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DILG RO XIII  
 FILE

DILG 13 Legal Opinion No. 2016-009  
 February 29, 2016

HON. ABELIO D. FABIO  
 Punong Barangay  
 Cantiasay, Surigao City

*file*

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 DILG - REGION XII  
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 MAR 03 2016  
 8:41 AM  
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Dear Hon. Fabio:

This refers to your letter seeking legal opinion whether or not the Barangay Treasurer can be removed from office without the concurrence of the majority of the council, and what is the process of terminating erring appointive officials in the barangay.

The first question has already been settled by the Court in the landmark case of *Alquizola et. al. vs. Ocol et. al.*, G.R. No. 132413, August 27, 1999), to wit:

*No. The Code (in Section 389) explicitly vests on the Punong Barangay upon approval by a majority of all members of the Sangguniang Barangay, the power to appoint or "replace" the barangay treasurer, the barangay secretary and other barangay officials. The term "replace" would obviously embrace not only the appointment of the replacement but also prior removal of, or the vacation by the official currently occupying the appointive position concerned. To "replace" is to take the place of, to serve as a substitute for or successor of, to put in place of, or to fill the post of an incumbent. In order to provide a replacement to an office, the prior holder must have first been remove, or the office must have, otherwise been previously rendered vacant.*

*No other provision in the Local Government Code treats of the power of the Punong Barangay to remove the barangay secretary, the barangay treasurer or any other appointive barangay official from office aside from what is implicit in the above Sec. 389. The duration of the term of office of these barangay officials have not been fixed by the Local Government Code. Where the tenure of office is not fixed by law, it is a sound and useful rule to consider the power of removal as being an incident to the power of appointment. The power to remove is deemed implied in the power to appoint.*

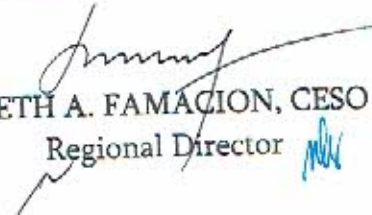

*Applying the rule that the power to appoint includes the power to remove, the questioned dismissal from office of the barangay officials by the Punong Barangay without the concurrence of the majority of all the members of the Sangguniang Barangay cannot be legally justified. To rule otherwise could also create an absurd situation of the Sangguniang Barangay members refusing, like here, to give their approval to the replacements selected by the Punong Barangay who has unilaterally terminated the services of the incumbents. It is likely that the legislature did not intend this absurdity to flow from its enactment of the law. (Emphasis supplied)*

A barangay treasurer may be removed with or without just cause. If it be without cause, the above pronouncement is instructive. This is also provided for in DILG Memorandum Circular 2002-150 entitled "Guidelines on the Appointment of Barangay Secretaries, Treasurers and Other Appointive Officials" dated 18 September 2002. Further, the same circular states that if the removal is for cause, it is due to an administrative case filed against him and the hearings conducted in accordance with the pertinent Civil Service Rules and Regulations. In the removal for cause, the concurrence of the majority of the Sangguniang Barangay members is not anymore required.

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

We hope to have sufficiently assisted your good office in this matter.

Truly yours,

  
LILIBETH A. FAMACION, CESO III  
Regional Director 

cc: Mary Ann Tomate  
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