



Republic of the Philippines  
**CIVIL SERVICE COMMISSION**

LAPASTORA, F.L.  
Re: Drug Test on Existing  
Organic Employees;  
Query

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RESOLUTION No. 991410

F.L. Lapastora, Officer-In-Charge, Administrative Department, Manila International Airport Authority (MIAA), Ninoy Aquino International Airport, requests for an opinion as to whether or not drug tests can be administered to existing organic personnel of MIAA.

The request of Lapastora reads, as follows:

*"We write to request opinion on the conduct of drug test to existing organic employees of the MIA Authority.*

*"While we are aware of CSC M.C. # 34 s. 1997, prescribing that all officials and employees entering government service shall undergo a drug test among other medical examinations, we are in the dark as to whether we can administer said test to our existing organic personnel.*

*"It is our belief that conducting a drug test to our employees will ensure a physically and emotionally well-balanced workforce of the MIAA."*

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Pertinent portions of CSC Memorandum Circular No. 34, s. 1997, cited in Lapastora's letter, reads, as follows:

*"Pursuant to CSC Resolution No. 97-4683 dated December 18, 1997, the Civil Service Commission promulgates and adopts a policy on pre-employment mental, physical-medical examinations to ensure the highest degree of productivity of its employees. All officials and employees entering the government service shall be required to undergo the following tests:*

1. Blood Test
2. Urinalysis
3. Chest X-ray
4. Drug Test
5. Neuro-psychiatric Exam (if necessary)"

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While the abovesited circular pertains only to pre-employment requirements, the intent and purpose of the Commission in issuing the said circular, however, is to "ensure the highest degree of productivity of its (the government's) employees". Such purpose, ultimately, is the aim of the Commission not only for new employees but also for the entire bureaucracy.

Article IX-B, Section 3, of the 1987 Constitution mandates that the Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service.

Furthermore, Art XI, Section 1 of the 1987 Constitution states:

*"Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."*

Thus, public officials and employees may also be examined from time to time and be disciplined when necessary if they violate the public trust and fail to serve with the utmost responsibility, integrity, loyalty and efficiency.

Book V of Executive Order No. 292 (Administrative Code of 1987) enumerates the powers and functions of the Commission, including the power to "promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government." (Sec 12 (3), Chapter 3, Subtitle A, Title I, Book V, E.O. 292)

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Prescinding therefrom the Commission, as the central personnel agency of the government, may validly implement a policy on medical examinations for existing employees, which may include drug testing, to ensure that only the best and most fit are retained in the government.

It is in this light that the Commission issued CSC Memorandum Circular No. 17, s. 1989 providing for a continuous evaluation of the physical and mental fitness of government employees for continued employment in the public service. Pertinent provisions of the said circular are stated as follows:

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*"The Commission notes that there is a need for a continuing evaluation of the state of health of government employees. They must be given a chance to undergo preventive remedial health measures to ensure that they are in good health at all times.*

*"In view of the foregoing, a health evaluation system shall be established in every department and agency whereby all government employees shall be required to undergo annual medical and physical examinations. Where an employee or official is noted to be unable to perform his duties for health reasons, whether physical or mental, the supervisor is obliged to report incidence of such irregular or unexplained behavior for evaluation and corrective action.*

*"Where the evaluation indicates that the employee is unable to continue working because of his physical or mental condition, steps shall be taken to effect improvement of the person's physical or mental state. Where this is deemed not possible and the person's continuance in the service may further jeopardize his health, that of his co-employees health and the service itself, he may be separated. This separation, however, shall not be disciplinary in nature and shall entitle the person to separation and other benefits under existing laws."*

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It is apparent from the aforementioned circular that a "health evaluation system" may be established by any agency or department. Such evaluation system was not specifically described in the said circular as it was left to the discretion of each agency or department to determine what particular health examination/s may be given to their respective personnel, considering the difference in the finances, logistics and the peculiar need of each agency/department.


Considering the foregoing premises, a drug test is definitely one of the optional examinations that may be included in a health evaluation system. It is not difficult to see the detrimental effects of the use of prohibited drugs on the productivity and efficiency of its user. Most assuredly, a drug user has no place in government service. In *People vs. Bati* (189 SCRA 106), the Supreme Court ruled:

*"...those who are caught in the strangle hold of prohibited drugs not only slide into the ranks of the living dead, what is worse, they become a grave menace to the safety of the law-abiding members of society. (citing People vs. Lamog. 172 SCRA 342, 349)*

It should be stressed that conducting medical examinations, including drug tests, is a management prerogative of every employer, including the Government. It is the prerogative of all employers to regulate all aspects of employment, including medical examinations, and may impose conditions and requirements for continued employment which existing personnel may be required to comply.

However, requiring an employee to undergo drug testing brings to the fore the issue as to whether or not they are violative of basic Constitutional rights, particularly the rights of an individual against self-incrimination and the right to privacy.

As to the right against self-incrimination, it is true that it may be invoked not only in criminal proceedings but also in administrative investigations and may be claimed not only by the witness but also by the accused. Nevertheless, the kernel of the right is not against all compulsions, but against testimonial compulsion (*Alih v. Castro*, 151 SCRA 279) and against production of documents, papers and chattels that may be used as evidence against the witness, except where the State has a right to inspect the same. (*Almonte v. Vasquez*, 244 SCRA 286)



The Supreme Court, in the case of *United States v. Tang Teng* (23 PHIL 145), ruled as follows:

*"Such an inspection of the bodily features by the court or by witnesses, can not violate the privilege granted under the Philippine Bill, because it does not call upon the accused as a witness - - it does not call upon the defendant for his testimonial responsibility. Mr. Wigmore says that evidence obtained in this way from the accused is not testimony by his body but his body itself"*

Regarding the right to privacy, it is presumed that every individual entering into government service naturally diminish their privacy expectations. Unlike employees of private firms, civil servants always expect inquiry into their fitness and probity, as a *"Public Office is a public trust"*. The responsibility of the government to safeguard public safety and interest and the constitutional mandate of this Commission to ensure the fitness and merit of civil service employees far outweighs the right to privacy of its employees. It is also the Commission's stand that drug testing only involve limited intrusions into an employee's privacy which is overcome by public interest.

Furthermore, government employees were already required to be subject to pre-employment drug tests. Aside from the said test, they are also subject to physical examinations on a regular basis in accordance with CSC Memorandum Circular No. 17, s. 1989 (supra).

Relevant also to the issue at hand is Opinion No. 7 s. 1999 of the Department of Justice (DOJ) pertaining to the proposal of the NBI to conduct regular drug testing of employees, particularly its agents and special investigators. Pertinent portions of the said opinion read, as follows:

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*"It has been held that the qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or qualification or assumption of office but during the officer's entire tenure (Frivaldo vs. COMELEC, 174 SCRA 254)*

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"One of the qualifications for appointment to a civil service position is the possession of good physical and mental condition. It is provided that "[E]mployees shall be selected on the basis of fitness to perform the duties and assume the responsibilities of the position" (Sec. 21[1], Chap. 5, Subtitle A, Title I, Book V, Administrative Code of 1987).

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"The requirement that the qualification for appointment, particularly those pertaining to mental and physical fitness, must subsist all throughout the employee's government service explains itself. Failure to maintain good physical and mental health while in the government service could result in poor performance or breed inefficiency and incompetence in the performance of duties to the detriment of the public service.

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It is clear from the aforesaid opinion that drug testing do not have any constitutional infirmities in as much as one of the qualifications to a civil service position is the possession of good physical and mental condition. More significantly, the opinion holds that such qualification *should subsist* all throughout the employee's service.

All in all, the issue of mandatory drug-testing for existing organic employees of the government boils down to the question as to whether it is a proper exercise of the Police power of the state. Police power is defined as "the power of promoting the public welfare by restraining and regulating the use of liberty and property" (The Police Power [Chicago, 1904], cited in CONSTITUTIONAL LAW by Justice Isagani A. Cruz, 1991 ed.)

In the case at bar, the effect of drug using transcends the private interest of the government employee as it directly involves and touches the interest of the public at large. The danger that drug use creates is not only a wrong to an employee's own person but also an injury to the public. Drug use of civil servants, multiplied a thousand fold can very well cause the breakdown of the government itself and eventually hurt the welfare of society and the public interest.

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The second paragraph of a resolution, dated March 31, 1998 by the Commission on Human Rights pertaining to mandatory drug-testing for purposes of pre-employment examinations is also applicable in the instant case. Thus, it was stated therein that:

*"Respect for human rights is guaranteed and secured by the Constitution but this constitutional guarantee does not import an absolute right in each person to be, at all times and in all circumstances, freed from restraint. For indeed, there are manifold restraints to which every person is necessarily subject for the common good. (Rubi vs. Provincial Board, 39 Phil 660, 705, citing cases; Morfe vs. Mutuc, 22 SCRA 424) This is grounded upon the fundamental principle that "persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the state. (Jacobson vs. Massachusetts, 49 L Ed. 643, citing cases) Stated otherwise, the possession and enjoyments of all rights are subject to the police power of the state which is the state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. (Pita vs. Court of Appeals, 178 SCRA 362)"*

At any rate, the Commission would like to emphasize that the purpose of requiring drug testing among its employees is for the sole purpose of testing their physical and mental fitness for public service. Thus, government employees who are positive for drugs and who can offer no satisfactory explanation may be subject to dismissal from the service. However, the test results of the said drug test may not be turned over to any other agency, including the Public Prosecutor's Office and the Ombudsman, without the employee's written consent.


WHEREFORE, the Commission hereby rules that the MIAA may administer Drug Test on its existing organic personnel, as the same is not violative of human rights nor is it an intrusion into ones' privacy.

Quezon City JUL 01 1999

  
CORAZON ALMA G. DE LEON  
Chairman

  
THELMA P. GAMINDE  
Commissioner

**DID NOT PARTICIPATE**  
JOSE F. ERESTAIN, JR.  
Commissioner

Attested by:  
  
ARIEL G. RONQUILLO  
Director III

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