

**DSWD OPINION NO. 27 S. 2024**

DRN:LS-L-LO-24-02-23114-C

**MEMORANDUM**

**FOR : ATTY. MEGAN THERESE Y. MANAHAN**  
Director IV, Standards Bureau

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

**SUBJECT : LEGAL OPINION ON THE RECOMMENDATION TO  
INCLUDE NBI CLEARANCE AS ONE OF THE  
REQUIREMENTS FOR THE ISSUANCE OF PUBLIC  
SOLICITATION PERMIT**

**DATE : 18 MARCH 2024**

This is in reference to your MEMORANDUM seeking for a legal opinion on whether the inclusion of an additional document in the amendment of Presidential Decree No. 1564, or otherwise known as “Solicitation Permit Law”, particularly the NBI Clearance is necessary given that the “existing guidelines of the DSWD were already streamlined.”

**Background**

Act No. 4075 as amended by Presidential Decree No. 1564 aims to regulate the solicitation of donations and voluntary contributions from the public sector to obviate illegal fund drives. Strengthening the mandates of the law, the Department of Social Welfare and Development (DSWD) issued Memorandum Circular No. 05, series of 2021, entitled “Guidelines in the Processing of Regional and National Public Solicitation Permits”.

Under said guidelines, the following documentary requirements<sup>1</sup> must be submitted to secure a permit, to wit:

**1. “For Solicitation Permit under Normal Situation****General Requirement**

1. Duly accomplished Application Form.
2. Certified True Copy (CTC) Certificate of Registration with SEC which has jurisdiction to regulate the endorsing SWDA, and Articles of Incorporation and By-Laws, if new applicant.

<sup>1</sup> Annex 1 – Checklist of Requirements, MC 05, series of 2021

3. Updated Certificate of Good Standing, or updated Certificate of Corporate Filing/Accomplished SEC General Information Sheet (GIS) from any of the above-mentioned regulatory government agencies that has jurisdiction to regulate the applying organization or agency.
4. Updated profile of the Governing Board or its equivalent in the corporation, certified by the Corporate or any equivalent officer.
5. Project Proposal on the Intended Public Solicitation approved by the Head of the Agency including the Work and Financial Plan (WFP) of the intended activity indicating details of the methodology to be used.
6. Notarized Written Agreement or any similar document signifying the intended beneficiary/ies concurrence as a recipient of the fund raising activities. For children beneficiaries only the parent of the child or maternal/paternal relatives may sign the document on behalf of the child.
7. Endorsement or Certification from licensed or accredited SWDA allowing an individual to solicit funds under their name or responsibility.
8. Endorsement or certification from any but not limited to the following agencies that allows applicant to undertake solicitation activities in their agency's.
9. Medical Certificate/Abstract and/or Treatment Protocol certified by the attending physician or by the Hospital Records Section.
10. Duly signed Social Case Study Report and endorsement from the Local Social Welfare Development Office.
11. Signed Memorandum of Agreement between the DSWD and C/MSWDO of the concerned LGU stating therein their commitment to monitor the applicant's solicitation activities and to submit post-reportorial requirements to the issuing DSWD office.
12. Approved and notarized Board Resolution or other written authorization for the solicitation activity which shall ensure strict compliance to the standard ratio of funds utilization.
13. Fund Utilization Report.
14. Official Receipt as proof of payment of processing fee issued by the concerned DSWD CO-FO finance Management Service/Unit (FMS/U)

**2. For Temporary Permit during state of Emergency/Calamity<sup>2</sup>**

**1. For Person**

- a. Application Form
- b. Project Proposal

---

<sup>2</sup> F. (2) Documentary requirements, MC 05, series of 2021

- c. Undertaking to comply with the remaining requirements within the validity period of the issued Temporary Permit.
  - d. Two (2) valid Government Issued identification cards.
  - e. Certification from the concerned Barangay Office that the person has the capability to conduct/manage fund raising activity.
  - f. Endorsement from the group the person is representing with.
- 2. For Corporation, Organization, Association or Organized Groups<sup>3</sup>**
- a. Application Form.
  - b. Project Proposal with the list of officers and staffs or employees/association or group members, officially designated to conduct solicitation or fund raising activities.
  - c. Undertaking to comply with the remaining requirements within the validity period of the issued Temporary Permit.

Noticeably, NBI Clearance is not among the requirements needed to secure a public solicitation permit **for an individual applicant.**

House Bill (HB) No. 4945, being introduced by 2<sup>nd</sup> District Representative of Bulacan, Hon. Tina Pancho, seeks to ensure the accountability of solicitors and protect the rights of the beneficiaries by proposing to include the NBI Clearance as part of the documentary requirements of the applicants requesting for solicitation permit

Hence, the request for legal opinion on whether the proposed inclusion is reasonable and aligned with the objectives of the Solicitation Permit Law.

#### Discussion:

The DSWD is hereby mandated to provide assistance to local government units (LGUs), non-government organizations (NGOs), other national government agencies (NGAs), people's organizations (POs) and members of civil society in effectively implementing programs, projects, and services that will alleviate poverty and empower disadvantaged individuals, families and communities for an improved quality of life as well as implement statutory and specialized programs which are directly lodged with the Department and/or not yet devolved to LGUs.<sup>4</sup>

Further, the DSWD Secretary has the authority to approve or disapprove the application for Solicitation Permit<sup>5</sup> and shall have the regulatory power over public solicitations.<sup>6</sup>

<sup>3</sup> F. (2.2) Documentary requirements, MC 05, series of 2021

<sup>4</sup> Section 1 of Executive Order No. 221, series of 2003

<sup>5</sup> Section 2 of Presidential Decree No. 1564, Amending Act No. 4075, or otherwise known as "The Solicitation Permit Law"

<sup>6</sup> Executive No. 15, Series of 1998, Section 3(e), entitled "Redirecting the Functions and Operations of the Department of Social Welfare and Development"

In **Gerochi v. Department of Energy, 554 Phil. 563 (2007)**, it was held that *"the power to "regulate" means the power to protect, foster, promote, preserve, and control, with due regard for the interests, first and foremost, of the public, then of the utility and of its patrons"*.

Clearly, the DSWD is given the power to regulate public solicitations as well as to prescribe the application forms, process the application, has the authority to approve or disapprove or even renew or revoke such applications in order to protect, control the issuance of permits, with due regard the interest of the public.

In implementing the Public Solicitation Permit, DSWD issued Administrative Order No. 79, series of 2003, entitled "Omnibus Rules and Regulations on Public Solicitations". One of the requirements for an individual applicant for a solicitation permit is, is that he/she *"must not have been convicted of any crime involving moral turpitude."*<sup>7</sup>

However, in the succeeding amendments of the Omnibus Guidelines of Processing of Regional and National Public Solicitation Permits per M.C. No. 05, series of 2021, thus, eligibility requirement for individuals was removed.

The proposed HB No. 4945 which includes NBI Clearance as an additional requirement is not a novel idea and DSWD supports this legislative proposal as this adds protection that serves as a verifiable measure of an individual's good character, that he/she has not been convicted of any crime. This requirement also supports the bill's objective of ensuring accountability of individual solicitors and the protection of supposed beneficiaries and accountability to the individual applicant, inclusion of NBI clearance as part of the requirements shall serve as an additional proof and supplementary safeguard that the person applying for a permit is credible and free from any criminal liability or has no pending criminal proceedings before the regular courts. With this, it will mitigate such circumstances mentioned above.

The proposed HB No. 4945 will strengthen this Department's thrust to continue protecting the vulnerable and the disadvantaged sector. The Standards Bureau has existing policies against applicants who will supply false or misleading information or producing falsified documents shall be a ground for institution of a legal action and revocation of an issued permit. Since NBI Clearance holds a broader scope, it encompasses criminal records throughout the entire Philippines, making it a more comprehensive evaluation of every individual applicant's criminal history.<sup>8</sup>

Republic Act No. 10867 entitled *"National Bureau of Investigation Reorganization and Modernization Act"* provides the enhancement and modernization of the NBI's operations and mandates including the maintenance and safekeeping of criminal records and other related information for the benefit of the government<sup>9</sup>.

<sup>7</sup> Section 4 (d), IV, Eligibility

<sup>8</sup> <https://nbiclearance.org/author/bendaggers/> accessed on 16 February 2024

<sup>9</sup> Section 4 (c), Powers and Functions of NBI

Therefore, it would be beneficial and prudent for the Department to support the proposal of the 2<sup>nd</sup> District Representative in the inclusion of an additional requirement of an NBI Clearance to minimize future frauds or deceit by the individual applicants.

Kindly fill-out the attached Customer Feedback Form and return to the Legal Service.

For your consideration.

Thank you

  
ATTY. GINA V. WENCESLAO

MMBP/ESQE/10065

Approved by:

  
ATTY. EDWARD JUSTINE R. ORDEN  
Undersecretary, GASSG