

NPM No. 167-2015

22 December 2015

MR. ABDULLAH B. DUMAMA, JR., MD, MPA, CESO III

Regional Director

DEPARTMENT OF HEALTH

REGIONAL OFFICE XI (DOH – RO XI)

DOH Compound, J.P. Laurel Ave.,

Bajada, Davao City

Re: Rental of Motor Vehicle

Dear Regional Director Dumama:

This refers to your letter requesting clarification on the rules and regulations relative to the rental of transportation services.

As represented, due to lack of adequate transportation vehicles, DOH-RO XI procured, through public bidding, a contract of transportation services¹ in response to the increased demand of health services delivery to different areas of the region. For this reason, DOH-RO XI was able to save a large amount of money compared to the previously implemented van rental policy. However, the attention of DOH-RO XI was called by the Commission on Audit (COA) to comply with National Budget Circular (NBC) No. 446, s. of 1995, entitled *Guidelines on the Acquisition and Rental of Motor Vehicle*. Hence, the following queries:

1. Whether the contract of transportation services procured by DOH-RO XI falls within the purview of “renting motor transport equipment” in NBC 446; and
2. Whether the effectivity of Republic Act (RA) No. 9184 repealed or amended NBC 446.

On the first query, we wish to clarify that the Government Procurement Policy Board (GPPB) and its Technical Support Office (GPPB-TSO) render policy and non-policy opinions respectively, on matters purely pertaining to the interpretation of the procurement law and its associated rules and regulations. We note that NBC 446 was issued by the Department of Budget and Management (DBM) to provide guidelines on the acquisition and rental of motor vehicles. As such, DBM is in the best position to determine the scope, coverage and application of the provisions of NBC 446. In this regard, we shall limit our discussion on the interpretation of the relevant provisions of the procurement law, rules and regulations pertinent to the second query.

¹ The contract has the following terms: (a) inclusive of driver; (b) insurance equivalent of PAMI shall be secured by the operator to cover all passengers; (c) diesel/fuel shall be supplied by DOH-RO XI; (d) operator shall be responsible to the driver’s rights and benefits set under labor standards law; (e) air-conditioned; (f) roadworthy; (g) free maintenance and repair (regular check-up and servicing at least once a week); (h) replacement of unit in case of breakdown and/or servicing; and (i) operator shall be responsible for the meals and other incidental expenses of the driver.

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Prior to the determination whether NBC 446 is repealed or amended by RA 9184, it is crucial to examine the legislative policy on rental of motor vehicles. A careful perusal of the provisions of NBC 446 reveals that the policies pertaining to rental of motor vehicles are anchored on the limitation prescribed by Executive Order (EO) No. 292, otherwise known as the *Administrative Code of 1987*. Section 76 of EO 292, as referred to under Section 3.3 of NBC 446, provides that no appropriations authorized in the General Appropriations Act shall be used for renting motor transport equipment for a continuous period of more than fifteen days, except as may be authorized by the Secretary of Budget and Management. Hence, the question of whether NBC 446 is repealed or amended by RA 9184 necessitates a parallel determination on whether the latter law repealed or amended Section 76 of EO 292.

The Supreme Court in the case of *Mecano v. COA*² discussed the concept of repeal of laws, thus:

“The question of whether a particular law has been repealed or not by a subsequent law is a matter of legislative intent. The lawmakers may expressly repeal a law by incorporating therein a repealing provision which expressly and specifically cites the particular law or laws, and portions thereof, that are intended to be repealed. A declaration in a statute, usually in its repealing clause, that a particular and specific law, identified by its number or title, is repealed is an express repeal; all others are implied repeals.”

Section 76 of RA 9184 and its revised Implementing Rules and Regulations (IRR) enumerate the specific laws or provisions of law that are either repealed or amended. Among these laws, neither EO 292 nor NBC 446 was particularly mentioned. Accordingly, RA 9184 and its IRR do not expressly repeal or amend Section 76 of EO 292 and NBC 446. This notwithstanding, the repealing clause under Section 76 of RA 9184 and its IRR contains a general provision on implied repeals by stating that any other law, presidential decree or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof contrary to or inconsistent with the provisions of RA 9184 is thereby repealed, modified or amended accordingly.

In the *Mecano*³ case, the High Tribunal comprehensively explained the concept of implied repeals, thus:

“Repeal by implication proceeds on the premise that where a statute of later date clearly reveals an intention on the part of the legislature to abrogate a prior act on the subject, that intention must be given effect. Hence, before there can be a repeal, there must be a clear showing on the part of the lawmaker that the intent in enacting the new law was to abrogate the old one. The intention to repeal must be clear and manifest; otherwise, at least, as a general rule, the later act is to be construed as a continuation of, and not a substitute for, the first act and will continue so far as the two acts are the same from the time of the first enactment.

The Supreme Court, in the same case, likewise clarified the two categories of repeal by implication: (1) where provisions in the two acts on the same subject matter are in an irreconcilable conflict; and (2) if the later act covers the whole subject of the earlier one and is

² G.R. No. 103982 promulgated on 11 December 1992, citing *School Dist. No. 45 v. Board of County of Comira*, 141 Kan. 108 and Agpalo, *Statutory Construction*, p. 289 (1986).

³ *Ibid*, citing *Posadas v. National City Bank*, 296 U.S. 497, 80 L. Ed. 351 (1935) and *Maceda v. Macaraig*, 197 SCRA 771 (1991).

clearly intended as a substitute. Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot be enforced without nullifying the other.⁴ The second kind of repeal by implication means that a subsequent statute is deemed to repeal a prior law if the former revises the whole subject matter of the former statute.⁵

RA 9184 has for its subject matter the procurement of goods, infrastructure projects and consulting services. Under Section 5(n) thereof, procurement shall also include the lease of goods, which includes motor vehicles. On the other hand, Section 76 of EO 292 and the relevant provisions of NBC 446 provide limitation on rental of motor vehicles. While these laws both covers rental of motor vehicles, they prescribe different, but not conflicting rules. The former lays down rules and procedures for the procurement of contract for rental of motor vehicles while the latter sets limitation on the use of appropriations for renting motor transport equipment. If at all, the two (2) legislations may even be regarded as complementary. As the two laws can stand together and be harmonized absent any clear showing of inconsistency or incompatibility, we are of the opinion that there is no irreconcilable conflict between the two legislative enactments. In addition, there is nothing in RA 9184 that suggests an intention of repealing the entire Section 76 of EO 292 and NBC 446, thereby negating a repeal by implication of the other kind. After all, it is well-settled rule of statutory construction that repeals of statutes by implication are not favored.⁶

All told, it is our considered view that RA 9184 and its revised IRR did not repeal or amend Section 76 of EO 292 and NBC 446, in relation to the provision on rental of motor vehicles because of the absence of an express repealing clause to that effect nor a clear showing on the part of the lawmaker that the intent in enacting the new law was to abrogate the old one.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is being issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,


DENNIS S. SANTIAGO
Executive Director V



⁴ *Id.*, citing *Villegas v. Subido*, 41 SCRA 190 (1971).

⁵ *Id.*, citing *People v. Almuete*, 69 SCRA 410, 414 (1976).

⁶ *Id.*, citing *National Power Corporation v. Hon. Zain B. Angas*, G.R. Nos. 60225-26, May 8, 1992; *Maceda v. Macaraig*, 197 SCRA 771 (1991); *Maddumba v. Government Service Insurance System*, 182 SCRA 281 (1990); *Larga v. Ranada, Jr.*, 164 SCRA 18 (1988); *De Jesus v. People*, 120 SCRA 760 (1983).