

Department of Budget and Management
GOVERNMENT PROCUREMENT POLICY BOARD
TECHNICAL SUPPORT OFFICE

NPM No. 32-2013

27 March 2013

ATTY. KAREN B. LIM

Member, Bids and Awards Committee (BAC)

OFFICE FOR TRANSPORTATION SECURITY (OTS)

DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC)

Corner Andrews Avenue and Aurora Boulevard, Pasay City

Re: Delegation of the Executive Assistant for Budget and Finance Concerns as Provisional Member of the BAC

Dear Atty. Lim:

We respond to your letter dated 18 October 2012, seeking our opinion on whether the Head of the Procuring Entity (HOPE) can appoint the Executive Assistant (EA) for Budget and Finance Concerns as a provisional member of the OTS-BAC without violating Section 11.2.5¹ of the revised Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184.

It is represented that Director Leoncio T. Laygo resigned as provisional member of the BAC when he was designated Assistant Administrator of the Administrative and Finance Bureau of OTS. After deliberation, the BAC recommended Mr. Elvin Tinsay, the Planning Division Chief, as replacement. Thereafter, the HOPE designated Capt. Jose Ernesto B. Gaviola as provisional BAC member to replace Director Laygo.² It is further represented that Capt. Gaviola is currently the EA for Budget and Finance Concerns who directly reports and serves as a coterminous assistant to the HOPE; hence, may be considered as the HOPE's alter-ego. It is within this context that you are seeking our opinion on whether there was a circumvention of Section 11.2.5 of the IRR of RA 9184 with the designation of Capt. Gaviola as provisional member of the BAC.

Applicability of the Alter Ego Principle to RA 9184 and its IRR

For your guidance, the concept of alter-ego is often discussed in Philippine cases involving Corporation Law and Political Law. Under corporate law, in defining the doctrine of "Alter Ego", the court merely disregards corporate entity and holds individual responsible for acts knowingly done in the name of the corporation.³ The doctrine of alter ego is based upon the misuse of a corporation by an individual for wrongful or inequitable purposes, and in such case the court merely disregards the corporate entity and holds the individual responsible for acts knowingly and intentionally done in the name of the corporation."⁴

¹ In no case shall the Head of the Procuring Entity and/or the approving authority be the Chairman or a member of the BAC.

² Per Memorandum dated 3 October 2012 causing the issuance of Special Order 2012-201.

³ Black's Law Dictionary, 6th Edition, Centennial Edition (1891-1991).

⁴ Ivy v. Plyler, 246 Cal. App. 2d. 678, 54 Cal. Repr. 894.

On the other hand, the Alter Ego Principle is also referred to as the Doctrine of Qualified Political Agency in political law. In *Spouses Constantino v. Cuisia*⁵, the Supreme Court (SC) stated that:

Necessity thus gave birth to the doctrine of qualified political agency, later adopted in *Villena v. Secretary of the Interior* from American jurisprudence, viz: ... Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority". (*Myers vs. United States*, 47 Sup. Ct. Rep., 21 at 30; 272 U. S., 52 at 133; 71 Law. ed., 160)

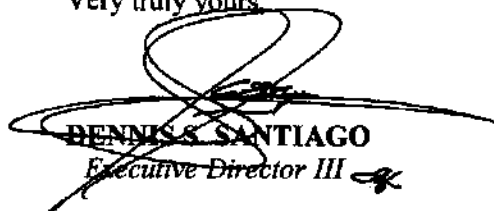
We note that the Doctrine of Qualified Political Agency or Alter Ego Principle falls under the control power of the President.⁶ Under the Doctrine of Qualified Political Agency, department secretaries are alter egos or assistants of the President and their acts are presumed to be those of the latter unless disapproved or reprobated by him.⁷ Considering that various jurisprudence explaining the Alter-Ego Principle exclusively limits its application to the President of the Philippines under Political Law, the question is whether the same principle may be applied to the HOPE and his EA.

We wish to inform you that the prohibition stated in Section 11.2.5 of the IRR of RA 9184 is limited to the HOPE and/or the approving authority wherein they cannot be the Chairman or a member of the BAC. Considering the foregoing, it is the approving authority that may be deemed the alter-ego of the HOPE. Thus, for the Alter-Ego Principle to apply, the EA should be the designated approving authority by the HOPE; otherwise, the principle will be inapplicable.

Based on the foregoing, we are of the opinion that the EA for Budget and Finance Concerns may be designated as provisional member of the BAC provided that s/he is not the approving authority disqualified under Section 11.2.5 of the IRR of RA 9184; and s/he possesses all the qualifications of a provisional member under Section 11.2.2(d) and (e) of the IRR of RA 9184.

We hope that our advice provided sufficient guidance on the matter. Please note that this opinion is being rendered on the basis of the facts and particular situation presented, and may not be applicable given a different set of facts and circumstances. Should you have additional questions, please do not hesitate to contact us.

Very truly yours


DENNIS S. SANTIAGO
Executive Director III

//LSD3

⁵ G.R. No. 106064, October 13, 2005.

⁶ Ricardo S. Lazo, *Philippine Governance and the 1987 Constitution*, 2006 Edition, at p.214.

⁷ *Manubay v. Garilao*, G.R. No. 140717 dated April 16, 2009.



Republic of the Philippines
DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS
OFFICE FOR TRANSPORTATION SECURITY

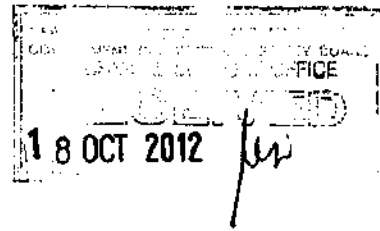
October 18, 2012

ATTY. DENNIS S. SANTIAGO

Executive Director

Government Procurement Policy Board

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



Dear Atty. Santiago

This is with respect to the composition of the Bids and Awards Committee of the Office for Transportation Security (OTS) of the Department of Transportation and Communications (DOTC).

On August 23, 2012, a member of the OTS BAC, Dir. Leoncio T. Laygo, tendered his resignation when he was designated Assistant Administrator of the Administrative and Finance Bureau (AFB) of our Office.

The BAC, after deliberation, recommended Mr. Elvin Tinsay, Chief, Planning Division, as replacement.

However, on October 3, 2012, the HOPE, in a Memorandum (Annex A) directed the AFB to issue Special Order No. 2012-201 dated October 4, 2012 (Annex B) designating CAPT. JOSE ERNESTO B. GAVIOLA as provisional member of the BAC vice Dir. Leoncio T. Laygo.

Capt. Gaviola is a co-term executive assistant of the OTS Administrator (HOPE). He is designated as the Hope's Executive Assistant for Budget and Finance Concerns (Annex C), reports directly and serves as assistant of the HOPE on program and budget analysis.

To avoid conflict of interest, HOPE is prohibited from BAC membership. (Sec. 11.2.5, IRR of R.A. 9184)

Considering that there is no express prohibition with respect to HOPE representatives, was there a circumvention of the prohibition when the HOPE appointed his Executive Assistant (Alter Ego) as member of the BAC?

Hoping for your immediate response

Very truly yours,


KAREN B. LIM
Attorney V/
Member, OTS Bids and Awards Committee