



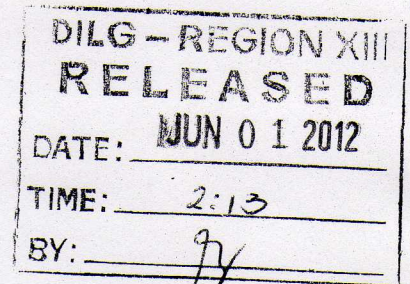
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DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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DILG-13 OPINION NO. 20

June 1, 2012

Mr. DOMINGO E. BULABOG
Provincial Director, DILG
Surigao del Norte



Dear Dir. Bulabog:

This refers to the letter of Vice Mayor Merle B. Origenes of Tagana-an, Surigao del Norte, seeking legal opinion on whether she can refuse to attest Proposed Resolution No. 15, Series of 2012 entitled "RESOLUTION AUTHORIZING HON. MAYOR CESAR A. DIAZ TO ENTER INTO CONTRACT FOR AND IN BEHALF OF THE MUNICIPALITY OF TAGANA-AN BY AND BETWEEN JERALF'S SURVEYING SERVICES FOR THE CONDUCT OF THE LOT SURVEY OF ALL LANDS OF THE MUNICIPALITY OF TAGANA-AN, SURIGAO DEL NORTE" for being ultra vires. She also mentioned that the agreement stipulates on the 15% advance payment and there is no appropriation for that purpose

Please be informed that the phrase "duly certified by the Presiding Officer" means that the Vice Mayor as Presiding Officer or any Temporary Presiding Officer for that matter shall have certified that a session was indeed conducted whereupon the resolution to be submitted was deliberated upon and duly enacted by the sanggunian concern. If the vice mayor refuses to sign without justifiable cause, she may be liable administratively or criminally, if warranted by evidence.

As to the Contract of Agreement, the following are our observations and comments:

Firstly, since the project is not included in the appropriation ordinance, we believed that the contract violated Section 305 of the Local Government Code of 1991 which states that:

Section 305. Fundamental Principles. – The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:

(a) No money shall be paid out of the local treasury except in pursuance of an appropriation ordinance or law; (underlining supplied)

Any disbursement of funds in violation to the above-mentioned provision is tantamount to malversation.

Secondly, we believe that the contract is not for public purpose, nevertheless, the landowners who would benefit the survey must be parties to the contract to bind themselves. There must be a guideline or policy on repayment.

Lastly, as to advance payment for mobilization, the government, as it considers fair and reasonable, may allow advance payment to the consultant in the amount which shall not exceed fifteen percent (15%) of the contract amount to cover the cost of mobilization, subject to the posting of an irrevocable standby letter of credit issued by an entity acceptable to the agency and of an amount equal to the advance payment (*Annex "F", IRR of R.A. No. 9184*). However, the advance payment can only be done if the procurement of surveying services have undergone the competitive bidding process or alternative mode of procurement as provided under Government Procurement Reform Act (*R.A. No. 9184*) and its revised IRR.

We hope to have clarified you on this matter.

Very truly yours,


LILIBETH A. FAMACION, CESO IV
OIC - Regional Director