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 DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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COMMISSION ON ELECTIONS
 OFFICE OF THE REGIONAL ELECTORAL DIRECTOR
 REGION XIII
 06/29/2016
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DILG 13 Legal Opinion No. 2016-019
 June 29, 2016

ATTY. FRANCISCO F. POBE
 Regional Election Director
 Commission on Elections
 Caraga Region XIII
 Km. 4, Libertad, Butuan City

file

DILG RO XIII
 FILE
 REGION XIII
 RECEIVED
 DATE: JUN 29 2016
 TIME: 10:50 AM
 BY: BA

Dear RED Pobe:

This refers to the indorsed letter of Hon. Ricarlita J. Tubo requesting for legal opinion whether she may still run as member of the Sangguniang Barangay in the next Barangay Elections given the fact that she won in the same post in 2007; 2010; and 2013 but succeeded as Punong Barangay during her second term.

We have already answered her query in a Legal Opinion dated June 16, 2016. We said that we found no cogent reason to depart from the previous opinions of the Department on the matter, one of which is attached hereto for your ready reference (DILG Legal opinion No. 17, S. 2015).

Thank you very much and God bless!

Truly yours,

[Handwritten signature]
 LILIBETH A. FAMACION, CESO III
 Regional Director



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

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30 JUN 2015

HON. ROLLY M. QUEBRAL
Sangguniang Bayan Member
Maconacon, Isabela

Dear SB Member Quebral:

This has reference to your letter dated 15 December 2014 requesting the Department's legal opinion on whether you can still run for re-election as Sangguniang Bayan Member in the May 2016 Elections in view of the three consecutive term limit rule provided under Section 8, Article X of the 1987 Constitution and reiterated in Section 43 (b) of Republic Act No. 7160 or the Local Government Code of 1991.

Per your letter, you were elected for the first time as Sangguniang Bayan Member in the 2007 local elections and served as such until the end of said term. In the 2010 local elections, you again ran and won as 1st ranking Sangguniang Bayan Member. However, due to the sudden death of Mayor Erlinda M. Domingo on 22 January 2013, the incumbent Vice Mayor assumed as Mayor and you as Vice Mayor. You assumed as Vice Mayor from 23 January 2013 up to 30 June 2013. Then came the 2013 local elections. You again ran and won as Sangguniang Bayan Member.

Thus, your subject letter query.

Your query was impelled by the express provisions of Section 8, Article X of the 1987 Constitution and Section 43 (b) of RA 7160 providing the three term limit rule for elective local officials, thus:

"SECTION 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

SECTION 43. Term of Office. xxx

(b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected. xxx"

In the landmark case of *Borja vs. COMELEC*¹ and further bolstered in the case of *Lonzanida vs. COMELEC*,² the Supreme Court consistently held that in order for the aforementioned three consecutive term limit rule to apply to elective local officials holding the same position, the following requisites must concur: (1) that the official concerned has been *elected for three consecutive terms* in the same local government post; and (2) that he has *fully served three consecutive terms*.

As to the first requisite, the same was fully satisfied considering that in three (3) consecutive local elections, namely, 2007, 2010 and 2013, you were elected as Sangguniang Bayan Member.

As to the second requisite, we are of the view that the same is not present in your case. We find the ruling of the Supreme Court in *Montebon, et al. vs. COMELEC, et al.* (hereinafter referred to as the "*Montebon case*") instructive.

In the *Montebon case*, Federico T. Montebon had been elected for three consecutive terms as Sangguniang Bayan Member of Tuburan, Cebu in 1998-2001, 2001-2004, and 2004-2007 local elections. However, in January 2004, or during his second term, Montebon succeeded and assumed the position of vice mayor of Tuburan when the incumbent vice mayor retired. When Montebon filed his certificate of candidacy again as Sangguniang Bayan Member, a petition for disqualification was filed against him based on the three term limit rule.

The Supreme Court held that Montebon's assumption of office as vice mayor in January 2004 was an interruption of his continuity of service as Sangguniang Bayan Member. The Supreme Court emphasized that succession in local government office is by operation of law and as such, it is an involuntary severance from office. Thus,

"xxx respondent's assumption of office as vice mayor in January 2004 was an involuntary severance from his office as municipal councilor, resulting in an interruption in the service of his 2001-2004 term. It cannot be deemed to have been by reason of voluntary renunciation because it was by operation of law. We quote with approval the ruling of the COMELEC that

The legal successor is not given any option under the law on whether to accept the vacated post or not. Section 44 of the Local Government Code makes no exception. Only if the highest ranking councilor is permanently unable to succeed to the post does the law speak of alternate succession. Under no circumstances can simple refusal of the official concerned be considered as permanent inability" within the

¹ G.R. No. 133475, September 3, 2008.

² G.R. No. 138150, July 31, 2001.

³ G.R. No. 180344, 08 April 2008.

contemplation of law. Essentially therefore, the successor cannot refuse to assume the office that he is mandated to occupy by virtue of succession. He can only do so if for some reason he is permanently unable to succeed and occupy the post vacated.

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Thus, succession by law to a vacated government office is characteristically not voluntary since it involves the performance of a public duty by a government official, the non-performance of which exposes said official to possible administrative and criminal charges of dereliction of duty and neglect in the performance of public functions. It is therefore more compulsory and obligatory rather than voluntary."

Applying the Supreme Court ruling in the Montebon case to your case, the five (5) months or from 23 January 2013 up to 30 June 2013 in which you served as vice mayor in the term 2010-2013 shall be considered as an interruption, which effectively removed your case from the ambit of the three-term limit rule.

However, if this matter becomes an election issue in the future, we shall defer to the ruling of the Commission on Elections (COMELEC) or the courts.

We hope to have guided you accordingly.

Very truly yours,



AUSTERE A. PANALERO

Undersecretary



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DIR. MARLO L. IRINGAN
Officer-in-Charge
Office Regional
Clarification/Inquiries
Cagayan