

OPINION NO. 46, 3, 2008



Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

June 26, 2008

Hon. **ARMANDO N. ALLI**
Chairman
Professional Regulatory Board
of Architecture (PRBoA)
P. Paredes Street, Sampaloc
Manila

Sir:

This has reference to your request for opinion on the query stated therein relative to a court order for the lifting / dissolution of injunction relating to the implementation and enforcement of the 2004 Revised Implementing Rules and Regulation (IRR) of Presidential Decree (PD) No. 1096¹, otherwise known as "National Building Code of the Philippines", specifically those relating to Sections 302.3 and 4 limiting to registered and licensed architects the signing and sealing of architectural documents.

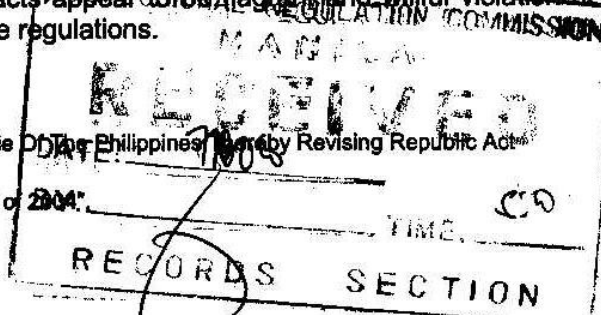
As a backgrounder you state that in the late 2004, then DPWH Secretary Florante Soriquez promulgated the 2004 Revised IRR of P.D. No. 1096, which carried Secs. 302.3 and 4, limiting to registered and licensed architects (RLAs) the signing and sealing of architectural documents to be submitted as part of building permit applications nationwide; and that sometime in 2005, Manila Regional Trial Court, Branch 22, issued a temporary restraining order (TRO) and a preliminary injunction against the implementation of Secs. 302.3 and 4, which purportedly allowed Civil Engineers (CEs) to sign and seal architectural documents.

You also state that on January 29, 2008, the Manila RTC Branch 22, in its Decision, ordered the lifting / dissolution of the injunction it issued against the implementation of Secs. 302.3 and 4; that however, the Philippine Institute of Civil Engineers (PICE) filed a *motion for reconsideration* of the aforesaid January 29, 2008 Decision of Manila RTC; that by reason thereof, in March 2008, DPWH Secretary Hermogenes Ebdane instructed the Offices of the Building Officials (OBOs) that DPWH shall await finality of the Decision on the matter of the *motion for reconsideration* filed by the PICE before implementing Secs. 302.3 and 4 of the Revised IRR of P.D. No. 1096.

You further state that despite the full effectivity of R.A. No. 9266² since April 2004, registered and licensed civil engineers continue to prepare, sign and dry-seal architectural documents, because of the ~~injunction and the instruction on the Revised IRR of P.D. 1096~~ and that these acts appear to be a flagrant and willful violation of R.A. No. 9266, its IRR and derivative regulations.

¹ Entitled : Adopting A National Building Code Of The Philippines Issued By Revising Republic Act Numbered Sixty-Five Hundred Forty One.

² Otherwise known as "The Architecture Act of 2004".



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Since, according to you, RLAs nationwide were in a quandary, you now seek opinion from this Department as to the status of the lifting / dissolution of injunction and the legality of the instruction of DPWH Secretary to suspend the implementation and enforcement of Secs. 302.3 and 4 of the 2004 Revised IRR of P.D. No. 1096 until the final decision of the court.

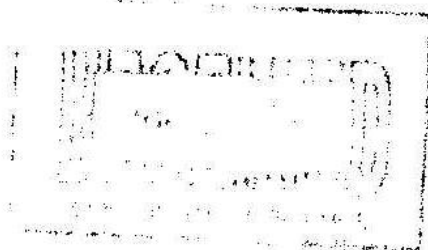
With regret, we have to decline to render the opinion requested.

At the outset, the subject matter of the query necessarily involve an inquiry into the interpretation, propriety and legality of the instruction to OBOs by the Secretary of DPWH, which is a co-equal department and beyond the revisory authority of the Secretary of Justice. By established policy and precedents, this Department has desisted from passing upon the official actuations/rulings of any government official, moreso a co-equal department, over whom this Department has neither supervisory nor revisory authority (Sec. Of Justice Op. No. 26, s. 2006, citing opinions).

Moreover, under the law, it is the Department of Public Works and Highways which has the mandate to develop and implement effective codes, standards, and reasonable guidelines to ensure the safety of all public and private structure in the country and exercise general supervision over the Offices of the Building Officials (Section 3, Chapter 1, Title V, EO No. 292). Thus, the Secretary of Justice has, time and again, refrained from rendering opinion of expressing any comment on matters which is within the primary jurisdiction of another office or agency, unless requested by the concerned agency (Id., Op. No. 20, s. 1988; Nos. 152 and 169, s. 1991). This Department has adopted such policy not only from practical considerations but also out of respect and deference for the competence and expertise of the office or agency having primary jurisdiction to resolve the matter and for its familiarity with the policy repercussions of the issue, as well as the logical recognition of the lawful exercise of an authority conferred by law (Id., Op. No. 39, s. 1976; No. 1, s. 1983; No. 66, s. 1989).

Finally, as noted above, the issues raised relates to a pending case before the Regional Trial Court of Manila. The Secretary of Justice has consistently refrained from rendering opinion or giving legal advice on matter which are sub-judice or those which have already been decided by the courts. To rule on the matter would be an unwarranted intrusion in the exercise of judicial powers and performance of the functions of the RTC judges (Id., No. 19, s. 1998).

Very truly yours,



Raul M. Gonzalez
RAUL M. GONZALEZ
Secretary



of August 2008