



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (CARAGA REGION)
1559 Matimco Bldg., Km.4, Libertad, Butuan City
Telefax. Nos. (085) 342-2134/815-1299
website: www.dilgxiii.org; email address: dilgxiii@yahoo.com



DILG-13 OPINION NO. 16

May 3, 2012

HON. MELLY V. RANQUE
Barangay Kagawad
Brgy. Badong, Tago, Surigao del Sur

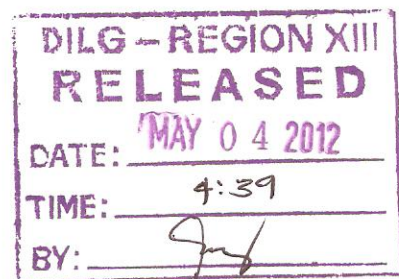
Dear Hon. Ranque:

This refers to your letter dated April 10, 2012 which is a follow up to your letter addressed to Secretary Jesse M. Robredo, this Department and was referred to this level by the Legal Service, seeking the Department's legal opinion regarding the following queries, to wit:

1. Whether the punong barangay of Barangay Badong can still reappoint or can keep on reappointing *ad infinitum* Joselita A. Ariar, Bonifacio Raz and Rhea Napal as barangay treasurer, barangay secretary and barangay bookkeeper, respectively after the Sangguniang Barangay in a final act had already disapproved or rejected, by a vote of a majority of its members, their respective appointment as such;
2. Whether the Sangguniang Barangay under its sound discretion as a concurring body can prescribe or cite additional or incidental or related qualifications for appointment to the position of barangay secretary or barangay treasurer, aside from the minimum qualifications set by law, as a ground for its concurrence in order to ensure that the appointees are able to discharge (sic) their functions with some degree of competence.

In our letter dated July 18, 2011 addressed to your colleague Hon. Melba C. Acevedo, we refrained from answering the above-mentioned queries to avoid violating *sub judice* rule; the case was still pending with the Sangguniang Panlalawigan (SP) of Surigao del Sur. With the certification of the Secretary to the SP that no motion for reconsideration or appeal was filed by the complainant-appellee, we can now answer your queries.

With regards to your first query, we believed that since the appointments were disapproved or rejected by the sanggunian, the appointment has no effect. The Supreme Court, in the case of *Alquizola vs. Ocol* (G.R. No. 132413, August 27, 1999) ruled:



The Local Government Code of 1991 explicitly vests on the punong barangay, upon approval by a majority of all the members of the sangguniang barangay, the power to appoint or replace the barangay treasurer, the barangay secretary, and other barangay appointive officials. Thus, the power of appointment is to be exercised conjointly by the punong barangay and a majority of all the members of the sangguniang barangay. Without such conjoint action, neither an appointment nor a replacement can be effectual.

We find no basis prohibiting the punong barangay to keep on reappointing the subject persons and the sanggunian keeps on rejecting, but such disagreement could affect the delivery of services to your constituents.

As to your second query, this issue was already raised and settled by the Sangguniang Panlalawigan of Surigao del Sur which ruled in your favor. However, for purposes of academic discussion, we believed that the sanggunian barangay cannot provide additional qualifications to barangay secretary and treasurer whose qualifications are governed by Sections 394 and 395, respectively, of the Local Government Code of 1991. In our system of government, the power of local government units to legislate and enact ordinances and resolutions is merely a delegated power coming from Congress. Local ordinances should not contravene an existing statute enacted by Congress.

However, with regards to barangay bookkeeper, we believed that the sanggunian has the power to provide additional qualifications pursuant to an ordinance as provided by Section 396 of the Code which provides:

Section 396. Other Appointive Officials. – The qualifications, duties, and functions of all other barangay officials appointed by the punong barangay shall be governed by the provision of this Code and other law or by barangay ordinance.

We hope to have clarified you on this matter.

Very truly yours,


~~LILIBETH A. FAMACION, CESO IV~~
OIC-Regional Director

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