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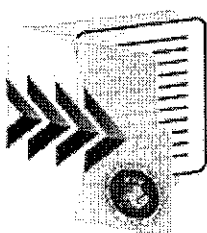
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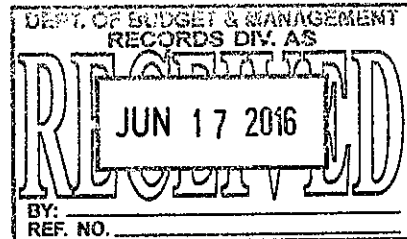


Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

ELC-L-17F16- 305

16 June 2016

Secretary Florencio B. Abad
Department of Budget and Management
Malacañang, Manila



Dear **Secretary Abad**:

This refers to your letter dated 11 March 2016 requesting this Department's opinion on the payment of retirement benefits of lawyers of the Public Attorney's Office (PAO) under Republic Act No. 9406¹ in relation to RA No. 10071, otherwise known as the "Prosecution Service Act of 2010."

The facts relevant to your request for legal opinion are as follows:

On 23 March 2007, RA No. 9406 was issued, which reorganized and strengthened the PAO.

From May 2010 to December 2014, thirty-nine (39) PAO lawyers retired.

On 8 April 2010, RA No. 10071 lapsed into law. Section 16 thereof pertinently provides for the salaries and benefits of prosecutors with the ranks of Prosecutors V, IV, III, and other prosecution attorneys. Pertinently, Section 16 also provides that the benefits stated in the section "shall not apply to officers other than those of prosecutors:"

Section 16. Qualifications, Ranks, and Appointments of Prosecutors, and other Prosecution Officers. - Prosecutor with the rank of Prosecutor V shall have the same qualification for appointment, rank, category, prerogatives, salary grade, and salaries, allowances, and emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefits as those of an associate justice of the Court of Appeals.

Prosecutors with the rank of Prosecutor IV shall have the same qualifications for appointment, rank, category, prerogatives, salary grade

¹ Entitled: "An Act Reorganizing and Strengthening the Public Attorney's Office (PAO), Amending For the Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known as the "Administrative Code of 1987", as Amended, Granting Special Allowance to PAO Officials and Lawyers, and Providing Funds Therefor."

and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefit as those of a Judge of the Regional Trial Court.

Prosecutor with the rank of Prosecutor III shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefit as those of a Judge of the Metropolitan Trial Court.

Prosecutor with the rank of Prosecutor II shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefit as those of a Judge of the Municipal Trial Court in cities.

Prosecutor with the rank of Prosecutor III shall have the same qualifications for appointment, rank, category, prerogatives, salary grade and salaries, allowances, emoluments and other privileges, shall be subject to the same inhibitions and disqualifications, and shall enjoy the same retirement and other benefit as those of a Judge of the Metropolitan Trial Court in municipalities.

Any increase after the approval of this Act in the salaries, allowances or retirement benefits or any upgrading of the grades or levels thereof of any or all of the Justices or Judges referred to herein to whom said emoluments are assimilated shall apply to the corresponding prosecutors.

All the above prosecutors shall be selected from among qualified and professionally trained members of the legal profession who are of proven integrity and competence. They shall be appointed by the President of the Philippines upon recommendation of the Secretary of Justice and shall serve until they reach the age of sixty five (65) years old: *Provided, however,* That the ages of "seventy (70) years" and "sixty-five (65) years" and the years of service "twenty (20) years" provided in Republic Act No. 910, as amended, and other retirement laws for judges shall be understood as "sixty-five (65) years" and "sixty (60) years," and fifteen (15) years," respectively, when applied to prosecutors.

A prosecution attorney or special counsel shall be a member of the bar in good standing and shall have a salary under Salary Grade 25. Such prosecution officer shall be appointed by the Secretary of Justice: *Provided, however,* That with respect to a special counsel, his/her appointment shall be upon the recommendation of the provincial

governor or city mayor and with the endorsement of the provincial prosecutor or city prosecutor, as the case may be.

Subject to Section 20 hereof, the salaries and allowances of regional, provincial and city prosecutors and their assistants, and the members of the prosecution staff, including the prosecution attorneys, shall be paid entirely out of national funds and included in the annual appropriations of the DOJ: *Provided, however,* That this provision is without prejudice to the grant of allowances to the above-mentioned prosecutors by their respective local governments in amounts not exceeding fifty percent (50%) of their basic salaries; *Provided, further,* That the whole of the allowances or portion thereof, whether granted by the national or local government shall be exempt from the income tax.

The salaries, allowances and other emoluments herein fixed shall not apply to officers other than those of prosecutors in the National Prosecution Service, notwithstanding any provision of law assimilating the salaries of other officers to those herein mentioned. (Emphasis supplied.)

The aforementioned prohibition in Section 16, RA No. 10071 is now in contention, particularly when related to Section 5 of RA No. 9406 – which places in the same rank the Chief Public Attorney, Deputy Public Attorney, Directors, Regional Public Attorneys, Provincial, City, and Municipal Public Attorneys, as the Chief State Prosecutor, Deputy State Prosecutors, Directors in the National Prosecution Service, Provincial, City, and Municipal Prosecutors, respectively:

SEC. 5. Section 16, Chapter 5, Title III, Book IV of Executive Order No. 292, as amended, is hereby further amended to read as follows:

"SEC. 16. *The Chief Public Attorney and Other PAO Officials.* - The PAO shall be headed by a Chief Public Attorney and shall be assisted by two (2) Deputy Chief Public Attorneys. Each PAO Regional Office established in each of the administrative regions of the country shall be headed by a Regional Public Attorney who shall be assisted by an Assistant Regional Public Attorney. The authority and responsibility for the exercise of the mandate of the PAO and for the discharge of its powers and functions shall be vested in the Chief Public Attorney.

"The Office of the Chief Public Attorney shall include his/her immediate staff, the six (6) line divisions in the Central Office, the Deputy Chief Public Attorneys and the Regional, Provincial, City, and Municipal District Offices.

"The Chief Public Attorney shall have the same qualifications for appointment, rank, salaries, allowances, and retirement privileges as those of the Chief State Prosecutor of the National Prosecution Service. The Deputy Chief Public Attorneys shall have the same qualifications for appointment, rank, salaries, allowances, and retirement privileges as those of the Assistant Chief State Prosecutor of the National Prosecution Service.

"The services herein created shall each be headed by a staff director who shall have the same qualifications for appointment, rank, salaries, allowances and privileges as those of staff director of the National Prosecution Service.

"Each of the PAO Regional Offices shall be headed by a Regional Public Attorney who shall be assisted by an Assistant Regional Public Attorney. The regional offices shall have such provincial, city and municipal district offices as may be necessary.

"The Regional Public Attorney and the Assistant Regional Public Attorney shall have the same qualifications for appointment, rank, salaries, allowances, and retirement privileges as those of a Regional State Prosecutor and the Assistant Regional State Prosecutor of the National Prosecution Service respectively.

"The Provincial Public Attorney, City Public Attorney and the Municipal District Public Attorney shall have the same qualifications for appointment, rank, salaries, allowances and retirement privileges as those of a Provincial Prosecutor and City Prosecutor as the case may be, of the National Prosecution Service, respectively.

"The other administrative personnel in the PAO shall have the rank and salaries equivalent to their counterpart in the National Prosecution Service."

The PAO insists that its lawyers (in particular, the thirty-nine (39) retirees) should be accorded the same retirement benefits as Prosecutors, in accordance with a retroactive application of Section 16, RA No. 10071. (In this regard, Section 24, RA No. 10071 states that the benefits under Section 16, RA No. 10071 shall have retroactive application, and may be accorded to those who had retired prior to the effectivity of the law.) The PAO lawyers mainly explain that the prohibition that Section 16 "shall not apply to the officers other than those of prosecutors" does not exclude public attorneys, but only excludes lawyers in the Office of the Secretary of the Department of Justice.

In support of the PAO's position, the Committee of Justice of the House of Representatives, on 27 January 2016, issued Committee Resolution No. 1, which urged the DBM to grant retirees from the PAO the same retirement benefits as those of their respective counterparts in the National Prosecution Service. In addition, in a letter dated 22 February 2016 to DBM, Senator Loren Legarda expressed her support for the PAO retirees, who seek the release of their retirement benefits at the level provided under RA No. 10071.

On the other hand, DBM relies on the opinion of its Legal Service that the benefits accorded in Section 16, RA 10071 may not be extended to public attorneys. The Legal Service of the DBM, in its LS Opinion No, 14, s. 2015 (6 November 2015), opined that the prohibition in Section 16 against the application of the benefits therein to "officers other than those of prosecutors"—including public attorneys—is evident from the provision itself. Further, even if public attorneys are given the same benefits as that of the Prosecutors of the National Prosecution Service under Section 5 of RA No. 9406, said provision cannot overturn the express prohibition under Section 16 of RA No. 10071.

This Department is constrained to deny the request for an opinion on this matter, for the following reasons:

Firstly, it has come to the attention of this Department that the PAO has filed a Petition for Mandamus before the Regional Trial Court of Quezon City² to compel the DBM to release their retirement benefits amounting to P139 million and to strike down the opinion of the Legal Service of the DBM stating that their retirement benefits should be based on average of their salaries during service with the agency. The Secretary of Justice has consistently refrained from rendering opinion or giving legal advice on matters that are pending before the court for to do so would not only be improper but also impractical since the ruling of this Department has no binding effect upon the courts.³

In addition, any opinion rendered by this Office at this time may be construed as an unwarranted intrusion into the exercise of judicial powers and functions pertaining to a separate and co-equal branch of government which could subject this Department to criticism for violation of the independence of the

² Case No. R-QZN-16-05464 entitled *Public Attorney's Office, et al. v. Department of Budget and Management, et al.*

³ Secretary of Justice Opinion Nos. 54 and 48, s. 2013; No. 76, s. 2012; Nos. 44 and 39, s. 2011; No. 40, s. 2010; No. 37, s. 2009; No. 30, s. 2008; Nos. 9 and 1, s. 2007; and Nos. 80, 57, 49, 26, 16, 8, 6 & 4, s. 2006.

judiciary.⁴

Secondly, the issue raised involves the substantive rights of private parties, *i.e.*, the retired PAO lawyers. Since the opinion of the Secretary of Justice is merely advisory in nature, such opinion would not be binding upon the private parties who may be adversely affected thereby and who may, in all probability, take issue therewith and contest the same before the courts. As a matter of policy, therefore, the Secretary of Justice has consistently refrained from rendering opinion on questions that are justiciable in nature or can be the subject of litigation before the courts (and those that are *sub-judice*).⁵

On a final note, we observe that the issues raised by the parties prescind from a divergence in the interpretation of Section 5, RA 9406 (enacted in 2007) in relation to Section 16, RA 10071 (enacted in 2010). While Section 5, RA 9406 clearly provides that the rank, salary grades, salaries, allowances and other emoluments of the public attorneys shall be the same as those of their counterparts in the National Prosecution Services, the prohibition in Section 16, RA 10071 expressly provides otherwise. **In other words, what Section 5 of RA 9406 allows, Section 16 of RA 10071 disallows.** In this sense, and in view of the clear statutory conflict, the arguments of the PAO (that the benefits under Section 16, RA 10071 may be retroactively applied to them) and of the DBM Legal Service (that the prohibition in the same provision overturns Section 5, RA 9406) both have basis. Consequently, the resolution of this conflict rests upon a proper interpretation of the prohibition in Section 16, RA 10071 and its effects on Section 5, RA 9406—which is a matter already with the courts.

Please be guided accordingly.

Very truly yours,


EMMANUEL L. CAPARAS
 Secretary
 Department of Justice
 CN : 0201606255


⁴ Secretary of Justice Opinion No. 12, s. 2013; Nos. 98, 65 and 19, s. 2012; Nos. 43, 40 and 10, s. 2010; Nos. 37 and 16, s. 2009; No. 46, 30, s. 2008; and No. 23, 3, s. 2007.

⁵ Secretary of Justice Opinion Nos. 9, 5, and 4, s. 2012; Nos. 57, 56, 44, 42, 39, 35, 28, 26, 5, and 1, s. 2011; and Nos. 51, 50, 47 45, 44, 43, 42, 40, 35, 31, 29, 27, 25, 19, 16, 14, 12, 11, 8, 6, 5, s. 2010.