) AND ALL SUCCEEDING BSKEs THREATER (PROMULAGTED ON 07 JUNE 2023)

ii. **Create and fill any new position.**

X X X

**Section 370. When Request for Authority is Not Necessary.**  
**– No prior written authority from this Commission shall be needed for the hiring or appointment of workers under Contract of Service and Job Order whose services are neither covered (sic) Civil Service law, rules and regulations nor considered as government service. x x x x" (Emphasis Supplied)**

Under the principle of *verba legis non est recedendum* (from the words of a statute there should be no departure), when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.<sup>4</sup>

The above-cited provisions clearly state that there is no prior written authority needed for hiring COS workers, hence, such is not covered by the prohibition under Section 366, Article XIV of COMELEC Resolution No. 10924.

Considering that the election issue raised is already moot and academic, this opinion merely serves as your office's guide in handling similar election concerns in the future.

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

For your information and guidance.

Thank you.



ATTY. MARIA CASSANDRA M. URBIZTONDO-GONZALES

GEPE/KAOD/ES/10055

<sup>4</sup> *Amoves v. House of Representatives Electoral Tribunal*, 636 Phil. 600, 608 (2010).