

OFFICE OF LEGAL AFFAIRS  
EXTERNAL OPINION

External Opinion # EX-2004-1003

**To:** Arturo L. Hernández González  
President, Board of Directors  
Servicios Legales de Puerto Rico, Inc.  
1859 Ave. Ponce de Leon  
San Juan, Puerto Rico 00909

**Date:** February 23, 2004

**Subject:** Permissibility of Retroactive Payment of Wages

You have asked for an Opinion from the office regarding the permissibility of using either LSC or non-LSC funds to provide certain PRLS employees with retroactive payment for wages during a period in which the employees were laid off.

***Brief Answer***

PRLS may not use LSC-funds to provide a retroactive payment of wages to employees during a period in which the employees were laid off and not working at PRLS. There are no applicable LSC laws or regulations which govern the use of non-LSC funds for such a purpose. As such, this Office offers no opinion on the use of non-LSC funds for the proposed purposes; the permissibility of such a use of PRLS' non-LSC funds would be a matter of whatever applicable authority applies to those funds.

***Background***

As we understand the facts, PRLS laid off a number of employees as of December 31, 2003 due to a reduction in PRLS' non-LSC funds. On January 7, 2004, the Governor of Puerto Rico signed a law providing additional for PRLS to, among other things, allow PLRS to rehire the laid off former employees. On January 16, 2004, the Board of Directors voted to rehire all of the former employees as of January 20, 2004. You have stated that the union representing the most of the positions held by the former employees agreed to this rehire date and understood that the rehired employees would be paid once the funds appropriated in the legislation signed on January 7, 2004, were by PRLS. On the basis of the information provided, we understand the situation to be that during the period of January 1 – January 20, 2004, the affected persons were not employees of PRLS and were not, in fact, performing services for PRLS during that time. Finally, you have informed us that, notwithstanding the agreement between PRLS and the union that the affected persons were not employees of PRLS during the period of January 1 – January 20, 2004, the union has requested that the Board of Directors provide payment of

wages and benefits to the laid off workers dating back to January 7, 2004 (the date of the signing of the bill appropriating additional monies for PRLS).

You have asked this office to provide an Opinion on whether the use of either LSC or non-LSC funds would be permissible under applicable LSC law and regulations.

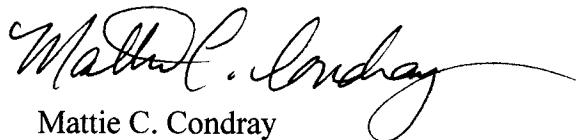
*Analysis*

The question you present regarding the use of LSC funds is governed by LSC's Cost Standards and Procedures regulation at 45 CFR Part 1630. Under §1630.3 expenditures of LSC funds are allowable only if the expenditure meets a number of criteria, including that the cost was "actually incurred in the performance of the grant or contract and the recipient was liable for payment" and the cost was "reasonable and necessary for the performance of the grant or contract as approved by the Corporation." 45 CFR §1630.3(a)(1) and (2).

As you have presented the situation, during the period of January 7, 2004 through January 19, 2004, the former employees were still unemployed by PRLS. Thus, PRLS cannot be said to have "actually incurred" any costs related to wages or benefits for the affected persons during the period of January 7 - January 19, 2004. Similarly, as you have explained the situation, it would appear that PRLS is not legally "liable" for such a cost. In addition, the payment of wages and benefits to persons not in the employee of PRLS would be neither "reasonable" nor "necessary" for the performance of PRLS' grant. As such, it is the opinion of the Office that the use of LSC funds to provide a payment to persons not employed by PRLS for wages and benefits for services not performed would not be an allowable cost under LSC's cost standards.

With respect to the use of non-LSC funds, a recipient may use public funds (such as the funds appropriated by the Puerto Rico legislature) "in accordance with the specific purpose for which the wee provided, if the funds are note used for any activity prohibited by Section 504" of the LSC FY 1996 appropriations act. 45 CFR §1610.4(b). The use proposed is not an activity prohibited by Section 504 and there are no other applicable LSC laws or regulations which govern the use of non-LSC funds for such a purpose. As such, this Office offers no opinion on the use of non-LSC funds for the proposed purposes; the permissibility of such a use of PRLS' non-LSC funds would be a matter of whatever applicable authority applies to those funds.

Very truly yours,

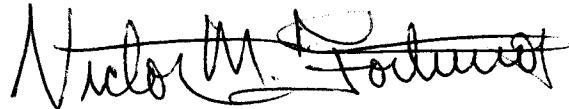


Mattie C. Condray  
Senior Assistant General Counsel  
Office of Legal Affairs

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A handwritten signature in black ink, appearing to read "Victor M. Fortuno". The signature is written in a cursive style with a horizontal line striking through the middle of the name.

Victor M. Fortuno  
General Counsel  
Office of Legal Affairs

mcondray@lsc.gov  
(202) 295-1624