



Republic of the Philippines
Department of the Interior and Local Government
Region 13 (Caraga)

DILG 13 Legal Opinion No. 2016-033
October 18, 2016

VICENTE T. PIMENTEL JR.
Provincial Governor
Surigao del Sur

Dear Governor Pimentel:

This refers to your request (dated 12 October 2016 and received by this Office on October 17, 2016) for legal opinion on the appointment of a losing candidate in the May 2016 National and Local Elections (NLE) to a vacant position in the Sangguniang Bayan of Tago, Surigao del Sur caused by the resignation of one of its members.

The following pertinent provisions of law prohibit the appointment of a losing candidate to any office in government within one year after the conduct of the election in which s/he lost:

1987 Philippine Constitution, Article IX-B:

"SECTION 6. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries."

Local Government Code of 1991 (RA 7160)

SECTION 94. Appointment of Elective and Appointive Local Officials; Candidates Who Lost in an Election. – (a) xxx

(b) Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the government or any government-owned or -controlled corporations or in any of their subsidiaries.

Consequently, Civil Service Commission Memorandum Circular No. 40, series of 1998, as amended, or the Omnibus Rules on Appointment and other Personnel Actions states:

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Rule XIII, Section 4. "A person who lost in an election (except Barangay election) shall not be eligible for appointment or reemployment to any office in the government or any government owned or controlled corporation within one year following such election."

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. Since the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or verba legis. This is expressed in the maxim, index animi sermo, or speech is the index of intention. Moreover, there is the maxim verba legis non est recedendum, or from the words of a statute there should be no departure.

In view of the foregoing, we opine that Amelita P. Hofeliña, a losing SB candidate in the May 2016 NLE may not be appointed to the vacant position in the Sangguniang Bayan of Tago, Surigao del Sur within one year after such election. It is only after the one-year ban that she may be appointed to the subject position, assuming that she satisfies all the requirements for appointment.

We hope to have satisfactorily addressed your concerns.

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

Very truly yours,

(SGD) LILIBETH A. FAMACION, CESO III
Regional Director

cc: Pedrito P. Alacaba
Provincial Director
DILG-Surigao del Sur

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