



Republic of the Philippines
 DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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DILG 13 Legal Opinion No. 2016-024
 July 13, 2016

REY G. JAMBOY
 City Vice Mayor
 Cabadbaran City
 Agusan del Norte

file



Dear City Vice Mayor Jamboy:

This refers to your request for opinion on the determination of majority of the members of the Sangguniang Panlungsod. Specifically, you would like to be clarified whether or not the City Vice Mayor is included in the determination of majority during voting or division of the house.

We answer in the affirmative.

This issue was already answered squarely in an earlier opinion by this Department and we find no cogent reason to deviate from it. Please refer to a copy of DILG Opinion No. 82 S. 2007 attached hereto for your convenient reference and perusal.

We hope to have satisfactorily answered your query.

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

Please be guided accordingly.

Truly yours,

[Signature]
 LILIBETH A. FAMACION, CESO III
 Regional Director *[Signature]*

cc: *Ellen Vee P. Chua*
 OIC- Provincial Director
 DILG Agusan del Norte

Annabel F. Yangson
 CLGOO - Cabadbaran City
 Agusan del Norte





Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
Francisco Gold Condominium II, EDSA cor. Mapagmahal St.
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FILE OPINION NO. 82 S. 2007

OFFICE OF THE UNDERSECRETARY FOR LOCAL GOVERNMENT

27 September 2007

MAYOR SONIA TORRES AQUINO
City of Tanauan, Batangas

Dear Mayor Aquino:

This has reference to your earlier letter asking our legal opinion on the following queries:

1. *Whether or not the City Vice-Mayor is included in the determination of a quorum;*
2. *Whether or not the City Vice-Mayor is included in the determination of the two-thirds (2/3) vote required in the overriding of the veto by the city mayor?*

In your letter, you represented that you vetoed Appropriations Ordinance No. 07-04 entitled, "An Ordinance Repealing Certain Portions of Appropriations Ordinance No. 07-03" passed by the Sangguniang Panlungsod, that City. In an attempt to override your veto, the Sangguniang Panlungsod mustered eight (8) votes out of their total thirteen (13) membership. Such being the case, it is now your contention that your veto has not been overridden for the simple reason that the eight (8) eight votes, which the Sangguniang Panlungsod has mustered, is definitely below the required two-third (2/3) vote of all of Sangguniang Panlungsod membership. Hence, your queries.

In reply to your first query, we answer in the positive. May we invite your attention to Section 10 of Republic Act No. 9005, the Charter of Tanauan City, which provides and we quote:

"SECTION 10. The Sangguniang Panlungsod.—
The sangguniang panlungsod, the legislative body of the City, shall be composed of the city vice-mayor as the presiding officer, ten (10) regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members."

Based on the aforequoted provision, the Sangguniang Panlungsod is composed of ten (10) regular members, the Liga ng mga Barangay President (City Chapter), the SK City Federation President, the City Vice-Mayor as Presiding Officer, and the sectoral representatives.

*gls
10/01/07*

Under the old Local Government Code (Batas Pambansa Big. 337), the Presiding Officer then of the Sanggunian was the Mayor. Thus, there was a dilemma as to whether or not the Presiding Officer is to be included in the determination of quorum in the Sanggunian. This issue was, however, resolved with the advent of the new Local Government Code of 1991 (RA 7160) providing under Section 457 (a) thereof the total composition of the Sangguniang Panlungsod as reproduced under Section (10) of RA 9005, your City Charter. Hence, the city vice-mayor is included in the determination of a quorum in the Sanggunian. This is further bolstered by the recent ruling of the Supreme Court in the case of Gamboa vs. Aguirre (310 SCRA 867), where the said Honorable Court ruled that when the Vice Governor is already acting as Acting Governor, he cannot anymore continue to preside over the session of the Sanggunian as he is expected to perform full-time executive functions. There is a clear delineation, therefore, that a Presiding Officer, as what is now provided for under the new Local Government Code, is part and parcel of the Sanggunian.

Also, based on the aforequoted provision, sectoral representatives are also included in the determination of quorum in the Sangguniang Panlungsod. Let it be noted, however, that sectoral representatives in the local sanggunian are, pursuant to Section 41 (c) of RA 7160 and Section 10 (B) of RA 9264, to be elected "*in a manner as may be provided for by law*". Meantime however, Congress has yet to enact a law providing for the manner of electing the sectoral representatives at the local sanggunians. Such being the case, sectoral representatives are not, in the meantime, included in the determination of quorum in the local sanggunians.

In view of the foregoing, the Sangguniang Panlungsod is composed of the ten (10) regular members, the Liga ng mga Barangay President (City Chapter) and the SK City Federation President as ex-officio members and the City Vice-Mayor as Presiding Officer. The total membership in that Sanggunian, therefore, is thirteen (13).

Anent your second query, may we invite your attention to Section 15 of your City Chapter, to wit:

"SECTION 15. Approval of Ordinances.- (a) Every ordinance enacted by the sangguniang panlungsod shall be presented to the city mayor. If the city mayor approves the same, he shall affix his signature on each and every page thereof; otherwise, he shall veto it and return the same with his objections to the sanggunian, which may proceed to reconsider the same. The sanggunian may override the veto of the city mayor by two-thirds (2/3) vote of all its members, thereby making the ordinance or resolution effective for all legal intents and purposes." (Emphasis Supplied)

Based on the foregoing, a 2/3 vote of all Sangguniang Panlungsod members is required for the overriding of the veto by the City Mayor. Since the City Vice-Mayor, as earlier discussed, is also a member of the Sangguniang Panlungsod and as such, he is included in the determination

of quorum, it is our considered view that the total membership of the Sangguniang Panlungsod, that is, thirteen (13) members, shall be the basis in the computation of the $2/3$ votes. This is the proper interpretation of the phrase "*two-thirds (2/3) vote of all its members*". Hence, a $2/3$ vote of 13 members will give us a mathematical result of eight point sixty-seven (8.67). Let it be noted however that a fraction cannot be considered as one whole vote since it is physically and legally impossible to count or divide a person, even his vote into a fractional part. Neither can we go down to eight (8) because definitely, it is less than $2/3$ of the Sanggunian membership. Thus, the voting requirement to muster two-thirds vote of all of the thirteen-membership Sanggunian shall be nine (9).

Let it be noted, however, that in the nine (9) votes required to muster the $2/3$ vote, the nine (9) votes should be coming from the floor, that is, excluding the Presiding Officer, because the latter can vote only to break a tie pursuant to Section 49 of the Local Government Code.

Foregoing considered, since the eight (8) votes mustered by your Sangguniang Panlungsod is short of the nine (9) votes required, we are of the considered view that your veto over Appropriations Ordinance No. 07-04 was not properly overridden by the Sangguniang Panlungsod.

We hope that we have addressed your concern accordingly.

Very truly yours,


AUSTERE A. PANADERO
Undersecretary

Legal/17

copy furnished:

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