



DILG RO XIII
 FILE

DILG 13 Legal Opinion No. 2016-012
 May 24, 2016

CRISTINA M. CAMBA
 Municipal Vice Mayor
 Hinatuan, Surigao del Sur

file

JUN 17 2016
 DILG - REGION XII
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Dear Vice Mayor Camba:

This refers to your letter seeking legal opinion whether RA 7160 requires the attendance of Sangguniang Bayan Members in the review of ordinance by higher Sanggunian. You presented that there are occasions when the Sangguniang Panlalawigan invite (*sic*) members of the local legislative council in the committee hearing before the same (*sic*) is acted upon by the reviewing body. You opined that upon examination of the local government code (*sic*), you found no provision that in the review of ordinances presence of Sangguniang Bayan members concern (*sic*) is needed.

The power of the Sangguniang Panlalawigan to review ordinances of component cities and municipalities is provided for in Section 468 of R.A. 7160, otherwise known as the Local Government Code (LGC), as follows:

Section 468. Powers, Duties, Functions and Compensation.

(a) xxx

(1) xxx

(i) Review all ordinances approved by the sangguniang of component cities and municipalities and executive orders issued by the mayors of said component units to determine whether these are within the scope of the prescribed powers of the sanggunian and of the mayor; xxx

At the outset, sanggunians, except the sangguniang barangay, are vested with dual functions namely: 1. as a legislative body, and 2. as a quasi-judicial body.

In *Negros Oriental II Electric Cooperative vs. Sangguniang Panlungsod of Dumaguete City* (155 SCRA 421), the Court said that in the exercise of the legislative function, the sanggunian has NO compulsory process to require persons to appear before it. Legislative function is the power of the local sanggunian to enact rules or regulations which may be embodied in the form of an ordinance or a resolution of local application and having the force and effect of law.

On the other hand, in the exercise of quasi-judicial function, the sanggunian CAN compel the appearance of any person pursuant to its subpoena powers in relation to Section 65 of the LGC (Rights of the Respondent). Recognizing the right of the respondent in an administrative investigation to confront and cross examine the witnesses and to require the attendance of witnesses and the production of documentary evidence in his favor, the sanggunian is allowed to issue compulsory process of *subpoena ad testificandum* or *subpoena duces tecum*.

Needless to say, the power of the Sangguniang Panlalawigan (SP) to review an ordinance is a legislative function, not a quasi-judicial one; thus, the SP has no compulsory process to require attendance of persons before it.

However, in deference to the invitation of the SP, the SB members are not precluded from attending the committee hearing or session in the course of the review of an ordinance the SB has passed. We find no provision in the LGC expressly prohibiting the SP from inviting the SB concerned or the SB concerned from yielding to the invitation of the SP.

To close, let us be reminded by the case of *Moday, et.al. vs. CA et. al.* (G.R. No. 107916, February 20, 1997) where the Court reiterated the interpretation of the review power of the Sangguniang Panlalawigan. The Decision stated emphatically that "the only ground upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is when such resolution, ordinance, or order is 'beyond the powers conferred upon the council or president making the same.' Absolutely no other ground is recognized by law."

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

Thank you very much and God bless!

Truly yours,


LILIBETH A. FAMACION, CESO III
Regional Director

cc: *Pedrito P. Alacaba*
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