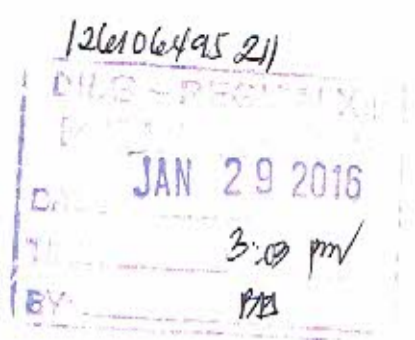




Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (Caraga Region)
1559 MATIMCO Bldg., Km. 4, Brgy. Libertad, Butuan City
Tel Nos. (085) 342-2134; (085) 342-2045; 341-1976
Website: caraga.dilg.gov.ph / Email: official@caraga.dilg.gov.ph



DILG 13 Legal Opinion No. 2016-005
January 28, 2016

MAYORICO G. REAMBONANZA, JR.
President, Liga ng mga Barangay
Punong Barangay, Maribojoc
San Benito, Surigao del Norte

file



Dear Hon. Reambonanza:

This refers to your letter, which this Office received on January 27, 2015 at on or about 2:44 in the afternoon, requesting legal opinion regarding the decision made by the Sangguniang Bayan of San Benito removing you from office. Specifically, you have three (sic) concerns, to wit:

1. *Is (sic) the Sangguniang Bayan has (sic) the authority for the removal of my post (sic)?*
2. *Is the Sangguniang Bayan following the proper proceeding of (sic) the case filed against me?*
3. *Is the Sanggunian Bayan decision final and executory?*
4. *If Not (sic)? Who will be the real person that is capable to hold the post as BARANGAY CAPTAIN (sic) in our Barangay and as LIGA PRESIDENT of our town?*

Since the issues above are interrelated, we would like to answer them in one discussion based on the provisions of the Local Government Code which we presume to be the basis of the Internal Rules of Procedure adopted by the Sangguniang Bayan of San Benito, Surigao del Norte. The same Code provides for the procedure in handling Disciplinary Actions:

Section 60. Grounds for Disciplinary Actions. - An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

xxx

(e) Abuse of authority;

xxx

(h) Such other grounds as may be provided in this Code and other laws.

An elective local official may be removed from office on the grounds enumerated above by order of the proper court.

Section 61. Form and Filing of Administrative Complaints. - A verified complaint against any erring local elective official shall be prepared as follows:

xxx

(c) A complaint against any elective barangay official shall be filed before the sangguniang panlungsod or sangguniang bayan concerned whose decision shall be final and executory.

Section 67. Administrative Appeals. - Decisions in administrative cases may, within thirty (30) days from receipt thereof, be appealed to the following:

(a) The sangguniang panlalawigan, in the case of decisions of the sangguniang panlungsod of component cities and the sangguniang bayan; and

xxx

Section 68. Execution Pending Appeal. - An appeal shall not prevent a decision from becoming final or executory. The respondent shall be considered as having been placed under preventive suspension during the pendency of an appeal in the event he wins such appeal. In the event the appeal results in an exoneration, he shall be paid his salary and such other emoluments during the pendency of the appeal.

Based on the above provisions of the Code, while the Sangguniang Bayan is the Disciplining Authority, and consequently the Investigating Authority in administrative complaints filed against barangay officials, we note that it is the proper court which has the authority to remove the local elective officials from office. Thus, we opine that the Sangguniang Bayan, in the present matter, has no authority to remove you from office.



Upon careful perusal of the documents attached to this instant request vis-à-vis the provisions of law, it appears that there was a conduct of preliminary investigation and you were given an opportunity to be heard. We note, however, that in the preliminary investigation, the Investigating Authority shall determine whether or not there is a *prima facie* case to warrant the institution of administrative proceedings. In this case, after the preliminary investigation, there is no showing that a formal charge was filed against you. Instead, a decision of removal from office was handed down and implemented.

Nevertheless, while your appeal is pending, the decision is final and executory. But under the law, you have a remedy of an administrative appeal to be filed at the Sangguniang Panlalawigan within 30 days from your receipt of the Decision, among others. Further, if you win the case on appeal, you will be considered preventively suspended during the pendency of the appeal and shall, therefore, receive salaries and benefits due you during such period.

Consequently, during the same period of pendency of the appeal, the Office of the Punong Barangay appears to be vacant and the highest ranking sangguniang barangay automatically exercises the powers and perform the duties and functions of the Punong Barangay. Likewise, the position of Liga ng mga Barangay President, appears to be vacant and shall be filled in accordance with the rules of the Liga.

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 

cc: *126106495193*
John Reyl L. Mosquito
Provincial Director
DILG Province of Surigao del Norte
Capitol Rd., Surigao del Norte