

On Drug Testing of Government Employees and Candidates for National and Local Office

Republic Act No. 9165 otherwise known as the COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, authorized drug testing to be done by any government forensic laboratories or by any of the drug testing laboratories accredited and monitored by the Department of Health (DOH) to safeguard the quality of test results. Section 36 of the CDDA enumerates, among others, who shall be subjected to drug testing, viz:

"x x x

(d) Officers and employees of public and private offices-Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations which shall be borne by the employer, for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination subject to the provision of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;

"xxx

(g) All candidates for public office whether appointed or elected both at the national or local government shall undergo mandatory drug test.

In addition to the above stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15 of this Act."

Respect for human rights is guaranteed and secured by the constitution but constitutional guarantee does not import an absolute right in each person to be, at all times and in all circumstances, freed from restraints. 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 subject 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. E & 643 citing cases). Stated otherwise, the possession and enjoyment 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).

It should be noted however that the law requires only random drug testing for offices and employees of public and private offices and the cost thereof shall be borne by the employer. On the other hand, all candidates for public office whether appointed or elected both in the national or local government shall undergo a mandatory drug test. The CDDA is part of the integrated and coordinated government effort to control, if not eradicate, drug substance abuse in the country. It needs no further elaboration nor proof, for it has long been accepted and proved that substances classified as prohibited or regulated under the Dangerous Drug Act impair both judgment and skill of persons under its influence which makes them unfit to perform their functions.

It has been opined that compulsory drug testing may violate the right against self-incrimination, which is guaranteed under

Section 17, Article III of the Constitution, which states that *"No person shall be compelled to be a witness against himself."* Essentially this right protects an individual by prohibiting the *"use of*

confession obtained from him through force, violence, threat, intimidation or any other means which violates his free will." The Supreme Court in Galman vs. Pamaran explained the basic purpose of the right against self-incrimination:

"It should be stressed that the basic purposes of the right against self-incrimination are (1) humanity or humanitarian reason to prevent a witness or accused from being coerced, whether physically or morally, and/or psychologically, into incriminating himself, and (2) protect the witness or accused from committing perjury, because the first law of nature is self-preservation."

Considering the foregoing, there seems to be conflict between the right against self-incrimination and mandatory drug testing, as the result in the latter can be used in the prosecution and punishment of a person for violation of the applicable provision of the Dangerous Drugs Act.

However, Philippine jurisprudence had clearly settled that the right against self-incrimination applies only to testimonial evidence. *"What is prohibited by the constitutional guarantee is the use of physical or moral compulsion to extort communication from the witness, not an inclusion of his body in evidence, when it may be material."* As to the kind of testimonial evidenced covered *"it is not necessary that a categorical admission of a specific offense be sought."* (J. Bernas, The Philippine Constitution, Notes and Cases, 424 {1974 ed.}). It is sufficient that it tends to elicit an element of the offense punishable. Likewise, any *"act, whether testimonial or passive, that would amount to disclosure of incriminatory facts is covered by the inhibition of the Constitution."* [People vs. Olvis, G. R. No. 71092, Sept. 30, 1987].

In view thereof, the Commission on Human Rights finds the aforestated provision of R.A. 9165 not violative of any human right. Noteworthy to mention is the statement of Commission on Election

Chair Benjamin Abalos that the COMELEC will not implement the mandatory drug testing requirement for candidates in the coming polls. He said that mandatory drug testing would violate the constitution, which had previously established qualification for candidates, especially those running for national office.

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