DUQUE, Francisco T.
Re: CSC Resolution No. 02-0790;
Request for Exemption
x---x

RESOLUTION NO. 021273

Dr. Francisco T. Duque, M.D., M.Sc., President and CEO, Philippine Health Insurance Corporation or Philhealth, requests the said agency's exemption from the coverage of CSC Resolution No. 02-0790, dated June 5, 2002.

Dr. Duque interposes the present request in the light of the fact that the magnitude of the MEDICARE functions transferred to Philhealth necessitated the hiring of extra personnel on a job order basis, and that "non-renewal of their contracts will result to a severely compromised work processes." He assures the Commission, nonetheless, that a proposal for the creation of contractual positions to be filled up by qualified job order contractors had already been submitted to the Department of Budget and Management (DBM) for its approval.

Furthermore, he seeks clarification on the following related issues:

"1. Are the provisions (of CSC Resolution No. 020790, dated June 5, 2002) applicable to contracts executed before the effectivity of the Resolution but shall take effect by July 1, 2002, which is after the effectivity of this Resolution?; and

"2. Is Section 3 applicable to both Individual and Institutional Contract of Services?"

The CSC issuance he adverted to enunciates the new policy guidelines recently adopted by the Commission to govern the practice of service contracting in the public sector. The promulgation came on the heels of the growing tendency among many government agencies to hire individuals on the basis of service contracts or job orders as a a way of circumventing civil service rules and regulations particularly those aimed at protecting and safeguarding the merit and fitness principle.

Under the new issuance, certain requirements have been imposed in the execution of contracts of service, memorandum of agreements (MOAs) or job orders. It is stipulated under Section 3 thereof some of the terms and conditions that should not be incorporated in such contracts, MOAs or job orders. More specifically, it provides:

"*Section 3. The contract of services, MOA or job order shall not contain the following provisions:*

PRO version Are you a developer? Try out the HTML to PDF API pdfcrowd.com

"a. The employee performs work or a regular function that is necessary and essential to the agency concerned or work also performed by the regular personnel of the hiring agency;

"b. The employee is required to report to the office and render service during the agency's prescribed office hours from 8:00 am to 5:00 pm or for forty (40) hours per week;

"c. The employee is entitled to benefits enjoyed by government employees such as ACA, PERA and RATA and other benefits given by the agency such as mid-year bonus, productivity incentive, Christmas bonus and cash gifts;

"d. The employee's conduct and performance shall be under the direct control and supervision of the government agency concerned;

"e. The employee's performance shall be evaluated by the government agency."

It is also spelled out in the said issuance those individuals who are disqualified from being hired under any of these modes, such as those who have been previously dismissed; those covered by nepotism; and those who are compulsory retired save as to consultancy services. **(Section 4)** At the same time, it is decreed therein the mandatory obligation of government agencies to submit, within thirty (30) days from execution, their contracts of service, MOAs or job orders to the CSC Regional Offices having jurisdiction over them for review of the stipulations, pending which, no services shall be rendered. While failure to submit will not affect the validity of such contract or job order, it will open the responsible official/s to possible administrative sanction.

Moreover, the issuance provides for its own effectivity. It declares that it shall take effect fifteen (15) days after its publication on a newspaper of general circulation. The records disclose that it was published in Today on June 7, 2002, thus, it formally entered into force and effect on June 23, 2002. Its effectivity, however, is without prejudice to existing contracts of service or job orders, for Section 10 states that *"all existing contracts of services and job orders which are in any way inconsistent with these guidelines shall continue to be effective until their termination or expiration"*. This is with the proviso that *"the same shall not be renewed unless they comply with the guidelines herein".*

With these parameters in mind, the Commission shall now endeavor to address the concerns raised. For clarity, the collateral issues shall be resolved first, before assessing the very merit of the request.

The new policy issuance expressly declares that it shall not, in any way, affect the terms and conditions of service contracts or job orders already existing or subsisting at the time of their entry into force. Section 10 reads:

"Section 10. Effect on Existing Contracts of Services and Job Orders.- All existing contracts of services and job orders which are in any way inconsistent with these guidelines shall continue to be effective until their termination or expiration. However, the same shall not be renewed unless they comply with the guidelines herein."

PRO version Are you a developer? Try out the HTML to PDF API pdfcrowd.com

With nary a doubt, the above-quoted provision is put there in keeping with the constitutional guaranty on the non-impairment of contract. Now, the provision speaks of "existing contracts of services and job orders" as being excluded from the ambit of the CSC issuance. The logical questions that arise, in reference to the query posed by Dr. Duque, are: What does the term "existing contracts" comprehend? Does it contemplate the situation he described where the service contracts were executed prior to the effectivity of the policy issuance, but made effective thereafter?

The Commission is of the considered view that it does.

Based on existing jurisprudential pronouncements, it is said that a contract undergoes certain stages of evolution. These are delineated, as follows:

1. preparation, conception or generation, which is the period of negotiation and bargaining, ending at the moment of agreement of the parties;

2. perfection or birth of the contract, which is the moment when the parties come to agree on the terms of the contract; and

3. consummation or death, which is the fulfillment or performance of the terms agreed upon in the contract. **(ABS-CBN Broadcasting Corporation vs. CA, 301 SCRA 572, citing the case of Toyota Shaw, Inc. vs. CA, 244 SCRA 320)**

From the foregoing, a contract comes into being at the precise moment that there is meeting or concurrence of the minds between and among the parties. Once the parties agree as to the terms and conditions, a contract is produced. Whether its effectivity is fixed at a later date does not detract from the fact of its being already a legal, if not an objective, reality.

In the situation detailed by Dr. Duque, when Philhealth and the individual employees affixed their signatures in their respective service contracts, there was unequivocally a meeting of the minds, so that thereupon, there commenced a contractual tie between the agency and these individual employees. Since these service contracts were perfected prior to the effectivity of the policy issuance in question, these contracts can be said to lie within the purview of the clause "existing contracts of services and job orders," excepted from the scope and coverage of the issuance in question.

The above conclusion is further borne out when due account is taken of the doctrine of non-impairment of contracts. *"Laws existing at the time of the execution of contracts are the ones applicable to such transactions and not later statutes, unless the latter provide that they shall have retroactive effect. Later statutes will not, however, be given retroactive effect if to do so will impair the obligation of contracts, for the Constitution prohibits the enactment of a law impairing the obligation of contracts. x x x And a statute which authorizes any deviation from the terms of the contract by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with those which are however minute or apparently immaterial in their effect upon the contract, impairs the obligation, and such statute should*

PRO version Are you a developer? Try out the HTML to PDF API pdfcrowd.com

not therefore be applied retroactively." **(Agpalo, Statutory Construction, Third Edition [1995], p. 289)**

At the time the service contracts Dr. Duque alluded to were entered into between Philhealth and the employees concerned, the governing rules were those spelled out under Rule XI of the Revised Omnibus Rules on Appointments and Other Personnel Actions. Subsequent to the execution of these contracts, however, CSC Resolution No. 02-0790, dated June 5, 2002, was promulgated. As previously mentioned, this latter enactment imposes new and substantive requirements relating to the execution of service contracts. Consequently, it cannot be made to apply retroactively so as to modify the service contracts already perfected without contravening the non-impairment of contract guaranty.

With respect to the second query, it should be clarified that Section 3 of the CSC issuance applies to both individual and institutional contracts of service. Aside from the fact that the provision in issue speaks of *"contract of services"* without making any distinctions, there is also no cogent reason why the two types of contract of service should be treated differently. While these contracts differ essentially insofar as it concerns the manner of execution and the contracting parties involved, their legal implication cannot be any different-- they basically do not give rise to government employment. The incorporation of Section 3 in the CSC issuance only serves to highlight and underscore the point that service contracts, be they individual or institutional, do not occasion employer-employee relationship.

Having disposed of the peripheral matters, the merit of the request for exemption shall now be inquired into.

As earlier mentioned, Dr. Duque premises the present request on the ground that with the transfer of MEDICARE functions to Philhealth, one of the priority programs of the present dispensation, additional manpower is needed to cope with the volume and magnitude of work. Such added personnel can only be accommodated through contract of service arrangements due to lack of plantilla items.

The Commission takes judicial notice of the fact that Philhealth is a newly-organized government agency, and thus, still deep in the process of fine-tuning its operational systems and processes. It also notes that a proposal for the creation of additional positions in the said agency is pending approval by the DBM.

Nonetheless, it is not convinced that the foregoing are sufficient considerations for exempting the agency from the coverage of the policy issuance. It should be noted that the policy issuance in question is actually intended as a measure to clean up or put in order the workings of the bureaucracy. It is meant to put a stop to the indiscriminate practice of agencies of entering into service contracts whose terms and conditions are suspect. In not a few instances in the past, the government had ended up being in the short end of the bargain. It has been observed that the standard clause of *"no employer-employee relationship"* had been overly abused. Unscrupulous service contractors would foist the same to evade any administrative liability incurred during the term of their contracts, but then go on to apply for retirement benefits, by alleging circumstances purportedly indicating the exercise of control and supervision by the agency in order to establish the presence of employment relationship. It was for the purpose of curbing this untoward happenstance and all other inimical off-shoots of hastily formulated or "*un-sanitized*" service contracts that the policy issuance was conceived.

PRO version Are you a developer? Try out the HTML to PDF API pdfcrowd.com

Now, the grounds for exemption being invoked by the Philhealth are not enough to tilt the weight of the scale in its favor vis-a-vis the overriding objective of the policy issuance as elucidated above. More so, the fact that it is still in the process of fine-tuning its operational systems should be a greater reason why it should now be placed within the coverage of the issuance. It may not be amiss to mention also that instead of hiring additional manpower, Philhealth should consider maximizing the potential of its existing personnel complement by adopting innovative measures like job rotation or time-shifting.

WHEREFORE, the Commission hereby rules, as follows:

1. Contracts of service, memorandum of agreements and job orders executed or perfected before but made effective after the effectivity of CSC Resolution No. 02-790, dated June 5, 2002, shall form part of the *"existing contracts of services and job orders"* within the contemplation of Section 10 of the said resolution. However, Philhealth is directed to submit an inventory of all its service contracts to the Civil Service Commission-National Capital Region (CSC-NCR);
2. The strictures of Section 3 of the resolution in question shall be applicable to both individual and institutional contracts of services;
3. The request of the Philippine Health Insurance Corporation to be exempted from CSC Resolution No. 02-0790, dated June 5, 2002, is DENIED. All contracts entered on or after the date of effectivity of the latter resolution should be submitted to the appropriate CSC regional office for review not later than three (3) days from the execution thereof. To facilitate the review process, the Philhealth, instead of submitting contracts on a piecemeal basis, may submit to the CSC-NCR a standard or *pro-forma* contract of service. If the standard contract is found to be in conformity with the policy issuance, it may then serve as basis for the subsequent hiring of people, especially in situations where time is of the essence or in other analogous circumstances. Nonetheless, executed service contracts shall still be submitted, with the resume of the individuals hired, in order to ensure that no departure has been made from the reviewed standard service contract; and
4. Service contracts, which remain unchanged even after the declaration by the Commission or its appropriate regional office that a provision or provisions thereof are invalid, shall be forwarded to the Commission on Audit for appropriate action.

Quezon City, OCT 01 2002

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)
JOSE F. ERESTAIN, JR.

PRO version Are you a developer? Try out the HTML to PDF API pdfcrowd.com

Commissioner

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

FPG/RTM/X1/Y22/jca196
NDC-02-0697
20020619-085
/duque'r

PRO version Are you a developer? Try out the HTML to PDF API pdfcrowd.com