

**NPM No. 54-2009**

14 October 2009

**MR. LEONARDO REY D. VASQUEZ***General Manager***ZAMBOANGA CITY WATER DISTRICT**

Pilar St., Zamboanga City

**Re : HOPE in Water Districts**

Dear Mr. Vasquez:

This refers to your letter dated 10 August 2009 received on 24 August 2009, seeking an opinion as to who may be considered as the Head of the Procuring Entity (HOPE), and who can be designated as the Chairperson of the Bids and Awards Committee (BAC) for water districts.

As represented in your letter, the Board of Directors of a local water district is appointed by the Local Chief Executive (LCE) for a term of six (6) years. The General Manager, on the other hand, is considered as the first (1<sup>st</sup>) ranking permanent official of a water district.

It is further represented that the organization of a water district provides for two (2) Assistant General Managers (AGMs) for Finance & Administration, and Operations, respectively. It is your position that because of the nature of work of both AGMs, they can never be designated as either BAC member or chairperson, inasmuch as the AGM for Finance & Administration has conflict of interest, while the AGM for operation, being the third ranking official, also gets to be appointed as OIC in the absence of the GM.

At the outset, we wish to inform you that it is already a well-settled doctrine backed by a long-line of cases<sup>1</sup> that local water districts (LWDs) are considered as government owned and controlled corporations (GOCCs) with special charters. LWDs exist as corporations only by virtue of Presidential Decree (P.D.) No.198. Section 6 thereof expressly confers on LWDs corporate powers by stating that LWDs "shall exercise the powers, rights and privileges given to private corporations under existing laws."

Furthermore, pleased be advised that the Revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (R.A. 9184) has already been approved by the GPPB through Resolution No. 03 – 2009, dated 22 July 2009 and became effective last 2

<sup>1</sup> Please see : *Davao City Water District vs. Civil Service Commission* (G.R. No. 95237-38, 13 September 1991, 201 SCRA 593); *De Jesus vs. Commission on Audit* (G.R. No. 149154, 10 June 2003); and *Feliciano vs. Commission on Audit* (G.R. No. 147402, 14 January 2004)

September 2009. Under Section 5 (t) thereof, the HOPE in GOCCs refers to the governing board or its duly authorized official.

Hence, even though the General Manager is considered as the first (1<sup>st</sup>) ranking permanent employee in the *plantilla* position of LWDs, s/he is not considered as the HOPE, unless duly authorized by the Board of Directors.

As to your second query, Section 11.2.2 (a) of the IRR of R.A. 9184 provides that the BAC Chairperson should be at least a third (3<sup>rd</sup>) ranking permanent official of the procuring entity. The exceptions to this rule are made clear under Section 11.2.5 of the same IRR and COA Circular No. 2003 – 004, dated 30 July 2004, to wit:

*Section 11.2.5 of the IRR of R.A. 9184*

In no case shall the head of the procuring entity and/or approving authority be the Chairman or a member of the BAC.

*COA Circular No. 2003 – 004, dated 30 July 2004*

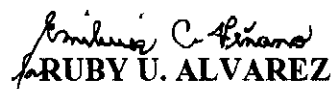
Pursuant to the authority vested in this Commission to promulgate accounting and auditing rules and regulations including those for the strengthening of internal control in the operations of the government, it is hereby directed that the Chief Accountant and the personnel of the Accounting Unit of any agency of government are prohibited from being regular members of the agency's Bids & Awards Committee as contemplated under the Implementing Rules & Regulations of R.A. 9184. However, they may serve as provisional members when the Unit is the end-user of the items, subject of the bidding.

Hence, it may be aptly deduced from the aforesaid provisions that any official holding at least a third (3<sup>rd</sup>) ranking position in the LWD's *plantilla* may be designated as the BAC Chairperson, except for the following:

1. The HOPE;
2. The Approving Official; and
3. The Chief Accountant and the personnel of the Accounting Unit of any agency of government or those officials who are tasked to approve payment vouchers.

We sincerely hope to have shed some guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

  
for RUBY U. ALVAREZ  
Executive Director III

**NPM No. -2009**

25 September 2009

**MR. LEONARDO REY D. VASQUEZ***General Manager***ZAMBOANGA CITY WATER DISTRICT**

Pilar St., Zamboanga City

**Re : HOPE in Water Districts**

Dear Mr. Vasquez:

This refers to your letter dated 10 August 2009 received on 24 August 2009, seeking an opinion as to who is considered as the Head of the Procuring Entity (HOPE) in water districts, is it the Board of Directors or the General Manager? In the same vein, who can be designated as Chairperson of the Bids and Awards Committee (BAC) in your office?

As represented in your letter, the Board of Directors of a local water district is appointed by the Local Chief Executive (LCE). The Board of Directors of water districts represents their own sector and has a term of six (6) years.

The General Manager, on the other hand, is considered as the first (1<sup>st</sup>) ranking permanent official of a water district. Moreover, the organization of a water district provides for two (2) Assistant General Managers (AGMs) – Finance & Administration and Operations.

Because of conflict of interest in the nature of work of an AGM for Finance & Administration, it can never be designated as a BAC member nor will the AGM for operations for s/he is sometimes designated as the Officer-in-Charge (OIC) whenever the General Manager is not available.

At the outset, we wish to inform you that it is already a well-settled doctrine back by a long-line of cases culminating from Davao City Water District vs. Civil Service Commission (G.R. No. 95237-38, 13 September 1991, 201 SCRA 593) and just recently reiterated in De Jesus vs. Commission on Audit (G.R. No. 149154, 10 June 2003) and Feliciano vs. Commission on Audit (G.R. No. 147402, 14 January 2004) that local water districts (LWDs) are considered as government owned and controlled corporations (GOCCs) with special charters. LWDs exist as corporations only by virtue of Presidential Decree (P.D.) No.198, which expressly confers on LWDs corporate powers. Section 6 of PD 198 provides that LWDs "shall exercise the powers, rights and privileges given to private corporations under existing laws."

Furthermore, under Section 5 (t) of the Revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184 (R.A. 9184), the Head of the Procuring Entity (HOPE) in GOCCs refers to the governing board or its duly authorized official.

Hence, even though the General Manager is considered as the first (1<sup>st</sup>) ranking permanent employee in the plantilla position of LWDs, s/he is not considered as the HOPE, unless duly authorized by the Board of Directors.

As to your second query of who can be designated as the BAC Chairperson, guidance may be inferred from Section 11.2.2 (a) of the Revised IRR of R.A. 9184.

The BAC Chairperson should be at least a third (3<sup>rd</sup>) ranking permanent official of the procuring entity. The exceptions to this rule are made clear by law under Section 11.2.5 of the Revised IRR of R.A. 9184 and COA Circular No. 2003 – 004, dated 30 July 2004, which read as follows:

*Section 11.2.5 of the Revised IRR of R.A. 9184*

In no case shall the head of the procuring entity and/or **approving authority** be the Chairman or a member of the BAC.

*COA Circular No. 2003 – 004, dated 30 July 2004*

Pursuant to the authority vested in this Commission to promulgate accounting and auditing rules and regulations including those for the strengthening of internal control in the operations of the government, it is hereby directed that the Chief Accountant and the personnel of the Accounting Unit of any agency of government are prohibited from being regular members of the agency's Bids & Awards Committee as contemplated under the Implementing Rules & Regulations of R.A. 9184. However, they may serve as provisional members when the Unit is the end-user of the items, subject of the bidding.

Hence, it may be aptly deduced from the aforesaid provisions that any official up to the third (3<sup>rd</sup>) ranking position in the LWDs plantilla may be designated as the BAC Chairperson, except for the following:

1. The HOPE;
2. The Approving Official; and
3. The Chief Accountant and the personnel of the Accounting Unit of any agency of government or those officials who are tasked to approve payment vouchers, unless designated as a provisional member, especially when the Unit is the end-user of the items, subject of the bidding.

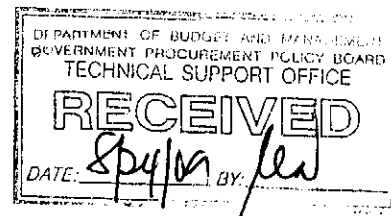
We sincerely hope to have shed some guidance on the matter.

Very truly yours,

**RUBY U. ALVAREZ**  
*Executive Director III*



Republic of the Philippines  
ZAMBOANGA CITY WATER DISTRICT  
Pilar Street, Zamboanga City



10 August 2009

MS. RUBY U. ALVAREZ  
Executive Director III  
Government Procurement and Policy Board  
Unit 2506, Raffles Corporate Center, F. Ortigas Jr. Road  
Ortigas Center, Pasig City 1605

Dear Madam Alvarez,

Greetings!

This has reference to the definition of HOPE (Head of Procuring Entity) of an agency. Section 5.t of the Implementing Rules and Regulation of R.A. 9184 defines HOPE as....."the governing board or its duly authorized official, for GOCCs, GFIs and SUCs.....provided, that in an agency, department or office where the procurement is decentralized, the head of each decentralized unit shall be considered as the Head of the Procuring Entity, subject to the limitations and authority delegated by the head of the agency, department, or office".

Section 11.2.2.a also provides that the BAC Chairman should be "at least a third ranking permanent official of the procuring entity".

In view of the above, may we pose the following questions?

1. The Board of Directors of a local water district is appointed by the Mayor or Governor as the case maybe. They represent their own sector and their term is six (6)

By,  
Pls. draft reply. HOPE is  
the Board of Directors, not the  
Gen. Manager, unless duly authorized.

→ Enunue,  
Pls. handle. Sign in  
my behalf. 18/8/24/09

years. If reappointed, they will serve another six (6) years. The General Manager is a permanent employee of a water district.

Query: Who is the HOPE of a water district? The Board of Directors  
or the General Manager?

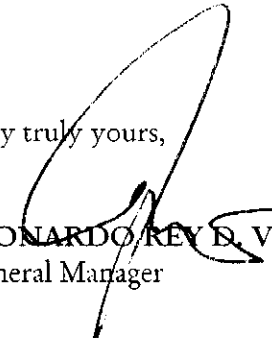
2. The organization of a water district provides for two (2) Assistant General Managers (AGMs) (Finance and Administration; and Operations). By the nature of the work of the AGMs, the Finance and Administration can never be part of the Bids and Awards Committee (BAC) due to conflict of interest. The only available officer, who is at least a third ranking official from the HOPE, is the AGM for Operation. However, since this officer also acts as the officer-in-charge of the office when the General Manager is, say, out of town, there will be a conflict of interest if what was recommended by the BAC will also be approved by the OIC (AGM for Operations considering that he is the Chairman of the BAC; this is true if the HOPE is the Board of Directors).

We are posing these queries because these seem to have a conflicting opinion on who the HOPE is.

Your answer shall be most appreciated.

Thank you.

Very truly yours,

  
LEONARDO REY D. VASQUEZ  
General Manager