



Republic of the Philippines
Department of Education

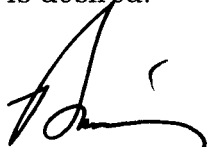
05 APR 2016

DepEd MEMORANDUM
No. **59**, s. 2016

**DISSEMINATION OF COMELEC RESPONSE REGARDING COVERAGE
OF PROHIBITIONS UNDER SECTION 261 (V) AND (W)
OF THE OMNIBUS ELECTION CODE**

To: Undersecretaries
Assistant Secretaries
Bureaus and Services Directors
Regional Directors
Schools Division Superintendents
Public Elementary and Secondary Schools Heads
All Other Concerned

1. Further to DepEd Memorandum No. 110, s. 2015 entitled *Dissemination of COMELEC Resolution No. 9981 (In the Matter of Prescribing the Calendar of Activities and Periods of Certain Prohibited Acts in Connection with the May 9 National and Local Elections)*, and for the information and guidance of all concerned, enclosed is a copy of the response letter issued by the Commission on Elections (COMELEC), regarding the Department of Education's queries on the *coverage of prohibitions under Section 261 (v) and (w) of the Omnibus Election Code* in relation to the conduct of the 2016 National and Local Elections.
2. Immediate dissemination of this Memorandum is desired.


BR. ARMIN A. LUISTRO FSC
Secretary

Encl.: As stated
Reference: DepEd Memorandum (No. 110, s. 2015)
To be indicated in the Perpetual Index
under the following subjects:

BUREAUS AND OFFICES
ELECTIONS
FUNDS
LEGISLATIONS
POLICY
PROCUREMENT
RULES AND REGULATIONS
STRAND: Legal and Legislative Affairs

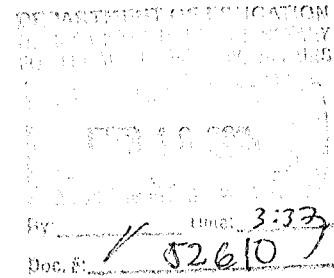
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0251/April 4, 2016



REPUBLIC OF THE PHILIPPINES
COMMISSION ON ELECTIONS
Intramuros, Manila
Office of Commissioner Christian Robert S. Lim

11 February 2016

ATTY. ALBERTO T. MUYOT
Undersecretary
Department of Education
DepEd Complex, Meralco Avenue
Pasig City



Dear Undersecretary Muyot,

This pertains to your *Letter dated 09 February 2016*, wherein you sought clarifications and posed three (3) questions with respect to the prohibitions stated in Section 261 (v) and (w) of the Omnibus Election Code (OEC). The undersigned respectfully submits his responses to the said questions, as follows:

1. Are goods and services such as training venues, manpower, catering and professional services, computer equipment, office machines and supplies, school furniture, learning materials, repair and rehabilitation of schools affected by calamities covered by the ban from 25 March to 08 May 2016?

No, the prohibitions stated under Section 261 (v) of the OEC are against the release, disbursement or expenditure for public funds only for: (1) Any and all kinds of public works, with some exceptions; (2) The DSWD, also with some exceptions; and (3) The Ministry of Human Settlements (now the NHA), with some exceptions.

The repair and rehabilitation of calamity-stricken schools, which fall under the definition of "public works", may be exempted under Section 261 (v) (1) (a) as maintenance of existing and/or completed public works project.

2. Are downloading/transfer of funds from DepED Central to Regional Offices allowed? If not, can DepED be granted exemption on the release, disbursement and expenditure of public funds during the 25 March to 08 May 2016, for the payment of these procured goods and services?

Yes, the transfer of funds within the same agency is allowed, as there is no disbursement to speak of. However, if the intention of the fund transfer is for the funds to be disbursed, it may fall under the prohibitions stated under Section 261 (v) or (w) (b). Exemption may be allowed only if the purpose for which the funds are to be disbursed is one of the enumerated exceptions specified under Section 261 (v) (1).

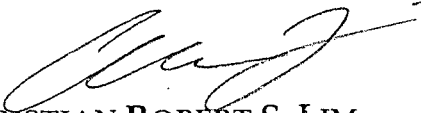
3. Can DepED request for a general exemption/authority to procure goods and services as well as disburse and release public funds in relation thereto, approved and authorized by a COMELEC Resolution?

As a general rule, the COMELEC does not grant general or blanket exemptions from the prohibitions stated in Section 261 (v) and (w) of the Omnibus Election Code. It is the position of the COMELEC that exceptions to prohibitions can only be granted if they are explicitly provided for under the law.

Please note, however, that there remains a general prohibition against the issuance, use or availment of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds, regardless of purpose, as provided in Section 261 (w) (b) of the OEC, and interpreted by the Supreme Court in the case of *Guzman v. Commission on Elections, et al.* (G.R. No. 182380, 28 August 2009). You may also refer to the "GUIDELINES ON THE CONDUCT OF PROCUREMENT ACTIVITIES IN RELATION TO THE MAY 9, 2016 NATIONAL AND LOCAL ELECTIONS" issued by Government Procurement Policy Board (GPPB) through its Circular No. 08-2015 dated 18 August 2015. A copy of the said Circular is attached to this letter for your reference.

Should you have any questions or concerns regarding this matter, you may contact the office of the undersigned through telephone numbers (02) 524-3711 or 524-2753, and look for Sonia Bea L. Wee-Lozada.

Respectfully yours,


CHRISTIAN ROBERT S. LIM
Commissioner-in-charge
Campaign Finance Office



Unit 2506 Raffles Corporate Center,
F. Ortigas Jr. Road, Ortigas Center,
Pasig City, Philippines 1605

CIRCULAR 08-2015

18 August 2015

TO : Heads of Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units

SUBJECT : Guidelines on the Conduct of Procurement Activities in relation to the May 9, 2016 National and Local Elections

1.0 PURPOSE

- 1.1** This Circular is issued to clarify the conduct of procurement activities of government agencies during the election period from **March 25 to May 8, 2016**, pursuant to **COMELEC Resolution No. 9981, dated 18 August 2015¹**, and to advise government agencies on the procurement activities that may or may not be undertaken in accordance with Section 261(v) and (w) of the Omnibus Election Code.
- 1.2** This also serves to remind agencies that the election ban is not designed to paralyze the operations of the government, but to insulate government procurement from political partisan activities, usually in the form of new projects, which may be designed and used to influence the public during the upcoming May 9, 2016 National and Local Elections.

2.0 SCOPE

All Departments, Bureaus, Offices and Agencies of the National Government including State Universities and Colleges, Government-Owned and/or Controlled Corporations, Government Financial Institutions, and Local Government Units.

3.0 DEFINITION OF TERMS

- 3.1 Public Works** - These refer to **“infrastructure projects”** as defined under Section 5(k) of Republic Act No. 9184 (Government Procurement Reform Act), which shall include construction, improvement, rehabilitation, repair, restoration, or maintenance of roads and bridges,

¹ In the Matter of Prescribing the Calendar of Activities and Periods of Certain Prohibited Acts in Connection with the May 09, 2016 National and Local Elections.

- (b) *COMELEC Exemption.* Such other expenses authorized by COMELEC after due notice and hearing.

4.1.3 Public Works. While procurement for public works may be conducted, no Notices of Award, whether through public bidding or any of the alternative modes of procurement, may be issued for public works during the election period from **March 25 to May 8, 2016.**

However, procurement for any of the following public works is allowed:

- (a) *Maintenance Work.* Maintenance of existing and/or completed public works projects; *provided* that no additional laborers shall be employed. Only the average number of laborers or employees employed during the six (6) month period immediately prior to **March 25, 2016** shall be permitted to work during such time.
- (b) *Contract entered into or awarded before election ban.* Notices of award, whether through public bidding or any of the alternative modes of procurement, issued before **March 25, 2016**, *provided* that such award was reported to the Commission on Elections (COMELEC) in accordance with Section 5 below.
- (c) *Preparatory works.* Preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and filed storehouses before **March 25, 2016.**
- (d) *Calamity.* Emergency works necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.
- (e) *Ongoing projects.* Ongoing public works commenced before **March 25, 2016**, *provided* that such project was reported to the COMELEC in accordance with Section 5 below.
- (f) *Similar projects under foreign agreements.* Ongoing foreign assisted projects commenced before **March 25, 2016** are likewise allowed, *provided* that such project was reported to COMELEC in accordance with Section 5 below.