



Republic of the Philippines
Professional Regulation Commission
Manila

**The Professional Regulatory
Board of Architecture
(PRBoA)**
Office of the Chairman



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Your Ref:

Our Ref: 08_PRBoA-159

22 May 2008

Republic of the Philippines
The Department of Justice (DoJ)
City of Manila, NCR, Philippines (PH)

ATTENTION: **The HON. RAUL M. GONZALEZ**
Secretary

SUBJECT : **REQUEST FOR DOJ OPINION ON THE COURT LIFTING/
DISSOLUTION OF THE 2005 INJUNCTION ON SECS.
302.3/ 4 OF THE 2004 REVISED IRR OF P.D. NO. 1096
(THE 1977 NATIONAL BUILDING CODE OF THE
PHILIPPINES/ NBCP)**

Dear Sec. Gonzalez,

Warm greetings!

Before the **Professional Regulatory Board of Architecture** (the "**PRBoA**") again requests Your opinion concerning the status of the foregoing, please allow the PRBoA to briefly relate the antecedents:

- 1) on 17 March 2004, HE President Gloria Macapagal-Arroyo signed into law **R.A. No. 9266**, otherwise known as The Architecture Act of 2004, multiple provisions of which limit the preparation, signing and sealing of **architectural** documents only to **registered and licensed architects** ("RLAs"); the law, which was crafted with the active/ recorded participation of official representatives of the Philippine Institute of Civil Engineers (**PICE**), took effect on 10 April 2004;
- 2) thereafter, the **DPWH** Board of Consultants (BoC) and the **DPWH** National Building Code Review Committee (NBCRC), which were tasked with the revision of the late 1970s IRR of **P.D. No. 1096**, and which included a number of official PICE representatives, harmonized the draft of the 2004 Revised IRR of **P.D. No. 1096** with the pertinent provisions of **R.A. No. 9266**; chief among these were **Secs.**

- 302.3 and 4** which pertain to **architectural** documents and the legal signatory to such documents i.e. **RLAs**;
- 3) in late 2004, the then **DPWH** Secretary Florante Soriquez promulgated the 2004 Revised IRR of **P.D. No. 1096**, which carried **Secs. 302.3 and 4** limiting the signing and sealing of **architectural** documents to **RLAs**;
 - 4) on 01 December 2004, the IRR of **R.A. No. 9266** took effect; of particular importance are the following definitions carried by said IRR:
 - a) Sec. 3 (18) of the 2004 IRR of **R.A. No. 9266** clearly defines **architectural** documents as "**x x x architectural drawings, specifications, and other outputs of an Architect that only an Architect can sign and seal** consisting, among others, of vicinity maps, site development plans, architectural program, perspective drawings, architectural floor plans, elevations, sections, ceiling plans, schedules, detailed drawings, technical specifications and cost estimates, and other instruments of service in any form" (*emphases and underscoring supplied*);
 - b) Sec. 3 (21) of the 2004 IRR of **R.A. No. 9266** states that "**Architectural Plans**" are "**two (2)-dimensional representations** reflecting a proposed development/redevelopment of an enclosed/ semi-enclosed or open area showing features or elements such as columns, walls, partitions, ceiling, stairs, doors, windows, floors, roof, room designations, door and window call-outs, the architectural layout of equipment, furnishings, furniture and the like, specifications callouts, elevation references, drawing references and the like; the architectural plan is the representation of a lateral section for a proposed building/ structure (running parallel to the ground) and at a height of from 1.0 - 1.5 meters above the finished floor; the term may also collectively refer to other architectural designs such as cross/ longitudinal sections, elevations, roof plan, reflected ceiling plan; detailed sections and elevations showing architectural interiors, detailed architectural designs, door and window schedules, other architectural finishing schedules and the like." (*emphases supplied*);
 - c) Sec. 3 (22) of the 2004 IRR of **R.A. No. 9266** defines "**Building**" as "a structure for the purpose and function of **habitation** and other uses." (*emphases supplied*);
 - 5) on 01, 08 and 15 April 2005, the **DPWH**, then already under the Hon. Sec. Hermogenes B. Ebdane, Jr., published the 2004 Revised IRR of **P.D. No. 1096** carrying the versions of **Secs. 302.3 and 4** limiting to **RLAs** the signing and sealing of **architectural** documents to be submitted as part of building permit applications nationwide; groups of civil engineers (CEs) and the PICE subsequently filed at least two (2) known suits against Sec. Ebdane, at a Quezon City RTC and at Manila RTC Branch 22 (PICE, et. al. vs. Sec. Ebdane); partly on the basis of a **materially incorrect** version of Sec. 302 of **P.D. No. 1096**, which purportedly allowed CE's to sign and seal **architectural** documents, about two (2) TROs and a preliminary **injunction** against **Secs. 302.3 and 4** of the 2004 IRR of **P.D. No. 1096** were secured by the PICE; the PICE complaint against Sec. Ebdane, and the TROs and the

injunction the PICE secured **never** referred to any provision of **R.A. No. 9266**, which is the law governing the preparation, signing and sealing of **architectural** documents;

- 6) in late 2005, the **RLAs**, represented by the United Architects of the Philippines (**UAP**), the integrated and accredited professional organization of architects (**IAPoA**) under **R.A. No. 9266**, actively intervened in the case (PICE vs. Sec. Ebdane); in December 2005, the **UAP-IAPoA** moved for the lifting/ dissolution of the injunction;
- 7) in a **Decision** dated 29 January 2008 (a copy of which the PRBoA previously furnished Your office), the Manila RTC Branch 22 ordered the **lifting/ dissolution** of the 2005 injunction it issued against **Secs. 302.3 and 4** of the 2004 IRR of **P.D. No. 1096**; the Decision also found the PICE, et. al. as having engaged in forum-shopping; a **motion for reconsideration** of the Decision was later filed by the PICE;
- 8) in March 2008, Sec. Ebdane apparently communicated to Offices of the Building Officials (OBOs) nationwide that the DPWH shall await finality of the Decision and/ or the ruling of RTC Manila Branch 22 on the matter of the **motion for reconsideration** filed by the PICE before implementing **Secs. 302.3 and 4** of the 2004 Revised IRR of **P.D. No. 1096**.

As **RLAs** nationwide were in a quandary as to the status of the injunction and of Sec. Ebdane's March 2008 instruction to OBOs, the **RLAs** proceeded to undertake legal researches with their counsels and have come up with the following:

- 1) Several Supreme Court decisions in the past (reference **Attachment 1**) have already upheld the **automatic** lifting of injunctions pending appeal/ filing of motions for reconsideration; if such an interpretation is correct, then the injunction on **Secs. 302.3 and 4** of the 2004 IRR of **P.D. No. 1096** may have already been truly lifted/ dissolved earlier this year, despite the **DPWH** position/ pronouncements to the contrary.
- 2) based on very recent legal researches/ interviews undertaken by and for the **UAP-IAPoA**, the **lifting/ dissolution of the injunction** by RTC Manila Branch 22 appears to already be in effect, viz:
 - a) The **Issuance, Lifting/ Dissolution of Injunction is immediately executory; In an action for injunction, the judgment granting, dissolving, or denying an injunction is immediately operative, unless otherwise ordered by the court** (Dimanahan vs. Aranas, 74 Phil. 455); *given the present set of conditions, this can only mean that the lifting/ dissolution of the 2005 injunction is in effect;*
 - b) **A judgment decreeing the dissolution of a preliminary injunction is immediately executory** (Crisostomo vs. SEC, 179 SCRA 146; Santiago vs. Vasquez, 217 SCRA 633); *again, the lifting/*

dissolution of the 2005 injunction is therefore deemed to be in effect;

- c) **An injunction cannot be stayed by an appeal or motion for reconsideration.** The general ruling is well-settled that **an appeal from a decree granting, refusing or dissolving an injunction does not disturb its operative effect.** When an injunction has been dissolved, it **cannot be revived** except by a new exercise of judicial power and no appeal by a dissatisfied party can itself revive it (Marcelo Steel Corporation vs. 54 SCRA 89); *this means that without a new court order and despite the PICE motion for reconsideration, the lifting/dissolution of the 2005 injunction is therefore deemed to be in effect;*
- d) **Rule 39. Execution, Satisfaction and Effect of Judgments. Section 4. Judgments not stayed by appeal.** Judgments in actions for **injunction,** receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and **shall not, be stayed by an appeal** taken therefrom, unless otherwise ordered by the trial court. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support; *please note that no appeal/ motion for review of the Court decision (containing the separate Court Order lifting/dissolving the 2005 injunction) has yet been filed by the PICE (at the appellate level);*
- e) **An Injunction once lifted/ dissolved can only be revived by another Court order.** It has similarly been held that **an order of dissolution of an injunction may be immediately effective, even though it is not final.** A dismissal, discontinuance or non-suit of an action in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction and no formal order of dissolution is necessary to effect such dissolution. Consequently, a **special order of the Court is necessary for the reinstatement of an injunction.** There must be a new exercise of judicial power (Santiago vs. Vasquez, 217 SCRA 633); *as of the present time, there is no such order emanating from the court and the lifting/dissolution of the 2005 injunction is therefore deemed to be in effect;*
- f) **An Injunction is only ancillary to the main case and must be taken separately.** A **writ of preliminary injunction** being **interlocutory and ancillary in character** is **automatically lifted** upon dismissal of the main case regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired or not (Golez vs. Leonidas, 107 SCRA 187); *please*

note that one of the many UAP-IAPoA counsels also explained that it just so happened that the Court order **lifting/ dissolving the 2005 injunction** (on Secs. 302.3 & 4 of the 2004 IRR of P.D. No. 1096/ 1977 NBCP, which ruled on the December 2005 UAP-IAPoA motion to lift the injunction) was issued simultaneous with the case decision. The **decision** and the Court **order lifting/ dissolving the 2005 injunction** are distinct in nature, and they must be taken **separately**. In the same way that the 2005 injunction's **issuance** was **promulgated and given immediate effect** even before a final decision was made, its **lifting must be treated in the same way**. We have to understand that the **decision that is on appeal** (by virtue of the PICE motion for reconsideration filed before the Court) **was on the only on the validity of Secs. 302.3 & 4, the injunction is only ancillary** to the decision and must be treated distinctively.

- 3) while the **DPWH** has recently maintained that it could **not** yet fully implement the previously restrained **Secs. 302.3 and 302.4** of the 2004 Revised IRR of **P.D. No. 1096** (limiting the signing and sealing of **architectural documents** only to registered and licensed architects/**RLAs**) inasmuch as the PICE has already filed a motion for reconsideration of the RTC Manila Branch 22 (the "**Court**") decision dated 29 January 2008, it must be remembered that the same decision also contains the Court **order** that apparently **automatically lifted/ dissolved the 2005 injunction** on the said sections. This may lead to the inevitable conclusion that the 03 **March 3 2008 DPWH Memo** issued to **OBOs** may be totally **misleading**. Even with the finality of the court decision still pending because of the PICE motion for reconsideration, the same cannot be construed with the injunction. The **Rules of Court and many jurisprudential cases** afore-cited attest that the **lifting of the injunction is immediately executory and cannot be stayed by an appeal or motion for reconsideration**. More so that it can **only be revived by another Court order**. And since there is none as of this time, what must be enforced by the **DPWH** and the **LGU OBOs** is the full implementation/ enforcement of Secs. 302.3 & 4 of the 2004 Revised IRR of P.D. No. 1096/ 1977 NBCP, which state that under the requirements for building permit application, **only architects** (meaning registered and licensed architects/ **RLAs** only) **can prepare, sign and seal architectural plans and documents**. Any other interpretation may mean culpable violation of one or several valid and subsisting laws that address the matter of the signatory to **architectural** documents.

Considering all of the foregoing, the **PRBoA** requests the **DoJ** opinion soonest as to the status of the **lifted/ dissolved 2005 injunction** and of the legality of the March 2008 instruction of Sec. Ebdane to suspend the implementation and enforcement of **Secs. 302.3 and 4** of the 2004 Revised IRR of **P.D. No. 1096**.

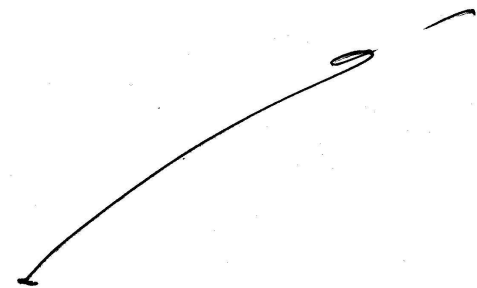
The **PRBoA** officially maintains its position that **an unrestrained, valid and subsisting national law such as R.A. No. 9266/ the Architecture Act of 2004** (which was crafted by Congress with the recorded participation of official representatives of the PICE), **must be accorded its due respect and prominence and be made to prevail over inferior regulations** (such as the IRR or IRR of P.D. No. 1096 insofar as the legal professional practice of **architecture** is concerned)/ **over incorrectly invoked or non-existent laws** (such as the alleged version of Sec. 302 of P.D. No. 1096 being espoused by the PICE) **and over the pertinently superseded/ repealed and/ or antiquated portions of laws and regulations before its approval** (such as those found in **R.A. No. 1582/** the CE law of 1956 and even those found in **P.D. No. 1096/ NBCP of 1977**).

The **PRBoA** looks forward to Your kind attention and prompt/ resolute action on this very, very urgent matter. Your understanding and assistance will go a very long way in helping relieve the continuing/ decades-long injustice foisted on Philippine registered and licensed architects (**RLAs**), presently **exacerbated by the flagrant and willful violations of R.A. No. 9266 for the more than 4 years that it has been in full effect and unchallenged in Court.**

Thank You very much.

Yours sincerely,

For the PRBoA



Armando N. ALLÍ
Chairman

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att: 1) PAST SUPREME COURT DECISION RE THE **AUTOMATIC** LIFTING OF INJUNCTIONS

cc : Offices of the PRC Chairperson, Professional Regulatory Board (PRB) Secretary;

United Architects of the Philippines (UAP), the Integrated and Accredited Professional Organization of Architects (IAPoA)