

DSWD OPINION NO. 20 S. 2024

DRN: LS-L-LO-24-03-43260-C

MEMORANDUM

FOR : DIRECTOR WAYNE C. BELIZAR
Financial Management Service

FROM : THE ASSISTANT SECRETARY FOR GASSG AND
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE

SUBJECT : REQUEST FOR TECHNICAL ASSISTANCE

DATE : 04 MARCH 2024

This is in reference to your MEMORANDUM¹ dated 01 March 2024, requesting for technical assistance relative to the proposed draft Financial Guidelines on the Receipt and Utilization of Local and Foreign Donations in Cash.

In the draft provision, the FMS stated that:

"All donations and grants in cash amounting to Php 5,000.00 or more, except donations for disasters and calamities directly deposited to the DSWD Donations Accounts, shall be covered by a notarized deed of Donation and Acceptance, Grant Agreement, Grant Resolution or Memorandum Agreement. An OR shall be issued by an authorized Collecting Officer to acknowledge receipt thereof."

In the Memorandum sent to LS, we were faced with the following questions:

1. *What is the legal process on the notarization of Deed of Donation if the donor resides abroad?*
2. *Does donations received by the DSWD requires Deed of Donation and Acceptance of is there any instance that donations should be covered by a Deed of Donation and Acceptance?*

Section 5 of General Appropriations Act for Fiscal Year 2024 (2024 GAA) provides for the treatment of cash donations sourced from various sources, thus:

"Departments, bureaus, and offices of the National Government, including Constitutional Offices enjoying fiscal autonomy and SUCs may accept donations, contributions, grants or gifts, in cash or in kind, from various sources, domestic or foreign, for purposes relevant to their functions. National government agencies may accept donations in cash or in kind, from domestic or foreign sources, for purposes relevant to their functions. In case of grants, in cash or in kind, from governments of foreign countries, their agencies and instrumentalities or multilateral institutions or organizations, acceptance thereof shall be subject to the prior clearance and approval by the President or his authorized representative based on the

¹ Annex "A" – Memorandum from the Office of the Assistant Secretary for International Affairs, Attached and Supervised Agencies dated 16 February 2024

recommendation of the Secretary of Finance. On the other hand, other donations, in cash or in kind, from foreign governments shall require prior clearance and approval by the President or his authorized representative based on the recommendation of the Secretary of Foreign Affairs. xxx" (emphasis supplied)

In this regard, the Department is not precluded from receiving donations from foreign countries or individuals provided that the document is in adherence with the Rules on Donation.

In the second inquiry, this level recommends for the deletion of the notarization requirement among donors who desire to donate with the Department since the said requirement is not expressly provided in the general laws, to wit:

Article 748, of the New Civil Code provides that

"Art. 748. The donation of a movable may be made orally or in writing.

An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated.

If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing, otherwise, the donation shall be void. (632a)"

Further, the 2024 GAA as also cited above provides that donations from various sources may be accepted by a NGA, such as the DSWD, for purposes relevant to its functions.

Corollary, Commission on Audit 2014-002 entitled "Accounting and Reporting Guidelines on the receipt and utilization of National Disaster Risk Reduction and Management Fund (NDRRMF), cash and in-kind aids/donations from local and foreign sources, and funds allocated from the agency regular budget for Disaster Risk Reduction and Management (DRRM) program" only requires:

"Cash Donations from Local and Foreign Sources

1. The cash donations shall be (a) acknowledged through the issuance of Official Receipt; (b) deposited with an authorized government depository bank (AGDB) under a separate bank account for DRRM Funds (DRRMF); and (c) entered in the Cash Receipts Record by the designated Collecting Officer. xxx"

Thus, donations made by a resident citizen or an individual with the **amount of more than Php 5,000.00 shall be made in writing and an acceptance in writing** must be executed by the Donee.

Pursuant to the doctrine of *ubi lex non distinguit nec nos distinguere debemus*, no distinction is to be made in the application of a law where none is indicated². Clearly, the law only provided that the donation instruments per se must appear plainly in writing. Neither does the law qualify whether donation is domestic or foreign sourced.

Consequently, the notarization of the donation instrument will only apply if the object to be donated is a real property in accordance with Article 749 of the New Civil Code, in relation with


² Pilar vs COMELEC, G.R. No. 115245 July 11, 1995

the provision on Statute of Frauds³. Since the law expressly provides that cash donation and acceptance, whether local or foreign, shall be in writing, in case the amount exceeds Php 5,000.00 and the same law did not provide that the Cash Donation and Acceptance Form ("Form") shall be notarized, this level recommends for the removal of the notarization requirement in donation in case the amount is more than Php 5,000.00 because adding another requirement could be burdensome to the Donor.

In view of the foregoing, this Level recommends that cash donations made by a donor to the Department should adhere with the New Civil Code without the necessity of having the Form notarized. For easy reference, we have attached a sample Cash Donation and Acceptance Form⁴, in lieu of the Deed of Donation and Acceptance template, for your consideration.

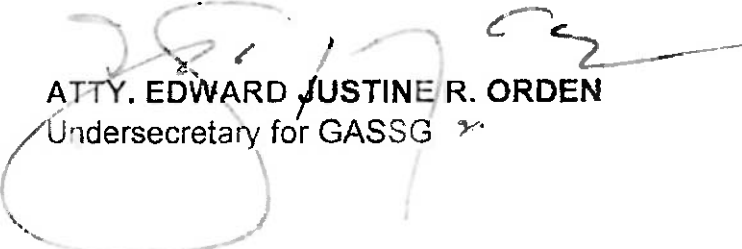
Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

Thank you.


ATTY. GINA V. WENCESLAO

MC:SG/MBP/ESSE/10065
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Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG

³ Art. 1403. The following contracts are unenforceable, unless they are ratified.

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum, thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing or a secondary evidence of its contents:

- (a) An agreement that by its terms is not to be performed within a year from the making thereof
- (b) A special promise to answer for the debt, default, or miscarriage of another.
- (c) An agreement made in consideration of marriage, other than a mutual promise to marry;
- (d) An agreement for the sale of goods, chattels or things in action at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;
- (e) An agreement of the leasing for a longer period than one year, or for the sale of real property or of an interest therein,
- (f) A representation as to the credit of a third person

⁴ Annex 'B' - sample Cash Donation and Acceptance Form

CASH DONATION AND ACCEPTANCE FORM

Date: _____

DONATION

I, _____ (name of Donor) _____, voluntarily donates to the
DSWD, the amount of PhP _____ (amount in figures and words) _____ in cash or
check, for purpose/s of _____.

ACCEPTANCE

I _____ (name of Donee)¹ _____, hereby accepts the donation in behalf of DSWD.

(Signature of Donor)

(Signature of Donee)

¹ Authorized DSWD official or employee to accept the donation in favor of DSWD

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