



**LEGAL SERVICE
GENERAL ADMINISTRATION AND SUPPORT
SERVICES GROUP**

DSWD-GF-002 | REV 04 | 04 FEB 2025

DRN: 18-LMD-OUR-ORDEN-MEM-25-01-078159-S

MEMORANDUM

FOR : MONINA JOSEFINA H. ROMUALDEZ
Undersecretary for Operations Group

FROM : ASSISTANT SECRETARY FOR GASSG, AND CONCURRENT
OFFICER – IN – CHARGE, LEGAL SERVICE

SUBJECT : LEGAL OPINION ON THE REQUEST FOR DELEGATED
AUTHORITY TO INITIATE AND PURSUE CASE

This refers to your Memorandum dated 08 May 2025 requesting for the Legal Service's comments and recommendations on the request of Field Office [REDACTED] to issue a Special Order for the purpose of pursuing appropriate actions against former Contract of Service (COS) workers who allegedly falsified documents, including Daily Time Records (DTRs) and Accomplishment Reports (ARs).

[REDACTED]

discovered unauthorized payments under the Cash for Work (CFW) Program for State Universities and Colleges (SUC) students. Sixteen (16) sets of falsified documents, including DTRs and ARs, were found, [REDACTED] denying any involvement. No official records supported the existence of the "ghost beneficiaries".

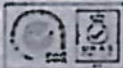
Further Investigation: [REDACTED]

Based on the foregoing, guidance was sought on whether a special order is needed to authorize Regional Director [REDACTED] to pursue the appropriate criminal/civil action against the former COS workers.

Our Opinion

Before we discuss the propriety of issuing a special order authorizing [REDACTED] to pursue the appropriate action against the former COS workers, we shall first discuss the justification for the DSWD to pursue the appropriate actions against erring former COS workers.

The DSWD as the Real Party
in Interest



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Section 2, Rule 3 of the 2019 Amendments to the Rules of Civil Procedure provides as follows:

A real party in interest is the party who stands to be benefitted or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

In civil cases, therefore, the real party in interest is the one directly affected—either benefitted or harmed—by the court's judgment or entitled to the benefits arising from the suit. Interest within the meaning of the Rules of Court means material interest or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved.¹ Based on the foregoing, one who has sustained a direct injury by reason of a wrongful act has the right to seek redress before the appropriate fora. In the present case, the DSWD, as the government agency whose functions were undermined by the unlawful actions of the former COS workers, is clearly the party aggrieved by their acts and is therefore legally and rightfully positioned to initiate and pursue civil action.

Meanwhile, in criminal cases, the real party in interest in a criminal case is the People of the Philippines.² However, it is important to note that criminal actions are initiated by filing a complaint with the proper authorities. According to Section 3, Rule 110 of the Revised Rules of Criminal Procedure, a complaint is defined as a sworn written statement charging a person with an offense. This complaint may be filed by the offended party, any peace officer, or other public officers charged with enforcing the law that was violated. While the Revised Rules of Criminal Procedure do not explicitly define the meaning of "offended party," Section 12, Rule 110 provides some clarity:

Section 12. Name of the offended party.—The complaint or information must state the name and surname of the person against whom or against whose property the offense was committed xxx

From this provision, the "offended party" can be understood as the individual against whom or against whose property the offense was committed. In other words, the offended party is the direct victim of the crime. In summary, although the People of the Philippines is the real party in interest in criminal cases, the offended party—being the victim—may initiate the filing of a complaint to start the criminal proceedings against the accused. In this case, since the offense was committed against the DSWD by the former COS workers, the DSWD is considered the offended party and the real party in interest to initiate a civil action, to act as the complaining party in a criminal action against these COS workers. Therefore, the DSWD is in a position to initiate a criminal action against the former COS workers.

Since the Respondents are former COS workers and not employees of the DSWD, the appropriate actions that may be pursued by the DSWD are limited to criminal and civil remedies.

Nature of COS engagements and their consequences

COS arrangements are governed primarily by Commission on Audit (COA) Circular No. 2012-001, Joint Circular No. 1, s. 2017 of the Civil Service Commission (CSC), Department of Budget and Management (COA), and COA, and COA-DBM Joint Circular (JC) No. 2, s. 2020. These issuances recognize the government's authority to engage individuals or entities for specific services where hiring regular personnel is constrained. COS personnel, however, are not considered government employees under civil service laws, enjoy no security of tenure, and are not entitled to standard employment benefits.

¹ *Ang v. Pacunlo et al*, G.R. No. 208928, July 08, 2015.

² *JCLV Realty & Development Corporation v. Managall*, G.R. No. 236618, 27 August 2020.

Nevertheless, a COS engagement constitutes a valid contract governed by the Civil Code. Under Articles 1305 and 1315, a contract is defined as a meeting of minds between two persons whereby one binds oneself with respect to the other to give something or to render some service, which becomes perfected upon mutual consent. By signing a Memorandum of Agreement (MOA) with the DSWD, COS personnel undertake to perform their duties in accordance with the agreed terms, with the requisite competence, diligence, and integrity. Therefore, acts committed during the engagement – such as falsification of documents or violations of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) – may constitute a breach of contract and may give rise to civil or criminal liability, as may be warranted under the circumstances.

Accordingly, the DSWD, as the contracting party, has legal standing to enforce the contract, claim damages, or pursue legal action. As held in *IP E-Game Ventures, Inc. v. Tan*,³ "It is well-established that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." Lastly, the cessation of the MOA does not absolve the individual of liability for wrongful acts committed during the engagement.

Authority of the DSWD Secretary to pursue appropriate action

As established earlier, the DSWD is the real party in interest, hence it is legally capacitated to initiate all appropriate legal actions—whether civil or criminal—against the former COS personnel who committed acts detrimental to the agency. As previously discussed, the DSWD stands to be directly injured by the unlawful acts committed during the tenure of former COS workers, thereby conferring upon the agency the legal standing to pursue appropriate remedies before competent tribunals.

Given that the DSWD, as a government agency, acts only through its authorized officials, the Secretary of the DSWD, as the head of the agency, is the proper authority to initiate and pursue legal actions in behalf of the Department. Under Section 38(1), Chapter 7, Book IV of the Administrative Code of 1987, the Secretary, as the department head, has the authority to exercise supervision and control over all bureaus, offices, and agencies under the Department. Control is defined under the same provision to include the authority to direct, modify, or nullify the actions of subordinates, and to substitute one's own judgment for theirs. Further, the authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the Department.⁴ These include, among others, the authority to represent the Department in all matters affecting its interests, including litigation. The Secretary, therefore, as the principal officer of the DSWD, is empowered to file the appropriate civil, criminal, or administrative actions involving matters that affect the integrity and operations of the Department.

Delegation of authority to the Regional Director

The question now arises as to whether such authority may be validly delegated to a subordinate official, such as the Regional Director. The principle of delegation of authority is well recognized in administrative law and is essential in ensuring effective management and operations in large government institutions such as the DSWD. Pursuant to Section 7(8), Chapter 2, Book IV of the Administrative Code of 1987, the Secretary is vested with the authority to delegate powers to officers and employees under his or her supervision, in accordance with the provisions of the said Code. This general grant of delegation power allows the Secretary to entrust subordinate officials with specific tasks or responsibilities, particularly when expedient and in the interest of service.

³ *IP E-Game Ventures, Inc. v. Tan*, G.R. No. 239576, 30 June 2021.

⁴ Section 6, Chapter 7, Book IV of the Administrative Code of 1987.

Consistent with this, the issuance of a Special Order authorizing the Regional Director [REDACTED] to initiate and pursue legal action, would be legally sound. Such delegation would facilitate immediate and localized action, considering that the facts and evidence surrounding the case originated from the said Field Office. It also aligns with the principle of administrative efficiency and decentralization, which is embedded in the Department's operational structure.

Moreover, the authority to represent the Department in legal proceedings may be delegated with limitations; provided that the delegation is clearly expressed and properly documented.

Non-publication of the Special Order

The request of [REDACTED] is for the delegation of authority to initiate and pursue appropriate legal action/s against the former COS workers of the Department who are alleged to have committed acts prejudicial to the interest of the service. While the delegation is necessary to enable [REDACTED] to act with dispatch in holding accountable those no longer under contract, the publication of the Special Order (SO) granting such authority is not recommended.

The SO involves the exercise of internal administrative authority concerning legal action against specific individuals. Its publication may unnecessarily disclose the Department's intent to pursue proceedings against the former COS workers, thereby compromising the confidentiality of potential or ongoing legal actions. Such disclosure may also give rise to undue prejudice, particularly where no final finding of liability has yet been made. Therefore, it is respectfully recommended that the SO be withheld from publication.

Conclusion

In view of the foregoing, it is respectfully submitted that the DSWD, being the real party in interest, has the legal standing to initiate appropriate legal actions against the former COS personnel concerned. In line with the principles of administrative efficiency, decentralization, and pursuant to the authority of the Secretary under the Administrative Code of 1987, the issuance of a Special Order delegating to the Regional Director [REDACTED] the authority to pursue such actions is legally permissible and operationally advisable. Furthermore, considering the internal and confidential nature of the delegated authority, it is respectfully recommended that the SO delegating authority to [REDACTED] not be published.

Also, attached for your review is a modified draft Special Order embodying the foregoing delegation of authority.

For your consideration.

Thank you.

ATTY. GINA V. WENCESLAO
RPAO:tb

Approved by:

ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG
Date: 24 JUN 2025