

**NPM No. 065-2016**

3 November 2016




**Re : Lease of Public Property**

Dear [REDACTED]:

This refers to your letter requesting for an opinion relative to the proposed agreement between the Foundation of Our Lady of Peace Mission, Inc. (FOLPMI) and the Department of Health (DOH) for the former's continuous use of a parcel of land under the administration of the Philippine Reclamation Authority (PRA).

It is represented that the FOLPMI entered into a contract of lease with the PRA for a period of twenty five (25) years, from 21 August 1990 to 21 August 2015, for a consideration of One (1) Peso per year, renewable for another twenty-five (25) years under the same terms and conditions. However, the Commission on Audit (COA) observed that the contract of lease is disadvantageous to PRA since it deprived the latter of additional revenue. It is further alleged that pursuant to the provision of Commonwealth Act (CA) No. 141 (Public Land Act), the monthly rental for the subject land should have been P373,350.00 per month. Since FOLPMC cannot afford the COA's proposed rate, PRA is studying the possibility of transferring the subject land to DOH, which may thereafter enter into an agreement with the FOLPMI for the latter's continuous use of the land. The issue raised before us is whether or not the proposed agreement between the DOH and the FOLPMI requires public bidding.

Leasing out a government-owned land for private use is outside the scope of RA 9184 and its revised Implementing Rules and Regulations (IRR). The *Guidelines on Lease of Privately-Owned Real Estate and Venue*<sup>1</sup> expressly excluded the "lease of government property for private use" from its coverage. As we have previously clarified in NPM No. 043-2004<sup>2</sup>, "[t]he law has no intention to include therein the leasing out of government buildings and spaces, wherein the concerned government agency does not acquire ownership or temporary use of a thing, but generates income through such transaction" by leasing out government real property for private use.

At this juncture, we wish to inform you that leasing out of government building or property for private use is governed by Executive Order (EO) No. 301<sup>3</sup>, dated 26 July 1987, as re-stated in Commission on Audit (COA) Circular No. 87-282, dated 22 December 1987, thus: 

<sup>1</sup> Issued through GPPB Resolution No. 08-2009 dated 3 November 2009.

<sup>2</sup> Dated 30 March 2004.

<sup>3</sup> Decentralizing Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal.

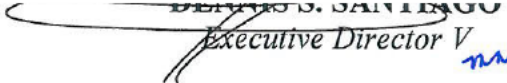
Section 7. Jurisdiction over Lease Contracts. - The head of agency intending to rent privately-owned buildings or spaces for their use, or **to lease out government-owned buildings or spaces for private use**, shall have authority to determine the reasonableness of the terms of the lease and the rental rates thereof, and to enter into such lease contracts without need of prior approval by higher authorities, subject to compliance with the uniform standards or guidelines established pursuant to Section 6 hereof by the DPWH and to the audit jurisdiction of COA or its duly authorized representative in accordance with existing rules and regulations.

On the other hand, the DPWH issued the "*Uniform Standards/Guidelines to Determine the Reasonableness of the Terms and Rental Rates of Lease Contracts for Private or Government Buildings/Spaces*" in accordance with COA Circular No. 88-282A, dated 3 March 1988, which was adopted in the aforesaid *Guidelines on Lease of Privately-Owned Real Estate and Venue* promulgated by the GPPB.

Based on the foregoing, the proposed agreement between the DOH and FOLPMI does not fall within the coverage of RA 9184 and its IRR as its nature is similar to that of leasing out of government building or property for private use which is more appropriately governed by EO 301 and COA Circular No. 87-282.

We hope that 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 there be other concerns, please do not hesitate to contact us.

(sgd.)

  
DENNIS S. SANTIAGO  
Executive Director V

//sdl