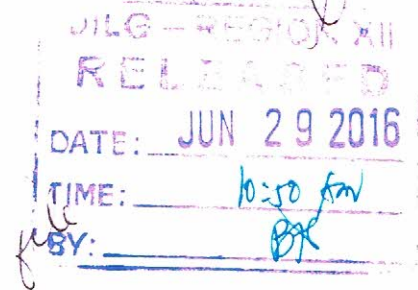




Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (Caraga Region)
1559 MATIMCO Bldg., Km. 4, Brgy. Libertad, Butuan City
Tel Nos. (085) 342-2134; (085) 342-2045; 341-1976
Website: caraga.dilg.gov.ph / Email: official@caraga.dilg.gov.ph

DILG 13 Legal Opinion No. 2016-018
June 29, 2016

ELLEN VEE P. CHUA
OIC – Provincial Director
DILG Agusan del Norte
Provincial Capitol
Butuan City



Dear OIC PD Chua:


This refers to your letter requesting for legal opinion whether the Sanggunian should immediately accommodate an Indigenous People Mandatory Representative (IPMR) even in the absence of salaries and benefits brought about by personal services limitations for the said calendar year.

We have no cogent reason to depart from the previous opinions of the Department on the matter, two of which are attached hereto for your ready reference (DILG Legal opinion No. 20, S. 2011 dated May 31, 2011 and DILG Legal opinion No. 07, S. 2013 dated 22 February 2013).

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



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

A. Francisco Gold Condominium II
EDSA Cor. Mapagmahal St., Diliman
Quezon City



LEGAL SERVICE

DILG OPINION No. 20 s. 2011

MAY 31 2011

DATU WILFREDO L. SANGGAYAN

Indigenous Peoples Representative
Kabasalan, Zamboanga Sibugay

Dear Mr. Sanggayan:

This has reference to your letters dated 24 March 2011 and 18 April 2011, respectively, wherein you are requesting the Department's legal opinion on the following issues:

"1. Is there a need for the Chief Executive to accept the duly selected Mandatory Indigenous Peoples Representative before assumption to office as member of the legislative council?"

2. Is it within the prescribed power of the Local Chief Executive to accept or otherwise the duly selected ICCs/IPs representative to the Sanggunian?"

3. Is there a need for the Sanggunian concerned to pass and approved (sic) a resolution accepting and concurring the duly selected Mandatory Indigenous Peoples Representative before assumption to office as member of the legislative council?"

4. Is it within the power of the Sanggunian to resolve any questions on the legitimacy of the selection of the ICCs/IPs representative duly affirmed by NCIP and recognized by DILG?"

5. Is it within the power of the Sanggunian to pass and approve a resolution to inhibit, suspend and withhold the salaries and other benefits of an incumbent Sectoral Representatives particularly the ICCs/IPs representative for questions of legitimacy of their selection?"

We shall answer your first up to third queries in one (1) discussion since they are interrelated.

In reply thereto, Republic Act 8371, otherwise known as the "Indigenous Peoples Rights Act of 1991" was approved and signed into law on 29 October 1997. Said law provides that the Indigenous Cultural Communities /Indigenous Peoples (ICCs/IPs)) have the right to participate fully, if they so choose, at all levels of decision-making in matters which may affect their rights, lives and destinies through procedures determined by them as well as to maintain and develop their own indigenous political structures. Said law recognizes the policy of the State in affording the indigenous people communities adequate representations in the local sanggunians at all levels.

Precisely, pursuant to Section 6, Rule IV of the Implementing Rules and Regulations of RA 8371, it is mandated that the ICCs/IPs shall be provided

mandatory representation in all policymaking bodies and in local sanggunians. ICCs/IPs representation shall be made proportionate to their population, and shall have the same privileges as the regular members of the local sanggunians and/or policy making bodies.

On 28 October 2009, the NCIP again issued NCIP Administrative Order No. 001, series of 2009 prescribing national guidelines for the mandatory representation of Indigenous Peoples in the local sanggunians.

Sections 11, 12, 13 and 16 of NCIP AO No. 001, series of 2009 provide and we quote:

"SECTION 11. Term of and Removal from Office. The term of office of the IPs mandatory representative in the local legislative councils shall be for a period of three (3) years from the date of assumption to office and can be re-indorsed for another term by the ICCs/IPs constituents but in no case shall the representative serve for more than three (3) consecutive terms. For LGUs with more than one (1) ICCs/IPs residing within its jurisdiction, all ICCs/IPs tribes in said LGU may agree on a term-sharing agreements based on population ratio, or on whatever local arrangement they may deem suited and applicable to address the cultural peculiarities in that LGU.

The IPs mandatory representative can be replaced anytime by the ICCs/IPs who selected him/her to the position in accordance with their local guidelines on recall/removal from office."

"SECTION 12. Selection and Assumption to Office. The selection of the particular ICC/IP representative to the local legislative council shall be in accordance with the Local Guideline that the concerned ICCs/IPs shall adopt and promulgate, which considers the cycle of traditional or local activities, and must be compliant to this Administrative Order by containing, at least, the following:

- a. Title;*
- b. Definition of Terms;*
- c. Selection process which should make a delineation of representation to the levels of Barangay, Municipality, City and Province;*
- d. Qualifications and Disqualifications;*
- e. Community Confirmation and Nomination;*
- f. Vacancy; Disciplinary Action;*
- g. Term of Office; Recall/Removal;*
- h. Special Provisions, if any;*
- i. amendment; and*
- j. Effectivity Clause*

For the purpose of ensuring uniformity in the form of the Local Guidelines to be adopted by the concerned ICCs/IPs, the Office of Empowerment and Human Rights (OEHR) shall develop and make available a guide form.

Assumption to Office shall take place as soon as the selection process is formally certified by the concerned NCIP Regional Director, upon recommendation of the Provincial or Community Service Center head, as the case may be, to be in accordance with this Administrative Order, and the person chosen takes the appropriate oath before an authorized officer

and informs the appropriate body/ies of his/her assumption. (Emphasis Supplied)

"SECTION 13. Compensation and Benefits. Compensation, benefits and other emoluments of the IP representative shall be the same with that of the regular members of the concerned legislative bodies as prescribed in RA 7160 and other applicable laws." (Emphasis Supplied)

"SECTION 16. Duties of the Regional Office. It shall be the task of the Regional Office to:

a. Evaluate the documents and results of the proceedings; if found meritorious, it shall issue a Certificate of Affirmation (COA) to the selected representative. Otherwise, the same shall be returned to the recommending NCIP Field Office with specific instructions for compliance.

b. Submit to DILG for recognition a copy of its issued COA of selected representative including all documents appurtenant thereto, copy furnished the NCIP Central Office through the Office of Empowerment and Human Rights (OEHR)."

Clearly from the foregoing, the ICC/IP representative to the local sanggunian shall be selected in accordance with the Local Guideline duly adopted and promulgated by the ICCs/IPs themselves. After said ICC/IP representative was selected, the NCIP Regional Office shall issue a Certificate of Confirmation (COA), and on the basis of such confirmation, this Department shall thereafter accord due recognition to him/her.

Nowhere can we find in RA 8371, its Implementing Rules and Regulations, and NCIP Administrative Order No. 001, series of 2009 a provision requiring the prior adoption by the concerned local sanggunian of a resolution recognizing/accepting the previously selected ICC/IP representative, or prior acceptance by the local chief executive on the selected ICC/IP representative before the latter is allowed to assume as ex-officio member of the local sanggunian. We cannot also deduce the intent of our lawmakers on requiring the prior adoption of a resolution by the local sanggunians or the acceptance of the mayor of the ICC/IP representative and if ever this was the intent of the Congress, they should have indicated it in clear and unequivocal terms.

As far as this Department is concerned, we opine that the adoption by the concerned local sanggunian of a resolution recognizing/accepting the previously selected ICC/IP representative, or prior acceptance by the local chief executive on the selected ICC/IP representative is no longer required before the latter is allowed to assume as ex-officio member of the local sanggunian. Our opinion is based on the fact that such requisite would only render nugatory the power of the ICCs/IPs to select their own representative according to their duly adopted local guidelines. This is evident when, for instance, the local sanggunian would issue a resolution not recognizing/accepting the previously selected ICC/IP representative or the mayor would not accept the selected ICC/IP representative. It could never have been the intention of RA 8371 to give wide latitude of powers to the local sanggunian or the local chief executive to withhold their approval on their already selected ICC/IP representative thereby holding the decision of the ICCs/IPs hostage to their sole discretion.

With regard to your fourth query on the legitimacy of the selection of the ICCs/IPs, we are of the view that this issue is already justiciable in nature.

Justiciable issues are those that require adjudication by the courts of law as to who between the opposing parties have the better right over a given controversy.

Finally, as to your fifth and final query, we are of the view that until the ICC/IP representative was validly removed from office, either by ICC/IP themselves pursuant to their authority to replace the selected ICC/IP representative at any time under Section 11 of NCIP Administrative Order No. 001, series of 2009, or upon proper judicial action ordering the ICC/IP's removal or suspension from office, said ICC/IP representative should be given his compensation for services actually rendered and other benefits appurtenant thereto.

May we emphasize that the concerned local sanggunian has to enact an Ordinance providing for the appropriation of funds for the salaries and other emoluments to be given to the concerned ICC/IP representative.

We hope to have addressed your concern accordingly.

Very truly yours,

ATTY. JESUS B. DOQUE IV

Director III

Ls/17

Copy furnished:

RD PAISAL O. ABUTAZIL
DILG-Region IX
SS Pajares Ave., San Francisco District
Pagadian City

MLGOO
Kabasalan, Zamboanga Sibugay



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
Francisco Goñi Comendador II
11 SA Ogo, Marikina Road, St. Lawrence
Lungsod ng
LEGAL SERVICE

OFFICE OF THE
SECRETARY

DILG Legal Opinion No. 20, series of 2011

22 January 2011

MR. ITU NG BENJAMIN R. DONATO

Chairperson

IPMRS

PRDP Office, 9-Spot Compound

Marikina-Sarangani Province

Dear Mr. Donato:

This is in reference to your letter dated 22 January 2011 inquiring to our Department about the legal process for payment of compensation and other emoluments of Indigenous Peoples Mandatory Representatives (IPMRS) to the Sangguniang Pangalawhan and other local sanggunians in the Province of Sarangani. Specifically, you pose the following queries:

- Is there a need to create a position or plantilla for an IP representative prior to allocation of fund?
- If yes, is the concerned committee of the Sanggunian does not pass a resolution providing appropriation for IP representative? Are there any sanctions if these do not pass a resolution on these resolutions?
- What is the role of DILG office against those localities vehemently refuse to accept or accept the chosen IP representative?
- What are the appropriate remedies if the sangguniang pangalawhan or local sanggunian does not take the budget of IPMR in the ensuing fiscal year?
- If not, are the processes of appropriating funds for IP representative?

As you narrated in your letter, there appears to be a conflict between the legal offices respectively mandated by the Department of Budget and Management of DILG Regional Office, Koronadal City and this Department in its DILG Legal Opinion No. 20, series of 2011:

Opinion of DILG Regional Office: "we said position challenges People's Mandated Representative Councils (PRMRS) be created, which shall be adequately provided with funding, equipment, honoraria, salary, including the associated compensation and benefits, and medicals."

DILG Legal Opinion No. 20, series of 2011: "May we emphasize that the concerned local sanggunian has to enact an ordinance providing for the appropriation of funds for the salaries and other emoluments to be given to their concerned local IP representative."

Hence, your subject letter to this Department.

Celebrating 20 Years of Local Autonomy in the Philippines

With regards your third query, please be informed that the Department is regularly generalising membership of all Fads and their officials, has consistently mandated the Fads' compliance to Republic Act No. 8371, specifically on the mandatory representation on Fads' local policy-making bodies and other local legislative councils. In fact, it is the Department's responsibility with the NCIP, signed Joint Order No. 101, s. 2001, to ensure that the suggestion concerned to appropriate funds covering the necessary and appropriate benefits and emoluments of the selected IP/IC representative, who is still the designated representative from received by the regular members of the local sanggunian, is considered and taken into account at all the same time giving priority to the economic and social circumstances of the local elites, yet ensuring that funds covering the salaries of the selected IP/IC are included in the executive budget which he/she shall submit to the sanggunian and to the Local Government Office thereafter enacted in the sanggunian.

By the data provided by the NCIP and regions previously, it seems that some local elites or groups of elites failed to recognize or accept the selected IP/IC due to the following reasons:

- a. Political reasons;
- b. No funds are available to cover the salaries/compensation of the IP/IC;
- c. Some and unreliable "Rules of Procedure" embodying the right of the local elites to the election of IP representative;
- d. Local appointed IP/IC representatives lack the competence required to represent their constituents and sentiments during sanggunian sessions;
- e. Some groups are claiming representation of local sanggunians but could not provide accreditation from the NCIP;
- f. IP/ICs are recognized by the FAD but not representative of local sanggunians, FDC or any LSR;
- g. Due to the selection process, there was no coordination between the FAD and the local IP/ICs and/or sanggunian by the NCIP and/or the NCIP;
- h. Some of the members of the local sanggunians are IP's themselves, thereby making IP representation technically present therein.

Based on the foregoing above, it can be deduced that Fads have the responsibility to enforce e.g. the mandatory representation of IP/ICs in the local sanggunian for understandable reasons.

For your 4th query under letter a, it should be noted that the suggested representation policy has been reviewed and appropriate administrative action is discussed above.

With regard to your 5th query under letter b, the FAD is obliged to ensure that the local elites are compensated for the IP/IC's since in the provinces and existing the FAD's local elites' remuneration can be provided under Section 325 (a) of Republic Act No. 7160, It should be

noted that the FAD is not a government agency, however, it is a government corporation and its personnel are government employees.

Very truly yours,

Section Chief, Regional Office, Department of Interior and Local Government

Enclosure: 1. Copy of the Department Order No. 101, s. 2001, signed by the Department Secretary, Department of Interior and Local Government, dated January 10, 2001, regarding the representation of IP/ICs in the local sanggunians.

JOSE S.B. DOQUE ET AL.