



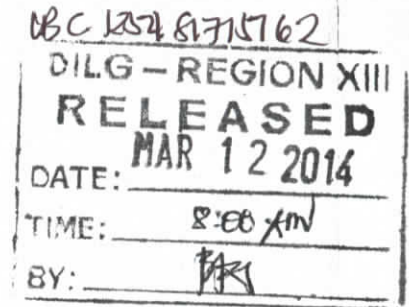
Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (CARAGA REGION)
1559 Matimco Bldg., Km. 4, Libertad, Butuan City
Telefax Nos. (085) 342-2134 / 815-1229
website: caraga.dilg.gov.ph; email address: dilgxiii@yahoo.com



**DILG RO XHI
FILE**

DILG-13 OPINION NO. 003-2014

March 5, 2014



HON. GLENDA B. ECLEO, Ed.D.
Provincial Governor
Province of Dinagat Islands
Caraga Region XIII

Dear Hon. Governor Ecleo:

This refers to your letter to Hon. Mar A. Roxas, Secretary of the Interior and Local Government, seeking legal opinion about the status as elected officials of the said Province in view of R.A. 9355, otherwise known as "An Act Creating the Province of Dinagat Islands", referred for appropriate action and disposition to DILG-13 Caraga Region XIII.

In the same letter, you have posed the following queries:

1. *What is the status of those who won for the first time National and Provincial positions in the Province during the 2010 Elections? Will such term of office be counted insofar as the "Three-term limitation" contained in the Philippine Constitution and the Local Government Code of 1991 is concerned?*
2. *Since there were officials who run and won for Provincial Government positions in the Province of Dinagat Islands during the 2007, 2010, and 2013 Elections, will they be considered to be on their last terms now assuming they won in the three (3) consecutive Elections?*
3. *What about the Barangay and Municipal elected officials within the Province of Dinagat Islands, would your good office' opinion on the previous questions also apply (sic) to them?*

At the outset, we realize that the simple questions carried with them underlying legal issues as complicated as the seemingly flip-flopping decisions of the Supreme Court on the creation of the Province of Dinagat Islands itself. Nevertheless, given the request, we are obliged to respond.

In the case of Republic of the Philippines vs. Court of Appeals, et al. (G.R. No. 79732 dated November 8, 1993), the Court quoted the brief treatise by Mr. Justice Isagani A. Cruz, saying and we likewise quote:

"There are two views on the effects of a declaration of the unconstitutionality of a statute.

The first is the orthodox view. Under this rule, as announced in Norton v. Shelby, an unconstitutional act is not a law; it confers no right; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, inoperative, as if it had not been passed. It is therefore stricken from the statute books and considered never to have existed at all. Not only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity.

The second or modern view is less stringent. Under this view, the court in passing upon the question of constitutionality does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it and determines the rights of the parties just as if such statute had no existence. The court may give its reasons for ignoring or disregarding the law, but the decision affects the parties only and there is no judgment against the statute. The opinion or reasons of the court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the statute books; it does not repeal, supersede, revoke, or annul the statute. The parties to the suit are concluded by the judgment, but no one else is bound.

The orthodox view is expressed in Article 7 of the Civil Code, providing that "when the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. . . ." (Emphasis supplied)

Further, in the case of De Agbayani vs. Philippine National Bank (38 SCRA 429 [1971]) as quoted in Union of Filipino Employees (UFE) vs. Benigno Vivar, Jr., et al., the Court discussed the effect if when the legislative act is subsequently declared invalid in what is known as the operative fact doctrine:

... It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the government organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination of [unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official." (*Chicot County Drainage Dist. v. Baxter States Bank*, 308 US 371, 374 [1940]). This language has been quoted with approval in a resolution in *Araneta v. Hill* (93 Phil. 1002 [1952]) and the decision in *Manila Motor Co., Inc. v. Flores* (99 Phil. 738 [1956]). An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.* (21 SCRA 1095 [1967]). (At pp. 434-435)" (Emphasis supplied)

However, the above doctrine does not validate an unconstitutional act. In the case of the League of Cities of the Philippines, et al. vs. COMELEC, GR. No. 176951; G.R. 177499; and 178056 all dated February 15, 2011, the effects of the unconstitutional law, prior to its judicial declaration of nullity, may be left undisturbed as a matter of equity and fair play. In short, the operative fact doctrine affects or modifies only the effects of the unconstitutional law, not the unconstitutional law itself. Thus, applying the operative fact doctrine to the present case, the Cityhood Laws remain unconstitutional because they violate Section 10, Article X of the Constitution. However, the effects of the implementation of the Cityhood Laws prior to the declaration of their nullity, such as the payment of salaries and supplies by the "new cities" or their issuance of licenses or execution of contracts, may be recognized as valid and effective. This does not mean that the Cityhood Laws are valid for they remain

void. Only the effects of the implementation of these unconstitutional laws are left undisturbed as a matter of equity and fair play to innocent people who may have relied on the presumed validity of the Cityhood Laws prior to the Court's declaration of their unconstitutionality.

With all these in mind, we went over the history of the creation of the Province of Dinagat Islands and noted the following relevant dates and events as recorded in Rodolfo G. Navarro, et al. vs. Executive Secretary Eduardo Ermita, et al. (G.R. No. 180050 promulgated on April 12, 2011):

October 2, 2006	R.A. 9355 otherwise known as "An Act Creating the Province of Dinagat Islands"
November 10, 2006	A Petition to declare R.A. 9355 unconstitutional was filed; dismissed on technical grounds; the motion for reconsideration filed was denied.
<i>December 3, 2006</i>	<i>The plebiscite was held and affirmative votes won.</i>
<i>January 26, 2007</i>	<i>The President appointed the interim officials of the Province of Dinagat Islands.</i>
<i>May 14, 2007</i>	<i>The new set of officials was elected.</i>
<i>July 1, 2007</i>	<i>The newly elected officials of the Province assumed to office.</i>
October 30, 2007	A Petition for Certiorari was filed.

On February 10, 2010, the Court rendered a Decision declaring R.A. 9355 otherwise known as "An Act Creating the Province of Dinagat Islands" unconstitutional for failure to comply with the requirement on population and land area in the creation of a province under the LGC. Consequently, it declared the proclamation of Dinagat and the election of its officials as null and void. The Decision likewise declared null and void the provision on Article 9 (2) of the Rules and Regulations Implementing the LGC (LGC-IRR), stating that, "the land area requirement shall not apply where the proposed province is composed of one (1) or more islands" for being beyond the ambit of Article 461 of the LGC, inasmuch as such exemption is not expressly provided in law. (Emphasis supplied). However, the same

declaration of unconstitutionality did not become final until after the May 10, 2010 National Elections, when again, a set of Provincial Officials had already been elected.

May 10, 2010	The National Election was held and a new set of officials of the Province of Dinagat Islands was elected in view of COMELEC Resolution No. 8790.
May 12, 2010	Denial of the motions for reconsideration separately filed by the Republic and Dinagat.
June 29, 2010	Each second motion for reconsideration of the Republic and Dinagat were "noted without action".
June 18, 2010	Intervenors filed a motion for reconsideration on the Resolution dated May 12, 2010 quoting COMELEC Resolution No. 8790.
June 20, 2010	The Court denied the motion of the intervenors.
September 7, 2010	Intervenors filed a motion for reconsideration of the July 20, 2010 Resolution.
October 5, 2010	Entry of Judgment made, stating Decision made in the case had become final and executory on May 18, 2010

Logically, as in COMELEC Resolution No. 8790 saying and we quote:

"c. If the Decision becomes final and executory after the election, the Province of Dinagat Islands will revert to its previous status as part of the First Legislative District of Surigao del Norte. The result of the election will have to be nullified for the same reasons given in Item "b" above. A special election for Governor, Vice Governor, Member, House of Representatives, First Legislative District of Surigao del Norte, and Members, Sangguniang Panlalawigan, First District Surigao del Norte (with Dinagat Islands) will have to be conducted. (Emphasis supplied)."

the election of the new set of officials of the Province of Dinagat in May 2010 was null and void. Legally speaking, upon the finality of the Decision declaring the creation of the Province of Dinagat Islands as unconstitutional, there was no province, and consequently, no officials.

However, in the Resolution dated April 12, 2011, the Court resolved, among others, to:

"(3) GRANT the Intervenors' Motion for Reconsideration of the Resolution dated May 12, 2010. The May 12, 2010 Resolution is RECONSIDERED and SET ASIDE. The provision in Article 9 (2) of the Rules and Regulations Implementing the Local Government Code of 1991 stating, "The land area

requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared VALID. Accordingly, Republic Act No. 9355 (An Act Creating the Province of Dinagat Islands) is declared VALID and CONSTITUTIONAL, and the proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared VALID;"

At this juncture, may we invite your attention to Section 43 (b) of the Local Government Code, which we quote:

"No elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term which the elective official concerned as elected."

In the leading case of *Borja vs. COMELEC* (G.R. No. 133495 promulgated on September 3, 1998) and in a long line of cases decided thereafter, the Supreme Court maintained that two (2) elements must concur in order that a local elective official will already be disqualified to run for the same position on the supposed fourth consecutive term:

"(1)the local official concerned must have been duly elected to that office; and

(2) said local official must have fully served the same office for three consecutive terms"

In DILG Opinion No. 81 S. 2007, we opined that in "three (3) consecutive terms in the same position", consecutive means no interruption.

Now then, to answer your first and second queries, we assume the following:

- 1. that since the February 10, 2010 Decision was not yet final and executory at that time, the officials of the Province of Dinagat Islands elected in May 2007 continued to hold office, performed their functions as provincial officials and still represented themselves as officials of the province until June 30, 2010;*
- 2. that as per October 5, 2010 Decision, the officials of the Province of Dinagat Islands elected in May 2010 discontinued, ceased and desisted from holding office, from performing their functions as provincial officials and from representing themselves as officials of the province;*
- 3. that the same persons ran for the same positions in 2007; 2010 and 2013.*

With these assumptions, it can be logically inferred that the officials were able to fully serve the term of the office corresponding to the first term (2007) but not the second term (2010). We agree with you that the interruptions were involuntary and beyond the control of the concerned officials, as they were caused by Supreme Court Decisions. As enunciated in *Socrates vs. COMELEC* (G.R. No. 154512 dated November 12, 2002), an interruption for any length of time, provided the cause is involuntary, is sufficient to break the continuity of service. Thus, the election of these same officials on May 13, 2013 may not be considered their third and last term, under the three-term limit.

On the other hand, with the April 12, 2011 Decision declaring Republic Act No. 9355 (An Act Creating the Province of Dinagat Islands) VALID and CONSTITUTIONAL, and the proclamation of the Province of Dinagat Islands and the election of the officials thereof VALID, the answers to the first and second query may understandably be different. Again, we assume:

1. *that despite the February 10, 2010 Decision, since it was not yet final and executory at that time, the officials of the Province of Dinagat Islands elected in May 2007 continued to hold office, performed their functions as provincial officials and still represented themselves as officials of the province until June 30, 2010;*
2. *that despite the October 5, 2010 Decision, the officials of the Province of Dinagat Islands elected in May 2010 continued to hold office, performed their functions as provincial officials and still represented themselves as officials of the province until June 30, 2013, in view of the Motions for Reconsideration made by the Intervenors;*
3. *that the same persons ran for the same positions in 2007; 2010 and 2013.*


With the April 12, 2011 Decision declaring Republic Act No. 9355 (An Act Creating the Province of Dinagat Islands) VALID and CONSTITUTIONAL, and the proclamation of the Province of Dinagat Islands and the election of the officials thereof VALID, the continuous holding of office, performance of functions as provincial officials, and representation of themselves as such officials of the Province of Dinagat Islands, were all VALID. Therefore, in consideration of the immediately preceding assumptions, we can

deduce that there has been no interruption of service rendered by the Provincial Officials. To underscore, the Provincial Officials of Dinagat Islands continuously, consecutively and without interruption in the term of office, rendered service to the Province of Dinagat Islands. Thus, at present, they may be considered as rendering their third and last term in connection with the three-term limit.

As to the third and final question posed, the immediately preceding paragraph in answer to the first and second questions does not necessarily apply to Barangay and Municipal Officials. The barangays and municipalities within the Province of Dinagat Islands are the same and remained the same in spite of the seemingly flip-flopping decisions relative to the constitutionality of the creation of the Province of Dinagat Islands. Whether the Province is Dinagat Islands or Surigao del Norte, the barangays and municipalities located in Dinagat Islands remained the same and their existence valid. Thus, the election of the same barangay and municipal officials for the same positions for three (3) consecutive terms was never interrupted. They may now be in their last term following the three-term limit.

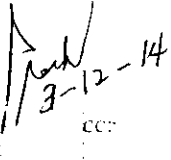
We hope that the foregoing sufficiently addressed your concerns. This opinion is rendered without prejudice to the decisions that competent higher authorities and the courts may subsequently decree.

Very truly yours,


LILIBETH A. FAMACION, CESO IV
Regional Director

Legal Service, DILG
Quezon Ave., Quezon City

UBC 125481715152


cc: Mr. Domingo E. Bulabog
Provincial Director-DILG
Province of Dinagat Islands