



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (Caraga Region)
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DILG 13 Legal Opinion No. 2016-010
February 29, 2016

HON. JOVITA S. UMAPAS
Vice-Mayor
Office of the Vice Mayor
Marihatag, Surigao del Sur

Dear Vice -Mayor Umapas:

This refers to your letter dated February 18, 2016 requesting for legal opinion on the following issues:

1. *Can the mayor disapprove the travel order of a member of the Sangguniang Bayan?*
2. *Can the municipal accountant refuse to reimburse the travel expenses of the member of the Sangguniang Bayan who travelled despite the disapproval of the travel order?*
3. *Can the member of the Sangguniang Bayan travel using the funds coming from the Mayor's Office with the mayor's permission but without permission from the Vice Mayor?*
4. *Can the vice mayor direct all SB members and legislative staff to course the approval of their travel order only to the office of the vice mayor if the funds to be used for the travel come from the legislative department?*
5. *Can the mayor withhold the release of commuter van bought using the funds allotted for the Sanggunian and intended for use by the same Sanggunian?*
6. *Can the mayor issue an order to all heads of offices to secure consent from the Office of the Mayor before attending SB sessions, except committee meetings?*

The issues raised in items 1 to 4 are interrelated and have been settled already in previous opinions of the department. We have no reason to deviate from such sound opinions. Thus, DILG Opinion No. 8 S. 2010 dated 20 January 2010 is hereto attached.

In so far as items 5-6 are concerned, Opinion No. 68 S. 2010 dated 28 May 2010 and DILG Opinion 22 S. 2009 provide an answer in so far as the exercise of general supervision and control by the local chief executive over all programs, projects, services, and activities of the government is concerned. Copies of the opinions are also attached hereto.

We would like to invite you to visit dilg.gov.ph legal opinion page for future reference. Your legal queries may have already been answered in previous opinions.



/amg dlo 2016-010

Page 1 of 2

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: *Pedrito P. Alacaba*
Provincial Director
DILG Surigao del Sur
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Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
A. Francisco Gold Condominium II Bldg. EDSA
corner Mapagmahal St., Diliman, Quezon City

OFFICE OF THE UNDERSECRETARY FOR LOCAL GOVERNMENT

DILG OPINION NO. 8 S. 2010
22 January 2010

VICE-MAYOR RAYMUND O. BRAVO
San Nicolas, Pangasinan

Dear Vice-Mayor Bravo:

This has reference to your earlier letter addressed to Regional Director Manuel M. Biason, DILG-Region I seeking a legal opinion on the following issues, to wit:

1. Is it not that it becomes the duty on the part of the Municipal Mayor to authorize including the issuance of corresponding travel order to members of the sangguniang bayan officials and its employees whenever the vice-mayor has already issued his prior recommendation and signed the warrant drawn to such official travel?
2. Is this not a clear violation of the Local Government Code of 1991 committed by the mayor?
3. Is there any available sanction/s to be imposed against such violation committed by the municipal mayor?
4. On instances wherein the members of the sangguniang Bayan, officials and its employees push through with their official travel taking into consideration that such travels have been approved by the vice-mayor and all expenses necessary for such travels to be chargeable against the sangguniang bayan funds, but without the authorization and the issuance of corresponding travel order by the mayor, who openly disrespected his position and maintained his discretion not to issue the order, how should

We shall answer all your queries in one (1) discussion since they all pertain to one (1) subject matter.

In reply thereto, please be informed that this Department has been consistent in its opinion, the most recent of which is DILG Opinion No. 31, series of 2009, dated 07 July 2009, as follows:

"If the Vice-Mayor's travel and/or that of the Members of the Sangguniang Bayan is chargeable to the general fund of the municipality, the approval of the Mayor is discretionary because under Sec. 444 (b)(1)(c) of the Local Government Code of 1991, the Municipal Mayor, being the chief executive who exercise general supervision and control over all programs, projects, services and activities of the municipal government, is given the sole prerogative to authorize official trips outside of the municipality of municipal officials and employees. This is part and parcel of the executive function of the municipal mayor.

On the other hand, if such travel is chargeable to the sangguniang funds, the recommendation of the Vice-Mayor is necessary and the approval of the Mayor becomes a ministerial function because under Section 445 (a)(1) of the same Code, the Vice-Mayor is given the authority to sign all expenditures appropriated for the operation of the sangguniang bayan. The sangguniang bayan, through the Vice-Mayor, is actually acting as a legislative body of the local government unit (LGU) and operating on a separate budget though forming part of the entire budget of the municipality. As such, it becomes a duty on the part of the municipal mayor to authorize, including the issuance of corresponding travel order thereto to members of the sangguniang bayan and employees whenever the vice mayor had already issued his/her prior recommendation and had already signed the warrant drawn on the municipal treasury for all expenditures necessary for such official travel."

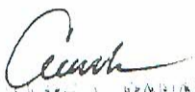

Per your letter, despite your travel having been charged to the sangguniang funds and with your prior recommendation, your Municipal Mayor nonetheless refused to authorize your trips, including the issuance of the corresponding travel order since, according to you, he "openly displays discrimination and maintained his discretion not to issue the same". If we are made to understand that the Municipal Mayor has unjustifiably refused in affixing his signature to the travel order we are of the view that in such instance, you and/or the sangguniang members concerned may already go on official travel even without your Municipal Mayor affixing his signature therein. As explained above, the signature of the Municipal Mayor is rendered ministerial, meaning the Municipal

Mayor cannot refuse in affixing signature, whenever the vice mayor has already issued his/her prior recommendation and has already signed the warrant drawn on the municipal treasury for all expenditures necessary for such official travel. It could never have been the intention of Congress to give wide latitude of powers to the Municipal Mayor under Section 444 (b)(1)(xv) of the Local Government Code of 1991 to authorize official trips outside of the municipality of municipal officials and employees so as to include the unjustifiable withholding of his signature approving the travel order thereby paralyze the normal operation of the sangguniang bayan.


Furthermore, it is also our position that for unjustifiable withholding his signature in the travel order, an administrative case for abuse of authority may be filed against the Municipal Mayor pursuant to Section 60 of the Local Government Code of 1991 (RA 7160).

We hope that we have addressed your concern accordingly.

Very truly yours,


AUSTERE A. PANADERO
Undersecretary 

LS/EL:md

 Cc: Dir. Mauro C. Biason, CESO III
Regional Director, DILG-Region I
City of San Fernando, La Union

The Municipal Local Government Operations Officer (MLGOO)
San Nicolas, Pangasinan



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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LEGAL SERVICE

OPINION NO. 68 S. 2010

28 May 2010

MR. TIMOTEO Y. DOSTO

Secretary to the Sangguniang Bayan
Buenavista, Province of Quezon

Dear Mr. Dosto:

This has reference to your earlier letter asking a legal opinion regarding the letter of the Local Chief Executive of the Municipality of Buenavista, Province of Quezon, addressed to the Sangguniang Bayan, requiring that all appearances of Municipal Employees under his supervision and any request for any information and data concerning executive works must be addressed to him. It may be recalled that your letter was initially addressed to CSC- Region IV. However, the CSC-region IV forwarded your letter to us for our appropriate action.

In reply thereto, please be informed that this Department had already answered a similar query in *DILG Opinion No. 22, series of 2009*. In the said legal opinion, we opined that in deference to the power of control of the mayor, it is just proper and legal that a department head or any official of the city under the mayor's control should first secure the permission or approval of the mayor before any appearance is made by him/her before the sanggunian, in aid of legislation. However, in the exercise of quasi-judicial functions, the sanggunian can compel the appearance of any person pursuant to its subpoena powers in relation to Section 65 of the Local Government Code of 1991 (RA 7160). In case the said subpoena is not obeyed, the Sangguniang Panlungsod should seek the aid of the Regional Trial Court to cite the defiant person in contempt.

Hereto attached is a photocopy of the aforesaid DILG Opinion for your ready perusal.

Thank you and warm regards.

Very truly yours,

BY AUTHORITY OF THE SECRETARY:

AFTY. JESUS B. DOQUE IV
Director III

Cc: DIRECTOR LYDIA A. CASTILLO



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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OFFICE OF THE UNDERSECRETARY FOR LOCAL GOVERNMENT

18 May 2009

ATTY. HERMINIGILDO G. TRINIDAD, JR.
City Administrator
City of Tanauan, Batangas

WLC OPINION NO. 22 S. 2009

Dear Atty. Trinidad:

This has reference to your earlier letter asking for enlightenment on the following issues, which we quoted in toto:

"We are writing to solicit the advice and/or legal opinion of your good office that can be observed by the Sangguniang Panlungsod when calling for appearances of city government officials to gather information or data; and for us to be apprised of the prohibitions or limitations when the nature of the inquiry is in pursuit of an investigation and/or in aid of legislation. Likewise, may we be enlightened as to what are the powers vested on the Sangguniang Panlungsod relative to the summons being made for these purposes."

We deem it proper to answer your queries jointly since they pertain to one subject matter.

At the outset, please be informed that all levels of the sanggunian, except the sangguniang barangay which exercises only legislative functions, are invested with dual functions, namely: (1) as a legislative body and (2) as a quasi-judicial body.

Legislative function refers to the power of local sanggunians to enact rules or regulations, which may be embodied in the form of an ordinance or a resolution of local application and having the force and effect of law. In the exercise of legislative powers, the sanggunian has no compulsory process to require persons to appear before it (*Negros Oriental*

II Electric Cooperative vs. Sangguniang Panlungsod of Dumaguete City, 155 SCRA #21).

Nevertheless, may we invite your attention to Section 455 (b)(1)(iv) of the Local Government Code of 1991 (RA 7160), which provides and we quote:

"Section 455. Chief Executive; Powers, Duties and Compensation. xxx (b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the city government and in this connection, shall: xxx xxx xxx

(iv) Initiate and propose legislative measures to the sangguniang panlungsod and as often as may be deemed necessary, provide such information and data needed or requested by said sanggunian in the performance of its legislative functions; xxx

Thus, while it is a settled jurisprudence that the Sangguniang Panlungsod cannot compel the attendance of any person before it in aid of legislation, it can however be safely stated that by invoking the aforequoted duty of the city mayor to furnish the necessary information and data to the sanggunian, the latter may exact that duty from the mayor by requiring the mayor or his duly authorized representative to be present in any session to present the information and data requested by the sanggunian.

It must be stressed however that if the person so required by the sanggunian is other than the mayor (e.g. a department head), please be reminded of the administrative hierarchy in the city government. The city mayor exercises control and supervision over all officials and employees in his local government unit save that of the sanggunian. As such, the mayor has the power to alter, reverse and modify the acts of his subordinates. In deference to the power of control of the mayor, it is just but proper and legal that a department head or any official of the city under the mayor's control should first secure the permission or approval of the mayor before any appearance is made by him/her before the sanggunian, in aid of legislation.

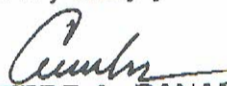
Quasi-judicial function, on the other hand, refers to their power to hear and decide administrative cases against erring elective local officials. Extensively, quasi-judicial refers to the discretion of officers who are required to investigate facts, or ascertain the existence of facts and draw conclusions from them as basis for their official action and to exercise discretion of a judicial nature.

In the exercise of quasi-judicial functions, the sanggunian can compel the appearance of any person pursuant to its subpoena powers in relation to Section 65 of the Local Government Code of 1991 (Rights of Respondent). Thus, in recognition of the right of the respondent in administrative investigation to confront and cross-examine the witnesses and to require the attendance of witnesses and the production of documentary evidence in his favor, the sanggunian is allowed to issue compulsory process of subpoena or subpoena duces tecum.

Let it be noted however that in case the subpoena is not obeyed, the Sangguniang Panlungsod cannot punish any person for contempt. Instead, it can invoke the aid of the Regional Trial Court to cite the defiant person in contempt pursuant to Rule 71 of the Rules of Court.

We hope that we have addressed your concern accordingly.

Very truly yours,


AUSTERE A. PANADERO
Undersecretary 