

DSWD OPINION NO. 33 S. 2024**MEMORANDUM**DRN: LS-L-LO-24-04-60596-C

FOR : **ATTY. HURJAE S. LUBAG, Rpm**
Head Executive Assistant (HEA), Office of the Secretary

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

SUBJECT : **REQUEST FOR LEGAL OPINION ON NEPOTISM VIS-À-
VIS MOA/COS WORKERS**

DATE : **03 APRIL 2024**

This refers to your Memorandum seeking legal opinion on the rules on nepotism in relation to the Contract of Service (COS/MOA) workers in the Department.

As culled from your Memorandum, you cited Section 59, Chapter 8, Title I, Book V of Executive Order No. 292, series of 1987, otherwise known as the "Revised Administrative Code of 1987" which states that:

"SECTION 59. Nepotism. — (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section, the word "relative" and members of the family referred to are those related within the third degree either of consanguinity or of affinity."

The questions herein proffered for this office's legal opinion are:

1. Does the prohibition against nepotism applies to hiring of Memorandum of Agreement/ Cost of Service (MOA/COS) workers?
2. If yes, the "appointing authority" mentioned in the cited provision pertains to which party in a MOA/COS arrangement in the Central Office and in the Field Offices?
3. If no, are there any other provisions of law that may have been violated in hiring relatives within the third degree either of consanguinity or of affinity in a MOA/COS arrangement?

In **Dator vs. Carpio-Morales**¹, the Supreme Court (SC) affirmed the Ombudsman's ruling that Mayor Dator's act of issuing the Special Order No.2, Series of 2014 and Job Order that hired his sister, Macandile, as Chief Administrative Officer, was irregular.

Citing the Civil Service Commission (CSC) Resolution No. 020790, the SC states that:

"CSC Resolution No. 020790 clearly states that the prohibition of hiring those covered under the rules on nepotism through a contract of service and job order:

Section 4. Prohibitions- The following are prohibited from being hired under a contract of services and job order.

- a. Those who have been previously dismissed from the service due to commission of an administrative offense;
- b. **Those who are covered under the rules on nepotism;**
- c. Those who are being hired to perform functions pertaining to vacant regular plantilla positions;
- d. Those who have reached the compulsory retirement age except as to consultancy services.

Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee. **Macandile, being the sister of Dator, is clearly within the scope of the prohibition from being hired under a contract of services and job order.** [Emphasis and underscoring supplied].

It is also worthy to emphasize that the Department has its internal policy on nepotism under Memorandum Circular No. 21, Series of 2012 as amended by Administrative Order No. 26, Series of 2022 or the Enhanced Guidelines on the Code of Conduct for Personnel of the Department of Social Welfare and Development, to wit:

V. POLICY ON NEPOTISM

- a. Pursuant to civil service law and rules on nepotism, no appointment in the career service shall be made in favor of a relative of the appointing or recommending authority or, or of the head of office, or of the immediate supervisor of the appointee within the third degree of affinity or consanguinity.

¹ CELSO OLIVIER T. DATOR, PETITIONER, V. HON. CONCHITA CARPIO-MORALES, IN HER CAPACITY AS THE OMBUDSMAN, AND HON. GERARD A. MOSQUERA, IN HIS CAPACITY AS THE DEPUTY OMBUDSMAN FOR LUZON, AND THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS. [G.R. No. 237742, October 08, 2018]

The nepotism rule shall also apply to designation and to all DSWD personnel². [Emphasis and underscoring supplied]

Parenthetically, Section 4 (a) of the Department’s prescribed contract template for COS/MOA workers provides that:

“4. Warranties. Contractor warrants that:

- a. Contractor is not related within the third degree of consanguinity or affinity to the hiring authority and/or respective of the DSWD, head of Office, or his/her immediate supervisor.”

Likewise, it is a Department policy that, prior to engaging the prospective COS/MOA worker with the Department, the approving authority and/or the head of the offices, bureaus, and services to which the said COS/MOA worker will be assigned will execute a Certification attesting that he or she is not related to such COS/MOA worker within the third degree, either by consanguinity or affinity.

In view of the foregoing and relative to your *1st inquiry*, this level finds no reason to deviate from the SC’s above-cited ruling and the Department’s policy that the rules on nepotism apply also to COS/MOA workers, the same being an explicit prohibition set forth in CSC Resolution No. 020790.

As to your *2nd inquiry*, Item I (B) (3) of the DSWD Administrative Order No. 16, Series of 2019 (AO No. 19, s. 2019) or the 2019 Delegation and Delineation of Authority states that:

“3. Hiring of COS/MOA/JO (Technical and Non-Technical) Position

		Recommending Authority	Approving Authority
CO	Regular Programs	HOBS	USEC Concerned ³
	FAPs or Special Projects	Project/Program Manager	
FO	Regular Programs	DC Concerned	RD
	FAPs or Special Projects	Regional Project/Program Manager	

Thus, we submit that the aforementioned “appointing authority” refers to the approving authority, that is, the **concerned Undersecretary** in the case of COS/MOA workers in the Central Office and **Regional Director** in the case of Field Offices.

Relative to your *3rd inquiry*, assuming for purposes of discussion that an approving authority hires a relative within the third degree either of consanguinity or of affinity

² Per MC 2012-02, “Personnel” means the Permanent, Casual, Contractual officials and employees of the Department, including Memorandum of Agreement (MOA) and contract of service (COS) workers, consultants, on-the-job trainees, and others.


³ In reference to AO 16, s. 2019, it is the Department’s policy that the aforementioned “USEC Concerned” refers to the Cluster Head to whom the prospective COS/MOA worker will be assigned.

under a MOA/COS arrangement, such act is in a clear violation of the foregoing CSC Resolution No. 020790, and he or she may also be held liable for other administrative offenses, such as Nepotism classified as a grave offense under 2017 Rules on Administrative Cases in the Civil Service³, Grave Abuse of Authority, or other related offense which violates Code of Conduct and Ethical Standards for Public Officials and Employees⁴, depending on the facts and circumstances. The administrative offense committed will depend on the allegations in the complaint to be filed.

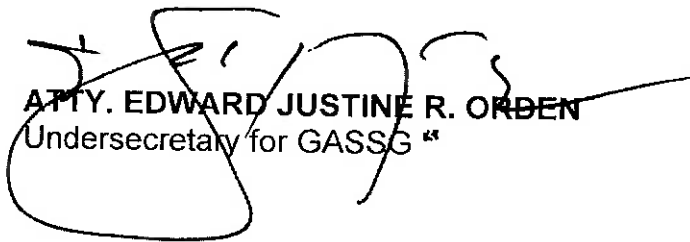
Please be informed that the foregoing legal opinion, is based solely on the information and documents provided by your office. We hope to have guided you accordingly.

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

Thank you.


ATTY. GINA V. WENCESLAO
CMUG/MAO/10065
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Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG ⁴

³ Section 50 (11), Rule 10 of 2017 RACCS
⁴ Republic Act No. 6713