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 DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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DILG 13 Legal Opinion No. 2016-001
 January 19, 2016

SOL F. MATUGAS
 Provincial Governor
 Surigao del Norte

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 DILG REGION XIII
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Dear Governor Matugas:

This refers to your letter seeking opinion on the propriety of appointing the nominee, Mr. Edgardo C. Canda, of the Makabayang Koalisyon ng Mamamayan (MAKABAYAN), as replacement of SP Leonilo A. Aldonza who resigned as member of the Sangguniang Panlungsod of Surigao City.

Article 44 of the Local Government Code in relation to Article 83 (a) of its IRR states that a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

It is undisputed that there is in fact a permanent vacancy in the Sangguniang Panlungsod of Surigao City and that the permanent vacancy occurred in the Sanggunian itself. For this instance, Article 45 of the Local Government Code in relation to Article 83 (c) of its IRR is instructive, *viz.*

(c) Permanent vacancies in the sanggunian —

(1) Permanent vacancies not covered by automatic succession — Permanent vacancies in the sanggunian where automatic successions do not apply shall be filled by appointment in the following manner:

xxx

(ii) By the governor, in the case of the sangguniang panlungsod of component cities and the sangguniang bayan;

xxx

Having determined the appointing authority, the next question would be: Who is the eligible appointee? The same Articles provide, *to wit*:

(2) Eligible appointee —


(i) Except for the sangguniang barangay, only the nominee of the political party under which the sanggunian member concerned has been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner provided in this Article. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and shall serve the unexpired term of the vacant office.

(ii) For appointments made in accordance with the immediately preceding subparagraph (i), the appointing authority shall see to it that a certificate of membership of the appointee and nomination from the highest official of the political party concerned are conditions sine qua non, and any appointment without such certification and nomination shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefore.

Clearly, since the Sanggunian Member who caused the vacancy by voluntary resignation was elected to that office with Makabayang Koalisyon ng Mamamayan (MAKABAYAN) as his political party, his replacement shall be a member and nominee of the same political party. Thus, if member and nominee, Mr. Edgardo C. Canda, possesses all the qualifications and none of the disqualifications for the position of Sangguniang Pnalungsod of Surigao City and the procedure and requirements mandated above were duly complied with, the Governor can issue the appointment.

This opinion is rendered without prejudice to any contrary decision or opinion of competent higher authorities and the courts.

Truly yours,


LILIBETH A. FAMACION, CESO III
Regional Director

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