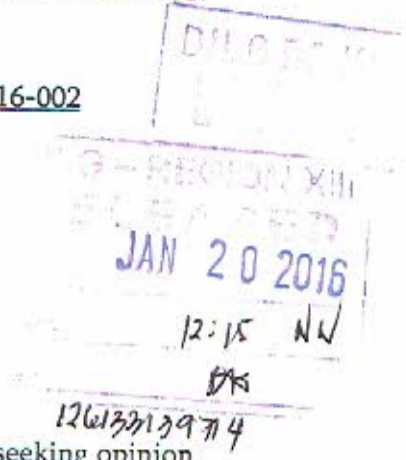




DILG 13 Legal Opinion No. 2016-002
 January 19, 2016

SHERWIN C. OBIEN
 MLGOO
 Veruela, Agusan del Sur

file



Dear MLGOO Obien:

This refers to your letter, indorsed by PD Arleen Ann R. Sanchez, seeking opinion on issues concerning the resignation of Hon. Conrado M. Empig, Jr., Barangay Kagawad of Poblacion, Veruela, Agusan del Sur. Specifically, you asked the following:

1. *Whether or not there is an existence of permanent vacancy in the position of Hon. Empig upon his tender of resignation?*
2. *Whether or not a resignation letter of an elective local official should be formally addressed to the Municipal Mayor and that acceptance is pre-requisite for a resignation to be deemed effective?*
3. *Whether or not Barangay Resolution No. 1, series of 2016 is valid?*
4. *What is the legal requirement so that there may exist "permanent vacancy" in the position of Hon. Empig?*

Since the issues raised are interrelated, we deem it proper to answer the questions in one discussion.

Article 44 of the Local Government Code in relation to Article 83 (a) of its IRR states that a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office.

Article 82 of the same Code also provides when the resignation of such officials shall be deemed effective, to wit:

Section 82. Resignation of Elective Local Officials. -

(a) Resignations by elective local officials shall be deemed effective only upon acceptance by the following authorities:

xxx

RECEIVED FEB 13 2016
 LEO R. OBIEN

(4) The city or municipal mayor, in the case of barangay officials.

(b) Copies of the resignation letters of elective local officials, together with the action taken by the aforesaid authorities, shall be furnished the Department of the Interior and Local Government.

(c) The resignation shall be deemed accepted if not acted upon by the authority concerned within fifteen (15) days from receipt thereof.

(d) Irrevocable resignations by sanggunian members shall be deemed accepted upon presentation before an open session of the sanggunian concerned and duly entered in its records. Provided, however, That this subsection does not apply to sanggunian members who are subject to recall elections or to cases where existing laws prescribed the manner of acting upon such resignations.

In your presentation, there is no showing that the appointing authority, i.e., the municipal mayor, accepted the resignation of Hon. Empig, or did not act on the resignation of Hon. Empig, or that the irrevocable resignation of Hon. Empig was presented in an open session of the sanggunian and entered in its records. Thus, based on the presentation, we can safely deduce that the resignation of Hon. Empig is not yet effective.

If and when any of the foregoing manners of acceptance of resignation is satisfied, only then shall the sanggunian barangay recommend the replacement to the municipal mayor, the appointing authority, as provided for in Article 45 of the same Code, viz:

Section 45. Permanent Vacancies in the Sanggunian. -


(a) *Permanent vacancies in the sanggunian where automatic succession provided above do not apply shall be filled by appointment in the following manner:*

xxx

(3) The city or municipal mayor, in the case of sangguniang barangay, upon recommendation of the sangguniang barangay concerned.

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

Truly yours,


LILIBETH A. FAMACION, CESO III
Regional Director

cc: Arleen Ann R. Sanchez 12613313 9714
Provincial Director
DILG Agusan del Sur