



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management  
Malacañang, Manila

**LEGAL OPINION NO. N-M-2002-02**

- SUBJECT :** National Government – Use of Funds
- ISSUE :** Whether public funds may be used to rehabilitate or improve a privately owned property.
- FACTS :** The construction/improvement of the ACDC Training Center at Archdiocesan Development Center, Poblacion, Tacuring, Sultan Kudarat is a project of Party List Representative Cresente C. Paez. Per verification, it was informed that the appropriation for the purpose is a lump sum (under the Department of Public Works and Highways) wherein Congressman Paez identified the particular project for implementation. Funds for said project were released under Special Allotment Release Order No. A-01-0064 dated February 5, 2001 amounting to One Hundred Fifty Thousand pesos (Php 150,000.00).

However, the DPWH XII/Sultan Kudarat Engineering District is hesitant to implement the project considering that the existing building to be rehabilitated/improved is owned by a cooperative operating as a private entity.

- OPINION :** The legality of the said improvement/rehabilitation depends on whether the project would ultimately be for a public purpose.

Consequently, this office recommends that the question of whether a certain project is for public purpose or not be verified and determined using the following guidelines:

- For particular projects identified by legislators, the infrastructure or building or improvement constructed must be owned by the government.

- For rehabilitation, repair or improvement projects, the building to be rehabilitated, repaired or improved must be owned by the government.

One of the basic principles in the disbursement and utilization of government funds is that these should only be used for a public purpose.

Section 29(1), Article VI of the 1987 Constitution, mandates that:

"No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."

Likewise, Section 4 of Presidential Act (PD) No. 1445, (Government Auditing Code of the Philippines) provides, to wit:

"Section 4. Fundamental Principles. Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

1. No money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.
2. Government funds or property shall be spent or used solely for public purposes. x x x."

"Public purpose" has for its objective the promotion of the public health, safety, morals, security, contentment, and the general welfare of all the inhabitants (Tantuico, Justice F.S, State Audit Code of the Philippines Annotated 1982 Edition, p. 112). On the other hand, public use, as traditionally understood, means any use directly available to the general public as a matter of right and not merely of forbearance or accommodation. The important thing is that any member of the general public, as such, can demand the right to use the converted property for his direct and personal convenience. (Constitutional Law by Cruz, 1989 Edition, pp. 70-71).


A strict definition of public purpose was applied in earlier jurisprudence. (Please see Pascual vs. Secretary of Public Works, et. al., 110 Phil 331). However, the meaning of public use/purpose was eventually liberalized to cover uses, which, while not directly available to the public, redound to their indirect advantage or benefit. Consequently, in the case of Heirs of Juancho Adona vs. Reyes, 125 SCRA 220, it was stated that public use is the general

concept of meeting public need or public exigency. It is not confined to actual use by the public in its traditional sense.

In this case, it appears that the subject project would ultimately redound to the private interest of the owner of the property and hence use of public funds is considered illegal.

**REFERENCE:** Memorandum of LLS to the DBM Secretary dated 20 February 2002

*Recommended:*



**RUBY U. ALVAREZ**  
Director, LLS

*Approved:*



**EMILIA T. BONCODIN**  
Secretary