

25 June 2004

LEGAL ADVISORY NO. 02

**TO : ALL ELECTRIC COOPERATIVES
ALL NEA OFFICES CONCERNED**

**SUBJECT : CDA Demand To Stop Using the Word “Cooperative” as part of
the EC’s Corporate Name**

In connection with the subject demand made by the Cooperative Development Authority on some of our electric cooperatives, we are furnishing you the following information and corresponding legal advices:

1. A sample copy of one such letter received by one of our electric cooperatives in Mindanao, hereto attached for your ready reference.
2. This Office holds the view that such demand is baseless in law and in fact, especially if we take a look at the following provisions of the law:
 - a.) Section 17 of Presidential Decree No. 269, as amended:

Sec. 17. **“Name.-** The name of a cooperative shall include the words **“Electric”** and **“Cooperative”**, and the abbreviation **“Inc.”**. The name of a cooperative organized under this Decree shall be distinct from the name of any other cooperative already organized or converted under this Decree. The foregoing requirement shall not apply to any cooperative which becomes subject to this Decree by complying with the provisions of Section 31.”
 - b.) Article 96 (2) and 127 of Republic Act No. 6938:

“Article 96. Definition and Coverage.- A public cooperative, within the meaning of this Code is one organized to render public service as authorized under a franchise or certificate of public convenience and necessity duly issued by the appropriate government agency. Such services may include the following:
x x x
(2) Ice plants and cold storage services. Electric Cooperatives created under Presidential Decree No. 269 shall be governed by this Chapter if they qualify as cooperative under the provisions of this Code.”
x x x
“Article 127. Repeals.- Except as expressly provided by this Code, Presidential Decree No. 175 and all other laws, or parts thereof, inconsistent with any provision of this Code shall be deemed repealed: Provided however, That

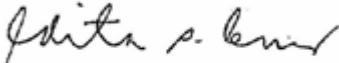
nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269: Provided further, That the electric cooperatives which qualify as such under this Code shall fall under the coverage thereof.” (*Underscoring supplied*)

3. Mr. Orlando R. Ravanera of the Cooperative Development Authority cited Article 124 of Republic Act 6938. As can be seen, this very law he cited contains a provision on repeals that categorically and clearly states that nothing in RA 6938 (the Cooperative Code) shall be interpreted to mean the amendment or repeal of any provision of PD269. For this reason, the Cooperative Code did not amend or repeal Section 17 of P.D. 269. Hence the mandatory provision therein that the name of the cooperative shall use the words “Electric” and “Cooperative” remains effective and must be followed. A reading of the last sentence of Article 127 of RA6938 also shows that electric cooperatives which qualify as such under RA6938 shall fall under its coverage. It therefore follows that those (electric cooperatives) not registered under RA6938 are not governed by the provisions of RA6938. Hence, the penal provisions of RA6938 particularly Art. 124 therein do not govern electric cooperatives which are mandated by law to use the words “Electric” and “cooperative”, and the abbreviation “Inc.” in their name.
4. The provisions of P.D. 269, as amended, consistently and continuously refer to electric cooperatives as “cooperatives”. Even the latest law on the electric power industry, specifically Republic Act No. 9136, is replete with provisions referring to electric cooperatives as “cooperatives”. Hence, this demand of an official of the Cooperative Development Authority hinges on undue, unfair and outright harassment since it will only cause undue hardship and unnecessary expenses to electric cooperatives. This is uncalled for and runs counter to the declared national policy in Section 2 of P.D. 269 where the national government, its instrumentalities and agencies are mandated to give electric cooperatives every tenable support and assistance to the fullest extent of which they (the government agencies) are capable.
5. In implementing a law, officials of government should not forget that there are other laws that should be observed and complied with for as long as such other laws remain effective and have not yet been repealed or amended. Failure to do so could expose the erring official of government to charges for violation of Sec. 3 (e) of the Anti-Graft and Corrupt Practices Act.

For your information and guidance.


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Noted by:


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Administrator