

NPM No. 117-2017

29 December 2017

HON. RICARTE R. PADILLA

Mayor

MUNICIPALITY OF JOSE PANGANIBAN

PROVINCE OF CAMARINES NORTE

2/F Municipal Hall, Vinzons Ave.,

North Poblacion, Jose Panganiban, Camarines Norte

Re: Lease of Government Owned Land for Private Use -

Dear Mayor Padilla:

This refers to the Honorable Mayor's letter inquiring as to whether the LGU Municipal Government of Jose Panganiban, Camarines Norte, can negotiate the Lease of LGU-owned land for private use.

It is represented that the Municipality of Jose Panganiban owns a 175-Hectare of idle land that the Municipality would like to lease out on a negotiated basis to an interested private developer and a 30-Hectare land already proclaimed as a Special Economic Zone (SEZ) by Presidential Proclamation No. 508 for which the Municipality has been searching for an investor-developer since 2003. Hence, clarification on the following is sought:

1. Whether or not Lease of government-owned land for private use is covered by the Republic Act (RA) No. 9184, the Government Procurement Reform Act, and the 2016 revised Implementing Rules and Regulation (IRR); and
2. Whether or not Executive Order No. 301 and the related Commission on Audit (COA) Circulars govern the Lease of government-owned land for private use.

Procurement, as defined under Section 5(n) of RA 9184 and Section 5(aa) of the 2016 revised IRR, refers to the acquisition of goods, consulting services, and contracting for infrastructure projects by the procuring entity. While the definition of Procurement includes lease of goods and real properties, what is contemplated by the definition is *lease by* the government agency of a real estate or property from either another government agency or from a private entity, and not *leasing out* of the procuring entity's own property for private use. It contemplates a transaction whereby the government spends public funds in exchange for the use of an identified property.

Based on the Honorable Mayor's letter, the transaction being contemplated by the Municipality of Jose Panganiban pertains to *leasing out* of the Municipality's property for

private use. In a previous Non-Policy Matter (NPM) Opinion¹ issued by this office, we expressed the following view, thus:

Verily, leasing out of government-owned properties does not involve the acquisition of any particular equipment, material, or personal property or a contractual service such as janitorial, security and related services. Moreover, this kind of transaction does not involve any construction, improvement, rehabilitation or other activity which would fall under the definition of the term "civil works," nor a contract for the performance of services such as advisory, review, design, management, or other service which would fall under the concept of "consulting services."

Accordingly, by the nature and peculiarity of this government contract, leasing out of government building remains to be governed by Executive Order No. 301 ("E.O. 301") particularly Section 7 thereof..

In order to clarify this position of the GPPB, a specific provision was included in the 2016 IRR, which identifies activities not considered as procurement under RA 9184. Thus, Section 4.5 provides for a list of activities not considered as procurement as contemplated in RA 9184 and its IRR, *to wit*:

- a) . . . ;
- c) *Lease of government-owned property as lessor for private use;*
- f) . . .

Based on the foregoing, we wish to reiterate the view that transactions where a government agency leases out its real property for private use, such as in the case of the Municipality of Jose Panganiban intending to lease out the 175-hectare of land owned by the latter to a private entity for economic development for the creation of jobs, employment, livelihood and business opportunities, are not covered by RA 9184 and its IRR but instead governed by the provisions of Executive Order 301, series of 1987, and allied issuances by concerned government agencies; or in the case of LGUs by Republic Act No. 7160, the Local Government Code of 1991².




¹ NPM No. 43-2004 dated 30 March 2004.

² Chapter II – General Powers and Attributes of Local Government Units

Section 18. Power to Generate and Apply Resources. - Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenues and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of any further action; to have an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions including sharing the same with the inhabitants by way of direct benefits; to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals. (Emphasis supplied)

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

Very truly yours
(sgd.)

Executive Director V 

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