

DSWD OPINION NO. 36 S. 2024

DRN: LS-L-LO-24-04-66784-C

MEMORANDUM

FOR : ATTY. VANESSA B. GOC-ONG
Regional Director, DSWD Field Office XI

**FROM : ASSISTANT SECRETARY FOR GENERAL
ADMINISTRATION AND SUPPORT SERVICES GROUP AND
CONCURRENT OFFICER-IN-CHARGE, LEGAL SERVICE**

**SUBJECT : REQUEST FOR GUIDANCE ON THE AUTHORITY OF THE
REGIONAL DIRECTOR TO ENTER INTO A DEED OF
DONATION INVOLVING THE DONATION OF A VEHICLE**

DATE : 22 APRIL 2024

This pertains to your MEMORANDUM¹ seeking legal guidance on the intended donation by Dumper – PTDA Partylist Representative of a service vehicle for the Crisis Intervention Section of the DSWD Field Office XI-Davao Occidental Provincial Operations Office. Specifically, you raised the following queries:

1. Whether the Undersecretary of GASSG or the Secretary will sign and enter into the Deed of Donation with the District and Partylist Representatives; or
2. Whether the Undersecretary of GASSG or the Secretary will delegate to the undersigned the authority to sign the Deed of Donation with the District and Partylist Representatives.

After careful review of the draft Deed of Donation and Acceptance (DDA)², please consider the following:

1. **The Secretary and the Undersecretary for GASSG are the proper authorities to enter into a Deed of Donation and Acceptance over local or foreign donations on matters involving administrative, procurement, and financial matters.**

In Administrative Order (AO) No. 16, series of 2019³ or the Manual of Delegation and Delineation of Authority in the DSWD, Item II (Administrative, Procurement, and Financial Matters) letter J, as amended by Administrative Order (AO) No. 12, series of 2023, on *Contracts not involving Procurement*, under the subject of contract labeled as “**Acceptance of Foreign and Local Donations**”, only the

¹ Annex “A” - Memorandum dated 28 February 2024

² Annex “A-1” – Draft Deed of Donation

³ Page 20, 2019 Manual of Delegation and Delineation of Authority in the DSWD

Undersecretary for GASSG, and the Secretary are the recognized approving/authorized signatories based on a threshold up to P 100M, respectively. There is no explicit provision delegating this matter to the Regional Directors.

To determine the proper signatory, it is imperative that the Deed of Donation indicate the value of the vehicle to be donated. Contract of donation up to P100 Million shall be signed by the Undersecretary for GASSG, while the Secretary shall be the signatory for donations over P100 Million.

As to your second query whether the Undersecretary for GASSG may delegate his authority as above mentioned, we answer in the negative. *It is a general principle of law, expressed in the maxim "delegatus non potest delegare," that a delegated power may not be further delegated by the person to whom such power is delegated, and that in all cases of delegated authority, where personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgment or discretion, the authority is purely personal and cannot be delegated to another unless there is a special power of substitution either express or necessarily implied⁴.*

Nonetheless, the existing delegation of authority does not foreclose the fact that the Secretary may delegate the exercise of his authority to represent the Department in contracts involving donations of personal property for exclusive use by the Field Office as in this case. To be an effective delegation, the same must be in writing, thus, a Special Order signed by the Secretary in favor of Regional Director Goc-Ong may be issued.

2. For purposes of enhancing the draft DDA, please consider our recommendations below:

- a. Reflect the complete name of Secretary as Rexlon T. Gatchalian, as he is the proper representative of the DSWD in the DDA.
- b. Pursuant to the recitals of the draft DDA, the intent is to donate a service vehicle to the DSWD. However, the draft DDA failed to provide for any background on the Department, as mandated in the 2020 DSWD Guidelines and Protocols for Contract Drafting, Review, Implementation and Monitoring⁵. Thus, may we suggest to incorporate this provision as 2nd Whereas Clause:

"WHEREAS, the DONEE is the primary government agency mandated to develop, implement and coordinate social protection and poverty – reduction solutions for and with the poor, vulnerable and disadvantaged;"

⁴ Kishu Dalamal vs Deportation Board; GR No. L-16812, 31 October 1963

⁵ Administrative Order No. 13, series of 2020

Further, please incorporate this provision as the 3rd Whereas Clause:

“WHEREAS, the donation is an act of liberality of the DONOR, who intends to donate a Service Vehicle to the DONEE.”

- c. Per stipulation in the draft DDA, the donation imposed conditions that are relevant to the maintenance and utilization of the Service Vehicle, thus, kindly consider the proposed revisions on the agreed terms and conditions by the parties.

- i. Item No. 1 should read, thus:

“NOW, THEREFORE, for and in consideration of the foregoing premises, the **DONOR** voluntarily **GIVES, TRANSFERS and CONVEYS** unto the **DONEE**, by way of **DONATION**, the donated property, a **TOYOTA HILUX 24LJ4X 2023** as **SERVICE VEHICLE**, free from all liens and encumbrances whatsoever, and particularly described as:

Vehicle Description

Make and Type: _____
 Motor Number: _____
 Serial/Chassis Number: _____
 Plate Number: _____
 Model: _____
 Official Receipt No. _____
 Certificate of Registration No: _____
 MV File No: _____
 Value of the vehicle to be donated P 1,169,000.00⁶

The donation is subject to the following conditions:

- a. That the vehicle shall conform to the attached Original Certificate of Registration, marked as Annex “A”, and made an integral part hereof;
- b. That the Donated Property shall be used solely of the Crisis Intervention Unit – Davao Occidental;
- c. That the DONEE shall maintain the vehicle in good working condition and shall be responsible for all the service and repair of any damages; and
- d. All expenses for the preparation of documents, donor’s tax, transfer fee, registration fee, notarial fee and other expenses incidental to the process of titling of the donated property shall be for the account of the DONEE;

⁶ Annex “B” – Sales Invoice

The DONOR hereby states, for the purpose of giving full effect and validity to this conveyance, that this Donation is not made with the object of defrauding its creditors, having reserved property sufficient to answer for its debts contracted prior to this date.

d. Acceptance of DONEE to be reflected in the same Deed of Donation, thus we propose:

"The **DONEE**, by way of this same instrument, hereby receives and accepts the Donated Property, together with the conditions herein imposed, and hereby expresses its gratitude and appreciation for the support, kindness and generosity of the **DONOR**."

e. The rest of the conditions are deemed reasonable and acceptable.

After all the foregoing revisions shall have been considered and approved, the Deed of Donation and Acceptance may be forwarded to the authorized signatories for execution.


For consideration.

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


ATTY. GINA V. WENCESLAO
04/24/24

CMUG/ESQE/10065

Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG