



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (CARAGA REGION)
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**DILG RO XIII
 FILE**

DILG-13 OPINION NO. _____
 July 4, 2013

**DILG REGION XIII
 RELEASED**
 DATE: **JUL 04 2013**
 TIME: 4:04 PM
 BY: [Signature]

Hon. JERITO B. LAYUPAN
 Sangguniang Bayan Member
 Lingig, Surigao del Sur

Dear SB Member Layupan:

This refers to your email dated July 3, 2013 to comment on the following notices issued by Acting Municipal Mayor Emelita C. Balinga of the Municipality of Lingig, Surigao del Sur:

- 1) Office Order dated July 1, 2013 issued by Acting Municipal Mayor Emelita C. Balingan detailing personnel to the Municipal Engineering Office; and
- 2) Notice dated July 2, 2013 notifying all Sangguniang Bayan Members about the inaugural session

Pertaining to the Office Order, it is our view that such issuance violated no laws, rules and regulations. Section 46 (a) of the Local Government Code of 1991 (R.A. No. 7160), states:

Section 46. Temporary Vacancy in the Office of the Local Chief Executive. - (a) When the x x x municipal mayor x x x is temporarily incapacitated to perform his duties for x x x legal reasons such as x x x suspension from office, the x x x municipal vice-mayor, x x x shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend, or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days. (underlining supplied)

Approved:

 7/5/13

Based on the abovementioned provision, the acting mayor is only prohibited to appoint, suspend or dismiss employees if the temporary incapacity is less than 30 working days; "detailing" of employees is not mentioned. Stated otherwise, the acting mayor is allowed to detail an employee from department to another even on her first day as acting mayor.

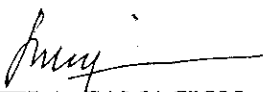
With regards to the Notice, we believe that it has legal infirmities.

Vice Mayor Balingan cannot notify the sangguniang bayan members for the conduct of inaugural session in the meantime that she is the acting mayor. The vice mayor acting as mayor for the duration of mayor's suspension is actually a quasi-mayor. This means that in relation to her functions and duties attached to the Office of the Vice Mayor, she cannot anymore continue to preside the session of the sanggunian as this would violate the principle of separation of powers (Gamboa vs. Aguirre, G.R. No. 134213, July 20, 1999).

As the highest ranking sangguniang bayan member, you shall assume as acting vice mayor. However, being the acting vice mayor does not vest you the power to preside over the sangguniang bayan. Under Section 49 (b) of the Local Government Code of 1991 (RA 7160), in the event of the inability of the regular presiding officer to preside at a sanggunian session, the members present, constituting the quorum shall elect from among themselves a temporary presiding officer.

We hope to have clarified you on this matter.

Very truly yours,


LILIBETH A. FAMACION, CESO IV
Regional Director ✓

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Subject **Query**
From Florencio Garay <cong_garay@yahoo.com>
To dilgxiii@yahoo.com <dilgxiii@yahoo.com>
Cc dilgsurigaodelsur@yahoo.com
<dilgsurigaodelsur@yahoo.com>
Date 2013-07-03 05:04 PM



July 03, 2013

LILIBETH A. FAMACION, CESO IV
Regional Director
DILG Caraga Region XIII
Libertad. Butuan City

Dear Reg. Director Famacion;

Greetings!

Hon. Emelita C. Balingan, Acting Mun. Mayor of Lingig is now sending the Notice of Inaugural Session to all Sangguniang Bayan Member of Lingig for the 8th Sangguninag Bayan, as the Municipal Vice Mayor of Lingig.

I would like to seek your comment/opinion regarding this two (2) conflict positions.
(Attached herewith the office order and the notice of Inaugural Session for your ready reference.)

For the mean time, she is now the Acting Municipal Mayor of Lingig, at the same time the Acting Mun. Vice Mayor of Lingig.

(Sgd.)HON. JERITO B. LAYUPAN
Sangguniang Bayan Member



PROVINCE OF SURIGAO DEL SUR
Municipality of Lingig

OFFICE OF THE MUNICIPAL MAYOR

OFFICE ORDER

July 1, 2013

TO: ~~ARCALYN T. LUNA~~
~~ALEJADRA C. CORTES~~
~~DIONESIA P. ALDRAN~~
~~REYNALDO Q. BEDIA~~
~~CAROLINA V. DANO~~
~~EMELITA B. LUCENARA~~
All Administrative Aides (Utility Workers/Laborers)

~~NORMA H. GARGAR~~
~~FILIPINA L. CAL~~
~~LEODEGARIA O. ORILLO~~
~~RECAREDA D. PALER~~
~~AURORA VILLAMUCHO~~
~~MARILYN S. SIM~~

FROM: HON. EMELITA C. BALINGAN
Acting Municipal Mayor

SUBJECT: OFFICE DETAIL

In the exigency of public service, you are all hereby detailed at the Municipal Engineering Office (MEO), effective immediately. As such, you are to perform the duties and responsibilities inherent with your respective positions, and as maybe assigned by the Municipal Engineer.

This Order, being for the good of service, is hereby declared official and made of record and shall remain in force and in effect until revoked, modified, or amended accordingly.

SO ORDERED.

Hon. EMELITA C. BALINGAN
Acting Municipal Mayor

Cc: CSC Field Office
Tandag, Surigao del Sur

Engr. Carmelo C. Rebosura
Municipal Engineer

HR File



Republic of the Philippines
PROVINCE OF SURIGAO DEL SUR
Municipality of Lingig

OFFICE OF THE SANGGUNIANG BAYAN

July 2, 2013

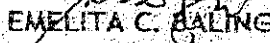
TO: HONORABLE MEMBERS
Sangguniang Bayan
Lingig, Surigao del Sur

FROM: EMELITA C. BALINGAN
Municipal Vice Mayor

SUBJECT: NOTICE OF INAUGURAL SESSION OF 8th SANGGUNIANG BAYAN ...

Please be notified of the inaugural session of the 8th Sangguniang Bayan of Lingig, Surigao del Sur on *the 4th of July 2013 (Thursday), 9:30 am at the Municipal Session Hall,*

Your presence is highly expected. Thank you.


HON. EMELITA C. BALINGAN
Municipal Vice Mayor