



Republic of the Philippines
Department of Social Welfare and Development
Batasan Pambansa Complex, Constitution Hills
Quezon City
Telephone No. 931-8101 to 07

MEMORANDUM CIRCULAR
NO. 11
Series of 2004

**SUBJECT : OPERATIONAL GUIDELINES DURING
THE ELECTION PERIOD**

I. PREFATORY STATEMENT

In the exigency of the service and with the approval of the Executive Committee (EXECOM), the following policies are hereby promulgated in line with the COMELEC Resolution, dated February 18, 2004, on the DSWD's request for guidance on allowable and prohibited activities during the election period.

II. BACKGROUND ON THE COMELEC RESOLUTION

In a Resolution dated February 18, 2004 the Commission on Election (COMELEC) resolves that it is precluded from granting an exemption to the "prohibition on the release, disbursement or expenditure of public funds for any and all kinds of public works" since granting an exemption in advance will be tantamount to prejudgment of an issue of a possible election offense (p.3-5, COMELEC Resolution).

With reference to Personnel Matters the COMELEC opined that the request was "couched in general terms", as such no blanket authority will be given by the Commission, instead requests will be resolved on a case by case basis (p.10, *ibid*).

It should be stressed that this Resolution should be read in the context of the Omnibus Election Code which allows exemption for said prohibitions.

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III. LEGAL FRAMEWORK FOR THE OPERATING GUIDELINES DURING THE ELECTION PERIOD

A. On Prohibition against Release, Disbursement or Expenditure of Public Funds

A.1. Public Works

It should be noted that the prohibitions are only time specific as provided by the Omnibus Election Code. Batas Pambansa Bldg. 881 Section 261 explicitly provides that **during the election period**, *"(1) release, disbursements, or expenditure of public funds for any and all kinds of public works, issuance of treasury warrants and similar devices thereof and actual construction activities of said public works, and; (2) creation of new project positions, hiring and promotion of project staff, all pertaining to the different programs/activities/projects are prohibited. "*

Thus, if any of the above is an on-going concern or project, or work undertaken by contract through public bidding held or the contract was awarded before the election period, or the creation or appointments or promotion of employees was before the election period, then the prohibition does not apply. (Section 261, (1b, c), Omnibus Election Code). Thus, repair and completion of Office Buildings, Centers and Institutions are allowed provided that the construction started before the election period.

Specifically, if any of the above concerns projects or actions was executed before 26 March 2004 then the prohibition does not apply.

Also the prohibition does not apply to projects under foreign agreements, nor to maintenance works on existing public works, nor emergency work necessary to restore damage facility and nor to payments for the usual costs of preparation to actual constructions including the purchase of materials and equipment and incidental expenses for wages (Sec. 261, (v) Batas Pambansa Blg. 881). Therefore, projects under the Department's KALAHI-CIDSS and Early Childhood Development Projects are not covered by the prohibitions (Section 261, (1d), Omnibus Election Code).

A.2. Calamity and Disaster

In the event of calamity or disaster, all releases of the Department shall be turned over to, and administered and disbursed by the Philippine National Red Cross, subject to Commission on Audit (COA) rules and no candidate, his or her spouse, nor member of his family by affinity or consanguinity shall participate

directly or indirectly in the distribution of any relief or other goods to the victims of the calamity or disaster. (Section 261 (2), Omnibus Election Code).

A.3. Normal and Routine Expenses

Normal and routine expenses for the Department's regular activities are allowed. Thus, disbursements under the Department's Assistance to Persons with Disabilities and Older Persons, Protective Services for Families and Individuals in Difficult Circumstances including Children, Youth and Women and for the Operation and Maintenance of Centers and Institutions which are regular activities of the Department, can be deemed as normal and routine expenses which are not prohibited under the law. This includes disbursement of funds involving Priority Development Assistance Fund (PDAF) in support of the Department's regular programs and activities.

However, in the use of PDAF of incumbent legislators the Department must ensure that such funds will be used for purposes in accordance with the SARO issued by the Department of Budget and Management (DBM), as well as with pertinent Commission on Audit (COA) rules and regulations. In accordance with the Election Code and the COMELEC Resolution, no such funds may be used for election-related activities. In the conduct of activities or procurement of materials under PDAF, no attribution should be made to favor any political candidate. No candidate, his or her spouse, nor member of his family by affinity or consanguinity shall participate directly in the implementation of the program or activity or be its beneficiary, or sit in the Board of a Non-Government Organization or Foundation which will assist the Department in the implementation of any program or activity.

Field Office Directors are enjoined to ensure that PDAF should not be used in any activity that in any manner could influence the vote of a person or could influence the results of election (such as medical mission organized by a political candidate, training for personnel closely identified with a political candidate, political gatherings/forums or campaigns, production of election paraphernalia, e.g., banners, stickers and T-shirts, as well as the printing of the legislators' names/pictures on materials purchased and distributed under PDAF-CIDSS projects, among others).

Further, as required by R.A. No. 9184 (Government Procurement Reform Act), which took effect in February 2003, all requests for the purchase of day care program materials/books to be funded from PDAF shall pass through competitive bidding. The concerned Central Office unit / Field Office should also ensure that the quantity of books being requisitioned is equivalent to the number of day care enrollees/pre-schoolers in the legislative district.

B. Prohibition Involving Personnel Matters

Notwithstanding the ban on the creation or hiring of new employees during the election period, request for authority to appoint or hire new employees may be submitted to the Commission specifying the necessity and reasons for the same. And in the case of urgent need to appoint new employees, within three (3) days from the appointment the Commission must be notified and likewise the reasons for the urgency must be justified (COMELEC, Resolution 6456 dated 10 December 2003, Section 1 to 4).

And in all cases, the projects undertaken, the disbursement mode, and the creation and/or filling up of any position in the Department should not in any manner influence the results of the elections.

IV. ALLOWABLE AND PROHIBITED ACTIVITIES

A. Release, disbursement or expenditure of public funds or any public works. When allowed:

- A.1. Whenever any of the above is executed or awarded before 26 March 2004.
- A.2. Whenever any of the above is a routine and normal expenditure of the Department.
- A.3. Whenever any of the above falls under the on-going programs and activities being implemented by the Department.
- A.4. Whenever any of the above falls under projects under foreign agreements, maintenance works on existing public works, emergency works necessary to restore damaged facility, and payments for usual costs of preparation to actual constructions.

B. Creation, hiring of employees or filling-up of positions in the Department. When allowed:

- A.1. Whenever any of the above is done before 26 March 2004.

- A.2. Whenever any of the above is necessary and authority is requested and granted by the COMELEC.
- A.3. Whenever any of the above is urgent and COMELEC is notified within three (3) days of the Appointment. In case of necessary or urgent need, the names and number of personnel and positions, the organized units where the vacancies for fillip up exists, as well as a clear justification why it is necessary or urgent for the Department must be specified.

C. Prohibited Activities:

- A.1. Use of any funds, equipment, facilities owned or controlled by the government for an election campaign nor for any political partisan purpose.
- A.2. Any release during a calamity or disaster, except through the Philippine National Red Cross (PNRC).
- A.3. Any other activity whatsoever that in any manner could influence the vote of a person or could influence the results of the election.

V. EFFECTIVITY AND AMENDATORY CLAUSE

This Order takes effect immediately and supersedes previous issuances inconsistent herewith. Let copies of this Circular be given to all Central and Field Offices, for their information and guidance.

Issued in Quezon City this 29th day of March 2004.


CORAZON JULIANO-SOLIMAN
Secretary, DSWD



