

**DSWD OPINION NO. 34 S. 2024**

DRN: LS-L-LO-24-03-52255-C

**MEMORANDUM**

**FOR : DIRECTOR WAYNE C. BELIZAR**  
Financial Management Service

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

**SUBJECT : COMMENTS ON THE REQUEST OF NCDA EXECUTIVE**  
**DIRECTOR FOR AUTHORITY**

**DATE : 19 APRIL 2024**

This pertains to your MEMORANDUM for our vetting on the request of the National Council for Disability Affairs (NCDA) for the approval of the Delegation of Authority to EXECUTIVE DIRECTOR GLENDA D. RELOVA to sign Purchase Requests (PRs), Purchase Orders (POs), check payments and procurements up to **FIFTY MILLION PESOS (Php 50,000,000.00)**.

In a letter sent by the NCDA, the Executive Director is requesting for an increase of the above ceiling amounts from the *Ex Officio* Chairperson of the NCDA Governing Board, who is also the Secretary of the DSWD. For purpose of discussion, the "NCDA" headed by the Executive Director pertains to the "NCDA Secretariat" under **Executive Order ("E.O.") No. 709, series of 2008**.

**Background****Presidential Decree (PD) No. 1509<sup>1</sup>**

PD No. 1509 was enacted creating the National Commission Concerning Disabled Persons (Commission) under the supervision and control of the Office of the President. All functions and powers of the Commission were expressly vested in a Board of Commissioners to be composed of different national agencies with the Chairperson to be appointed by the President<sup>2</sup>.

Among the Duties of the Chairman shall be **to disburse, administer and obligate funds of the Commission, subject to the approval of the Board<sup>3</sup>**.

<sup>1</sup> "Creating the National Commission concerning Disabled Persons and for Other Purposes"

<sup>2</sup> Section 5 of PD No. 1509

<sup>3</sup> Section 6, *Ibid*.

Executive Order (EO) No. 123<sup>4</sup> and 676<sup>5</sup>

Subsequently, EO No. 123 and 676 were issued thereby categorizing the Commission as an Attached Agency of Ministry of Social Welfare and Development (DSWD) and transferring the Commission under DSWD to oversee the Commission in behalf of the President of the Philippines<sup>6</sup>.

Executive Order (EO) No. 232<sup>7</sup>

EO No. 232 was issued renaming the Commission to National Council for the Welfare of Disabled Persons or the "Council" and further adopting the provisions of PD 1509 expressly providing that the Council (which is the NCDA) shall be headed by a governing Board which shall still be composed of various national agencies but shall now be Chaired by DSWD<sup>8</sup>.

Executive Order (EO) No. 709<sup>9</sup>

Thereafter, EO No. 709 was issued specifically detailing the functions and organizational structure of the Commission. The same EO also renamed the Commission into National Council on Disability Affairs, returning the Commission under the Office of the President (OP) and reappointing the Chairperson of the Board from the DSWD to non-government organization. However, upon the passage of EO No. 33 series of 2011<sup>10</sup>, the Commission was transferred from OP to DSWD with DSWD Secretary as the ex officio Chairman of NCDA.

*Discussion*

While there may have been movements or modification on the "chairmanship" of NCDA, the change on the chairmanship neither revised nor repeal the duty of the Chairman under PD No. 1509 to **disburse, administer and obligate funds of the Commission, subject to the approval of the Board.**

<sup>4</sup> REORGANIZING THE MINISTRY OF SOCIAL SERVICES AND DEVELOPMENT NOW REFERRED TO AS MINISTRY OF SOCIAL WELFARE AND DEVELOPMENT

<sup>5</sup> TRANSFERRING THE NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS (NCWDP) FROM THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD) TO THE OFFICE OF THE PRESIDENT

<sup>6</sup> Section 3 of EO No. 676

<sup>7</sup> PROVIDING FOR THE STRUCTURAL AND FUNCTIONAL REORGANIZATION OF THE NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS AND FOR OTHER PURPOSES

<sup>8</sup> Section 5 of EO No. 232

<sup>9</sup> REDEFINING THE FUNCTIONS AND ORGANIZATIONAL STRUCTURE OF THE NATIONAL COUNCIL FOR THE WELFARE OF DISABLED PERSONS WHICH IS RENAMED AS THE NATIONAL COUNCIL ON DISABILITY AFFAIRS AND ATTACHED TO THE OFFICE OF THE PRESIDENT, AND AMENDING FOR THE PURPOSE EXECUTIVE ORDER 676 (2007) AND EXECUTIVE ORDER 232 (1987)

<sup>10</sup> TRANSFERRING THE NATIONAL COUNCIL ON DISABILITY AFFAIRS (NCDA) FROM THE OFFICE OF THE PRESIDENT (OP) TO THE DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD)

May we direct you to the decision of the Supreme Court in the case of *Mecano vs COA*.<sup>11</sup> Jurisprudence dictated that there are two kinds repeal, implied and express, thus:

*“The lawmakers may expressly repeal a law by incorporating therein a repealing provision which expressly and specifically cites the particular law or laws, and portions thereof, that are intended to be repealed. A **declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed is an express repeal; all others are implied repeals.**” (Emphasis supplied)*

It has been a well settled doctrine that in the interpretation of laws, all doubts shall be construed against implied repeal, thus:

*“The fundament is that the legislature should be presumed to have known the existing laws on the subject and not have enacted conflicting statutes. Hence, **all doubts must be resolved against any implied repeal, and all efforts should be exerted in order to harmonize and give effect to all laws on the subject.**” (Emphasis supplied)*

All the EOs contains a Repealing Clause, to wit:

*“Repealing Clause. All ordinances, regulations, and other issuances or part thereof, which are inconsistent the Executive Order, are hereby repealed or modified accordingly.”*

From the above discussion, it can be reasonably concluded that the intended repeal covers all that which are inconsistent with the prevailing or latest issuance. A review of all the EOs on what we know as NCDA show no inconsistent nor contradictory provision on the power and duty of the Chairman to disburse, administer and obligate funds, subject to the approval of the Board.

The authority to disburse, administer and obligate funds has been reflected in the previous issuances by the Secretary as the ex officio Chairman of the Commission. Notwithstanding the absence of the Board Resolution approving these disbursement and obligation of funds, the same carries with it the presumption of regularity of official actions. *The presumption of regularity in the performance of official duties is an aid to the effective and unhampered administration of government functions. To successfully overcome such*

<sup>11</sup> GR No. 103982, 11 December 1992

*presumption of regularity, case law demands that the evidence against it must be clear and convincing; absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit*<sup>12</sup>. NCDA has been efficiently performing its mandated tasks without issues, external nor internal.

### **NCDA Head of Procuring Entity (HOPE)**

Section 5(j) of Republic Act No. 9184 define who is the HOPE, to wit:

**Sec. 5. Definition of Terms.** For purposes of this Act, the following terms or words and phrases shall mean or be understood as follows:

XXX

**(j) Head of the Procuring Entity – refers to: (i) the head of the agency or his duly authorized official, for national government agencies; (ii) the governing board or its duly authorized official, for government-owned and/or -controlled corporations; or (iii) the local chief executive, for local government units. *Provided, That in a department, office or agency where the procurement is decentralized, the Head of each decentralized unit shall be considered as the Head of the Procuring Entity subject to the limitations and authority delegated by the head of the department, office or agency. (emphasis supplied)***

The mandated functions and powers of the NCDA, an attached agency of DSWD, is primarily vested in the Governing Board which shall be headed by the Secretary as the ex officio Chairperson. Under the prevailing issuances, the duties of the Chairperson<sup>13</sup> are explicitly provided and inherently vested to him as the ex officio Chairperson, to be performed without any Board Resolution except for the disbursement, administration and obligation funds. His duty as HOPE is anchored on Section 6. Item (e) of PD 1509 – *to sign and represent the Commission.*

<sup>12</sup> Susan A. Yap vs Elizabeth Lagtapon; GR No. 196347; 23 January 2017

<sup>13</sup>SECTION 6 of PD 1509 - Duties of the Chairman – The Chairman shall perform the following duties;

- a. To call and preside over the meetings of the Board;
- b. To disburse, administer and obligate funds of the Commission, subject to the approval of the Board;
- c. To conduct and manage the affairs of the Commission;
- d. To ensure that the decision and policies of the Board are implemented;
- e. To sign for and represent the Commission;
- f. To accept on behalf of the Commission, gifts, grants or donations and to administer, obligate and disburse the same in accordance with policies and regulations promulgated by the Board;
- g. To organize permanent or ad-hoc committee, consisting of members of the Board or such other experts as are deemed necessary for the discharge of the functions of the Commission.

Relatively, as the HOPE, the Secretary may delegate the functions such as the signing of all procurement and/or payment related documents to the Executive Director of NCDA in accordance with the relevant provisions of RA 9184.

***Relationship between the NCDA Secretariat and the DSWD Secretary as Ex Officio Chairman of NCDA***

The NCDA Secretariat is headed by an Executive Director, appointed by the Chairperson upon favorable recommendation of the Board. The appointment is coterminous and that the position is primarily confidential in nature. The Board has the following functions under EO No. 709:

**“Section 2. Powers and Functions of the Council.** The National Council on Disability Affairs, hereinafter referred to as the **“Council”**, shall have the following powers and functions:

x x x

**6. Serve as a national working body to promote and monitor implementation of national laws and international commitments;**

**7. Assist in the establishment of self-help organizations and the setting up of specific projects through the provision of technical and financial assistance to draw out the active participation of persons with disabilities in the social and economic development of the country. (Section 31, RA 7277).”**

In order to ensure that the NCDA’s day-to-day operations are aligned with its mandates, the Board, as part of their mandate, has to concur through issuance of a Board Resolution. Thus, the Board should issue its Resolution concurring its decision on the relevant changes of the NCDA, such as increase in the amount of the ceiling amount that the ex officio Chairperson may delegate to the appointed Executive Director.

**Nature of the position of the NCDA Executive Director**

The nature of the position of the NCDCA Executive Director has been thoroughly discussed by the **Civil Service Commission (CSC)** in its Resolution No. 2000602, dated 18 June 2020, viz:

*"A review of the above PDF shows that the **duties of the position are dominated by confidential (non-routine) tasks.** While there are other routine functions of the position but these are mostly recommendatory in nature and only incidental in the performance of the primarily confidential functions of the position.*

***Among the principal responsibilities of the Executive Director III position is to supervise the convening of all meetings of the Board, Executive Committee and Sub-Committees and assisting the Chairperson in administering the budget of the Council. Indeed the Executive Director III position entails extraordinary confidence between the appointee and the appointing authority.***

*Furthermore, there is "close proximity" between the appointing authority, the Chairman and the appointee, the Executive Director III position. In the organizational structure, the **Executive Director III position directly reports to the Chairman.**" (Emphasis Supplied)*

In connection thereto, the duties of the Executive Director are defined under his/her **Position Description Form (PDF)** which includes:

***"14. Approves purchase request (PR), letter order for supplies, materials and equipment, as well as books, periodicals and other items for the Council in the amount not exceeding Fifty Thousand Pesos (P50,000.00) per transaction in accordance with the approved annual procurement plan of the agency;***

xxx

***16. Approves all claims for payment in the amount not exceeding Seven Hundred Thousand Pesos pursuant to the approved Council work and financial plan"** (Emphasis Supplied)*

In sum, the CSC has explicitly declared that the nature of the position of the Executive Director entails **extraordinary confidence between the appointee and the appointing authority.** Given this nature of the position of the Executive Director, it is apparent that the **DSWD Secretary, as the ex officio Chairman of the NCDCA,** may authorize the **NCDCA Executive Director to administer and manage the budget of the Council on his behalf.** Nevertheless, as indicated under Items 14 and 16 in the duties of the

Executive Director, he/she must act in accordance with the approved annual procurement plan and approved work and financial plan of the NCDA.

**Recommendation**

In view of the foregoing, the Legal Service submits no objection to the request of Executive Director Relova. As in the previous issuances, the Chairperson, head of the Board, have authorized increases on the ceiling amount to sign Purchase Requests, Purchase Orders, check payments, procurements and similar matters relating to the disbursement, administration and obligating funds with the Board's approval.

Nevertheless, the matter is ultimately **within the discretion of the DSWD Secretary as the *ex officio* Chairman of NCDA and as the appointing authority.** Let it also be stressed that the approving authority on financial matters of the Executive Director **must be pursuant to the approved annual procurement plan, approved work and financial plan of the NCDA with the concurrence of the Board through a Resolution.**

Please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

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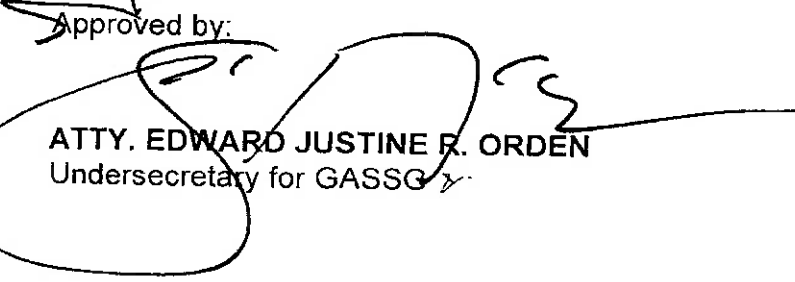
Thank you.



ATTY. GINA V. WENCESLAO

CMUG/M/IBP/DKB/ESQE10065

Approved by:



ATTY. EDWARD JUSTINE R. ORDEN  
Undersecretary for GASSG