

Republika ng Pilipinas
(Republic of the Philippines)
MINISTRI NG EDUKASYON AT KULTURA
(MINISTRY OF EDUCATION AND CULTURE)
Manila

July 12, 1982

MEC M E M O R A N D U M
No. 171, s. 1982

TEACHERS ENTITLED TO CONTINUATION OF LIVING ALLOWANCE
FROM THE SPECIAL EDUCATION FUND AND COST OF LIVING
ALLOWANCE PURSUANT TO LOIMP NO. 116

To: Bureau Directors
Regional Directors
Chiefs of Services and Heads of Units
Schools Superintendents
Presidents, State Colleges and Universities
Vocational School Superintendents/Administrators

1. Inclosed is a copy of a 2nd Indorsement dated March 22, 1982 of the Minister of Justice (Opinion No. 41, s. 1982) to the effect that public school teachers are entitled to the continuation of their living allowance from the Special Education Fund and to receive the cost of living allowance pursuant to Letter of Implementation No. 116 dated May 12, 1980.
2. In view thereof, MEC Memorandum No. 46, s. 1982, terminating the payment of cost of living allowance under R.A. No. 5447 as of December 31, 1978 is hereby rescinded.
3. Please be guided accordingly.

(SGD.) ONOFRE D. CORPUZ
Minister

Incl.:
As stated

Reference:
MEC Memorandum: (No. 46, s. 1982)

Allotment: 1--(D.O. 1-76)

To be indicated in the Perpetual Index under the following subjects:

ALLOWANCE
LEGISLATION

RULES & REGULATIONS
TEACHERS

(Inclosure to MEC Memorandum No. 171, s. 1982)

Republika ng Pilipinas
MINISTRI NG KATAPUNGAN
(MINISTRY OF JUSTICE)
Manila

OPINION NO. 41, s. 1982

2nd Indorsement
March 22, 1982

Respectfully returned to the Honorable, the Chairman, Commission on Audit, Quezon City his within request for "advisory opinion" on the legal effect of the issuance of Letter of Implementation No. 116, dated May 12, 1980, which grants a uniform cost of living allowance to all government employees, upon the cost of living allowance being paid out of the Special Education Fund created under R.A. No. 5447 by the local school boards to public school teachers pursuant to R.A. No. 4670 (the Magna Carta of Public School Teachers).

Subject to an extended discussion hereunder stated, we are of the opinion that the public school teachers involved in the present query (of Calococan City and Muntinlupa) are entitled to the continuation of the grant of the cost of living allowance from the Special Education Fund and to receive the cost of living allowance pursuant to LOImp. No. 116.

It appears that prior to the promulgation of LOImp. No. 116 the subject teachers had been receiving the cost of living allowance authorized by their respective local school boards pursuant to R.A. No. 4670 and R.A. No. 5447, supra.

However, upon the issuance of LOImp. No. 116 and National Budget Circular No. 329 the payment of the aforesaid cost of living allowance from the Special Education Fund was stopped presumably in view of the ruling of the Acting Minister of the Budget dated May 12, 1981, to wit:

"National Budget Circular No. 329 particularly paragraph 3.5 states that: 'Agencies who have been giving amelioration benefits, inflation-connected allowances and other similar allowances of at least ₱3.35 per day or ₱100 per month or ₱1,200 per annum, as the case

may be, to their employees mentioned in Section 2.0 hereof, shall be deemed to have complied with LOImp. No. 116 and shall not grant the emergency cost of living allowance authorized herein. Provided, however, that those who have been granting less than the amount specified herein, shall grant the difference in amount'.

'Since the said teachers are already receiving cost of living allowances from the local school boards, only the difference in the amounts is deemed authorized and in no case shall exceed the \$100 cost of living allowance authorized in the National Budget Circular No. 329.'

On the other hand, you state that it is the view of that Commission that:

"... local school boards are authorized to grant cost of living allowance to public school teachers to be paid out of the Special Education Fund, created under R.A. No. 5447, which is separate and distinct from the national and local funds, the same being constituted from the proceeds of an additional real property tax and a certain portion of the taxes on Virginia-type cigarettes and duties on imported leaf tobacco."

At the outset we wish to state that while at first impression we would have desisted from rendition of opinion on the present query, considering that the Ministry of the Budget had already expressed its views, and we possess no revisory authority over said office, we are nonetheless rendering opinion on the query because the Acting Chairman of the Commission on Audit who, we believe, has authority over the matter which involves a money claim against the government, has requested us to give him our "advisory opinion". Furthermore, we believe that it is our duty to give the advice being sought because so many public school teachers are dependent upon a determinative resolution of the question.

We do not find any provision in LOImp. No. 116 which would preclude the receipt of the allowance granted thereunder to the teachers already receiving allowance from the local school boards under R.A. Nos. 4760 and 5447 or vice versa.

Significantly, the injunction found in National Budget Circular No. 329 is cited by the Ministry of the Budget which provides that agencies already giving allowances and other amelioration benefits to their employees shall not grant the cost of living allowance authorized in LOImp. No. 116. We believe that this prohibition does not apply to the cost of living allowance authorized under R.A. No. 5447 which is granted not by the Ministry of Education and Culture to be paid out of the appropriation of the said Ministry but by the local school boards, paid out of the Special Education Fund.

Besides, we agree with your position that the cost of living allowance, the payment of which by the local school boards is authorized under R.A. Nos. 4670 and 5447, should be treated differently and separately from the cost of living allowance authorized under LOImp. No. 116. The former proceeds from the specific authority of the local school boards granted to it by R.A. No. 5447 "to authorize the provincial, city or municipal treasurer as the case may be, to disburse funds from the provincial, city or municipal share in the Special Education Fund pursuant to the budget prepared under Section seven thereof and in accordance with the rules and regulations to be promulgated under Section ten of this Act." (Sec. 6) On the other hand, the payment of the latter was authorized by the President pursuant to P.D. No. 985 (the "Budget Reform Decree on Compensation and Position Classification of 1976").

Moreover, the grant to national employees, including the public school teachers, of the cost of living allowance under LOImp. No. 116 is mandatory. LOImp. No. 116 states:

"Each and every official/employee of the National Government, including state universities and colleges, whether permanent, temporary, emergency, contractual or casual, shall be granted a cost of living allowance of ₱3.35 a day or ₱100 per month in case of daily or monthly employees respectively."
(Underscoring supplied.)

Also, the amount needed to implement the aforequoted directive in the said LOIrp. is chargeable to "(a) lump-sum appropriation for salary increase incorporated in the budget of national government agencies/offices and (b) salary lapses and other personal services savings of the Ministry/bureau/office/agency concerned. x x x".

On the other hand, the cost of living allowance paid to teachers by the local school boards is chargeable to the share of the province, city or municipality, as the case may be, in the Special Education Fund created in R.A. No. 5447 (Sec. 1), over which fund the authority of the local school boards is plenary under section 9 of the same Act, to wit:

"SEC. 9. Turnover of the collections; release of the Fund is ministerial. The municipal or city treasurers concerned shall retain the shares of the municipal or city government and turn over the portions of their collections of the taxes and penalties mentioned in Section four hereof appertaining, as the case may be, to the provincial government and/or to the National Government to the respective treasurers thereof monthly within fifteen days of every succeeding month. No portion of the collections may be transferred or diverted to the general or any other fund of the National Government, or used or expended for any purpose other than those specified in this Act. It shall be the ministerial duty of the Budget Commissioner, the Treasurer of the Philippines, all municipal, provincial and city treasurers, as well as of the officials and employees under their supervision and control to effect releases from the Fund within fifteen days from receipt of the order and/or authorization by the Secretary of Education, in respect to the share of the National Government from the Fund, and by the municipal, city or provincial school boards, in respect to their respective shares from the Fund." (Underscoring supplied.)

Finally, the prohibition contained in Executive Order No. 80-03 of the Metro Manila Commission which states that no one shall receive the cost of living allowance from more than one source " (paragraph 2.5) does not contemplate the public school teachers who have been receiving the cost of living allowance from the respective local school boards. As we see it, subject prohibition contemplates the situation where an employee is on detail in another office and he is enjoined not to receive the cost of living allowance mandated by LOImp. No. 116 concurrently from his mother office and from the office to which he is detailed.

In view of the foregoing we reiterate our reply as hereinabove stated, that the subject public school teachers are entitled to the continuation of their living allowance from the Special Education Fund and to receive the cost of living allowance pursuant to Letter of Implementation No. 116.

(SGD.) RICARDO C. PUNO
Minister of Justice

A true copy