



Department of Migrant Workers
Central Records Division
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City of Mandaluyong 1550 National Capital Region

DEPARTMENT OF MIGRANT WORKERS

Central Records Division

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By: MARTIN EYES III

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Office of the Secretary

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**DMW HAS BEEN DULY CONSTITUTED AND
IS NOW ON INITIAL IMPLEMENTATION**

Summary

The Creation and Consolidation/Merger provisions of RA 11641 (Sections 4 & 19) duly created, established and constituted the Department of Migrant Workers. The Transition Period provision (Section 23) did not negate, reverse or suspend the legal fact of due constitution which happened when the Act took effect on February 3, 2022.

This is a case of contradictory use of the word "constitute". Sections 4 & 19 use "are constituted" while Section 23 uses "shall not be constituted". Which use shall prevail?

The specific (naming which agencies) and definite (describing what happens, i.e. "are consolidated, merged, *constituted*, and subsumed") peremptory prescriptions in Sections 4 & 19 stated in the present tense, prevail over the general negative conditional future prescription in Section 23 (The Department shall *not be constituted* without an appropriation, etc...) which really is not a prohibition or negation but a recognition: (a) of the need for completing the tasks assigned to the Transition Committee within two years, with shorter deadlines for each task; and (b) of the initial implementation period whose operational appropriation is provided for by Section 26, which implementation is executed by the personnel of the consolidated and merged agencies in "hold-over capacity" [Section 21 (a)].

Besides, Sections 4 & 19 give life, while Section 19 kills; thus, the life-giving provisions must be upheld.

During the Transition Period and initial implementation, **the Department is operational but not yet fully**. This is the harmonious and effective interpretation of the apparently contradictory use of the word "constitute". And obligatorily, in order to be operational during this initial implementation, the Secretary has to exercise, at his discretion, any, some, or all of his powers and functions granted by the Act.

Duly constituted

- RA 11641 was passed to create the Department of Migrant Workers. To actualize this legislative and Presidential policy, the Act decreed in its Sections 4 and 19 that:

"Section 4. Creation. – The Philippine Overseas Employment Administration (POEA) created under Executive Order No. 247, Series of 1987, as amended, and all the

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entities, agencies and units enumerated in Section 19 are consolidated and merged, and hereby constituted as the Department of Migrant Workers, hereinafter referred to as “the Department”. The Department is hereby organized structurally and functionally in accordance with the provisions of this Act.” (underlining and emphasis supplied)

“Section 19. Consolidation and Merger of Agencies and Functions. – The following agencies are hereby consolidated and merged into and constituted as the Department, and their powers and functions subsumed to the Department which shall assume and perform all their powers and functions:

- (a) The POEA, as created under Executive Order No. 247 and Republic Act No. 8042, as amended;
 - (b) The Office of the Undersecretary for Migrant Workers’ Affairs (OUMWA) of the DFA as provided under Republic Act No. 8042, as amended;
 - (c) All Philippine Overseas Labor Offices (POLO) under the DOLE;
 - (d) The International Labor Affairs Bureau (ILAB) under the DOLE;
 - (e) The National Reintegration Center for OFWs (NRCO) under the OWWA;
 - (f) The National Maritime Polytechnic (NMP) under the DOLE; and
 - (g) The Office of the Social Welfare Attaché (OSWA) under the DSWD.”
- (underlining and emphasis supplied)
- When the Department of Migrant Workers Act (RA 11641) took effect on February 3, 2022, these “creation” and “consolidation/merger/constitution” provisions came to life and to force, and thus **on that date, duly created, established, and constituted the Department** which, as provided for, now assumes and performs all the powers and functions of the seven merged agencies, namely: POEA OUMWA, POLO, ILAB, NRCO, NMP, and OSWA;

These 7 agencies, then, neither continue to exist separately nor to be under the control and supervision of their erstwhile mother Departments and Secretaries as their umbilical cords were cut off on February 3, 2022;

Any attempt by anyone from these seven merged agencies to refuse to recognize the authority of the Secretary of the Department of Migrant Workers shall be dealt with in accordance with law.

Due Constitution and Establishment not negated, reversed, rendered ineffective or suspended by Transition Period

- When the Congress put in Section 23 (Transition Period), it neither intended to contradict itself nor to render the constitution of the DMW that it has already decreed, to be invalidated, reversed or suspended by that portion (the last paragraph of Section 23) saying:

“The Department shall not be constituted without an appropriation in the 2023 General Appropriations Act; an effective implementing rules and regulations; and a staffing pattern.”
- For it has long been recognized that:

Congress cannot commit logical fallacy. Logical fallacy relates to the law of contradiction, which is a principle in logic stating that “a thing cannot at the same time both **be and not be** of a specified kind (as a table and not a table) or in a specified

manner (as red or not red)" ... "There are three laws of logic: (1) the law of contradiction, (2) the law of excluded middle (or third), and (3) the principle of identity. The three laws can be stated symbolically as follows: For all propositions p , it is impossible for both p and not p to be true. 1/

"The requirement that law, understood as a system of norms, has to be consistent, that is to say it must lack contradictions, seems to be even stronger than the requisite of completeness. This requirement shows two directions: on the one hand, it is frequently asserted that a conflict between norms issued by a rational legislator is logically impossible, since it contradicts the premise of rationality. On the other hand, it is admitted as a postulate of legal science, that the system of norms must lack contradictions. Consequently, its "interpretations" must be based on that principle." 2/

- The "shall-not-be-constituted" phrase of the last paragraph of Section 23 (*Transition Period*) cannot be interpreted as having rendered ineffective the indispensable provisions of Section 4 (*Creation*) and of Section 19 (*Consolidation and Merger of Agencies and Functions*) for the realization of the law's purpose which is creation and establishment of the DMW. Section 23 merely acknowledges the need for some time to effect the smooth transition and merger of the seven agencies, for which certain tasks were mandated to be completed within a time period not later than two years.
- Since this appears to be a case of contradictory use of the word "constitute" in one law, the pertinent rules on statutory construction shall apply, such as:

"In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy. 3/

"One of the well-established rules of statutory construction enjoins that endeavor should be made to harmonize the provisions of a law or of two laws so that each shall be effective." 4/

"A special and specific provision prevails over a general provision irrespective of their relative position in the statute. *Generalia specialibus non derogant*. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment." 5/

"However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment." 6/

"We must interpret not by the letter that killeth, but by the spirit that giveth life." 7/

"Since no legislature ever intends to give two simultaneous inconsistent commands; every statute must, if possible, be reduced to a single, sensible meaning before it is applied to any case". 8/

- In light of the foregoing rules on statutory construction, it is submitted that Sections 4 and 19 prevail over Section 23.

In this case "constitute" is the critical word. Secs. 4 and 19 use "are constituted" while Sec 23 uses "shall not be constituted". According to the law of contradiction, ~~if they really are contradictory, one of them must not be true.~~ One

giveth life and the other killeth. Consequently, the provisions giving life to the Department should be upheld.

As cited above, "However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment." Also: "Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."

Moreover, given that we observe the principle of *generalia specialibus non derogant* or the rule that the specific prevails over the general, if we are to use this criteria, it is clear that Sections 4 and 19 prevail over and trump Section 23. Because Sections 4 and 19 are specific and definite and are stated in the mandatory present tense, while the last paragraph of Section 23 is generally stated in the negative for a conditional future situation.

- But, as we are to harmonize and make both provisions effective, we can make it happen if we construe the use of "not be constituted" in Section 23, in the context of the purposes of the Transition Committee (TC) from the perspective of the provisions of "the whole law, and its object and policy".
- The purposes of the TC, are: (a) to facilitate the complete and full operation of the Department which shall not be later than two (2) years after the effectivity of the Act, and (b) to effectively implement the smooth and orderly transfer to the Department of the subsumed agencies, by promulgating the necessary implementing rules and regulations. (3rd Paragraph, Section 23).
- Taking this sense of the third paragraph of Section 23, we can understand the general negative use, as referring to what the Executive Secretary had described, in his letter to Secretary Mama-o, dated March 14, 2022, that: "Accordingly, the DMW shall be fully operational only after the above-mentioned conditions have been complied with", meaning that **the Department is already operational, albeit not yet fully.**
- Nothing in the last paragraph of Section 23 says that the Department, duly constituted by virtue of Sections 4 and 19, has been abolished or frozen into a state of suspended animation until after two years of the Act's effectivity and/or while the TC's tasks are being worked on. As both contending norms must be given effect, it stands to reason that **the continued existence and functioning of the Department are effective, and that the deadlines for completing the TC jobs are also effective.**
- The Transition Committee (TC) is an executive Team or Task Force under the one command of the Secretary as the President's Alter Ego for RA 11641, because it is just a group of persons of unequal power and authority without any specific mandate to operate as a collegial body, simply brought together to complete certain tasks.
- The sensible meaning that can be given to the apparent contradiction, is: **that the DMW now exists and functions while in the process of completing the smooth and orderly subsumption of the seven agencies into the Department,** since, indeed, "no legislature ever intends to give two simultaneous inconsistent commands..."
- This operational fact is strongly upheld and supported by Section 26 of RA 11641 which provides for appropriations for the Act's initial implementation that is now being

executed by personnel of the merged agencies performing their functions on "hold-over capacity" [Section 21(a)]. This provision on hold-over capacity can only signify that the 7 agencies have already been duly merged and duly constituted as the Department.

The Secretary has authority to exercise his powers and functions to execute the initial implementation during the transition

- In this initial implementation during the transition period, necessarily, the Secretary is obliged to exercise his plenary and self-executory powers and functions, such as:
 - "Provide executive directions, supervision, and control over the entire operations of the Department and exercise supervision over its attached agency for program and policy coordination" [Section 8 (a)]; and
 - "Perform such other tasks as provided under existing laws, including the functions of the POEA Administrator under Executive Order No. 247, Republic Act No. 8042, as amended and other laws". [Section 8(m)].
- There is nothing in RA 11641 that prohibits or can be interpreted as prohibiting the President's Alter Ego for the execution of RA 11641 or the Secretary of the DMW, from exercising his self-executory and plenary powers during the transition period. So, just to be clear: **during the transition period, the Secretary can and may, at his discretion, exercise all his powers and functions!**
- It is well-established that "what is not expressly or impliedly prohibited by law may be done, except when the act is contrary to morals, customs and public order." 8/

FOR THE GUIDANCE OF ALL CONCERNED.

ISSUED, 11 April 2022, City of Mandaluyong.


ABDULLAH D. MAMA-O
Secretary

End Notes

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2/ "Contradictions in the Legal System" by Ricardo Alberto Caracciolo Cordoba,

3/ Statutory Interpretation: General Principles and Recent Trends
March 30, 2006 – September 24, 2014

4/ G.R. No. L-1276, April 30, 1948, VALERA, vs TUASON, Jr., et al

5/ G.R. No. L-41861, March 23, 1987, Commissioner of Customs, vs. Court of Tax Appeals, Smith Bell & Co., Inc

6/ Statutory Interpretation: General Principles and Recent Trends, March 30, 2006 – September 24, 2014,

7/ G.R. No. 100113 September 3, 1991, Cayetano vs. Monsod, et al; also, G.R. No. 200103, April 23, 2014, CSC vs. Cortes

8/ Frederick J. De Sloovere, Contextual Interpretation of Statutes, 5 Fordham L. Rev. 219 (1936).

9/ G.R. No. 213948, April 25, 2017, ~~KNIGHTS OF RIZAL VS. DMCI HOMES, INC., et al.~~

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