



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management
Malacañang, Manila

LEGAL OPINION NO. L-B/M-2002-01

SUBJECT : Local Government Budgeting – Calamity Fund

- ISSUES :**
- (1)** Whether or not the Head, Presidential Management Staff (PMS) authorized to sign documents such as the matter which allegedly bears the approval of the President.
 - (2)** Whether the matter which carries the approval by the President must come from the President herself or from no less than the Office of the Executive Secretary.
 - (3)** Granting without accepting, that the request of the Mayor to utilize the Calamity Fund for the items mentioned was indeed approved by the President thru PMS, is Republic Act (R.A.) No. 8185 repealed/amended considering the fact that no amount of Executive Orders can simply amend or modify the mandate of a law?

FACTS : In letter dated 28 June 2001, former Secretary Victoria P. Carchitorena, Head of PMS and Secretary to the Cabinet, informed the Mayor of the Island Garden City of Samal that President Gloria Macapagl-Arroyo has approved the use of P5,000,000.00 from the P10,300,000.00 Calamity Fund allocation for the city government. Said amount is to be used for the purchase of fast crafts and communication equipment for disaster mitigation and to upgrade armaments to deter future terrorist attacks in the island of Samal.

By virtue of the above-mentioned approval, the Sangguniang Panlungsod (SP) passed Appropriations Ordinance No. 001-06 "realigning" the amount of P5,000,000 for the purchase of the following items:

a. Speedboat	P 1,500,000.00
b. Radio Base and Accessories	150,000.00
c. Handheld Radio	180,000.00
d. Construction of 3 Naval Stations	1,050,000.00
e. Motorcycles	180,000.00
f. Armaments and Ammo	1,300,000.00

g. Night Vision Telescope	200,000.00
h. FOL	440,000.00

TOTAL

P 5,000,000.00

SP Member Amit questioned the foregoing appropriation items for being apparently contrary to the provisions of R.A. No. 8185, which partly reads:

"SECTION 1. Section 324(d) of Republic Act No. 7160 is hereby amended to read as follows:

'(d) Five percent (5%) of the estimated revenue from regular sources shall be set aside as annual lump sum appropriation for relief, rehabilitation, reconstruction and other works or services in connection with calamities which may occur during the budget year: Provided, however, That such fund shall be used only in the area, or a portion thereof, of the local government unit or other areas affected by a disaster or calamity as determined and declared by the local sanggunian concerned.'

'Calamity shall be defined as a state of extreme distress or misfortune produced by some adverse circumstance or event or any great misfortune or cause or loss or misery caused by natural forces.'

'In case of fire or conflagration the calamity fund shall be utilized only for relief operations.'

'The local development council shall monitor the use and disbursement of the local calamity fund.'

OPINION : As a premise, Appropriations Ordinance No. 2001-06 was passed to cover the realignment of the specific expenditure items under the Calamity Fund, applying Section 336 of R.A. No. 7160 (The Local Government Code of 1991), which reads:

"Sec. 336. *Use of Appropriated Funds and Savings.* Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the sanggunian concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations." (underscoring supplied)

Based thereon, it is apparent that the realignment covers specific expenditure items within the same lump-sum Fund (Calamity Fund).

Accordingly, the following opinion proceeded from the foregoing premises.

The first and second issues can be best answered by the Office of the President. It is a matter of internal procedure under said Office. However, it is surmised that the questioned communication is well within the delegated authority of the Secretary of the PMS to sign, otherwise, she would have refrained from doing so for being ultra vires.

As regards the third issue, R.A. No. 8185 has not yet been repealed nor amended. Further, it is expressly provided in Article 7 of the New Civil Code of the Philippines, that:

"Art. 7. x x x

Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."

In relation to the subject matter, it is opined that the Presidential approval of the use of P5 Million Calamity Fund was couched in general terms as "for purchase of fast crafts and communication equipment for disaster mitigation and to upgrade armaments to deter future terrorist attacks in the Island of Samal", is consistent with the provisions of R.A. No. 8185. On the other hand, it is incumbent upon the LGU to ensure that the specific appropriations and expenditure items they will be authorizing pursuant thereto fall within the coverage/contemplation of R.A. No. 8185.

REFERENCE: Memorandum of the Secretary dated 21 February 2002 to DBM RO-XI

Recommended:


EDUARDO P. OPIDA
Assistant Secretary, OIC-LLS

Approved:


EMILIA T. BONCODIN
Secretary