

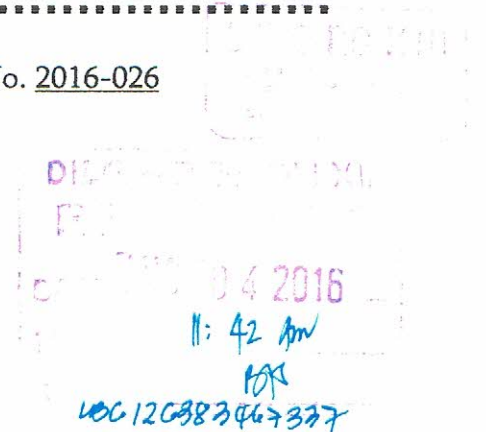


Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (Caraga Region)
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DILG 13 Legal Opinion No. 2016-026
August 1, 2016

SHEM G. GARAY
Municipal Mayor
Hinatuan, Surigao del Sur

file



Dear Hon. Garay:

This refers to your request for opinion dated July 27, 2016 on whether the existing Indigenous Peoples Mandatory Representative (IPMR) in your municipality will continue to serve as member of the Sangguniang Bayan or his term of office ended last June 30, 2016.

Please be informed that this Department has categorically answered the same query in DILG Legal Opinion No. 01, S. 2015 dated 12 Jan 2015. Attached is a copy of the same opinion for your easy reference and guidance.

God bless.

Truly yours,

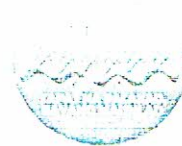
LILIBETH A. FAMACION, CESO III
Regional Director

cc: *Pedrito P. Alacaba*
Provincial Director
DILG Surigao del Sur

Xh 8/9/16
JOSEPH XHOROYONG



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
DILG-NARPOCOM Center, 105A corner Quirica Avenue, West Triangle, Quezon City
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DILG Legal Opinion No. 01, S. 2015

12 JAN 2015

HON. EFREN E. PASCUAL, JR.

Vice Governor

Province of Bataan

Dear Vice Governor Pascual:

This has reference to your letter dated 17 July 2014 requesting legal opinion on the following queries:

1. *Whether or not the issuance of the Certificates of Affirmation by the NCHP and the Certificate of Recognition by the DILG Regional Director provide sufficient legal basis in considering HON. DANILLO B. SALONGA as a member of the Sanggunian.*
2. *Whether or not the requirement of a prior determination by the Sanggunian within ninety (90) days prior to the holding of the local elections on which sector shall be represented, as provided Section 407 (b) of the Local Government Code is applicable in the case at bar.*
3. *Whether or not the provision under Section 41 (c) of the Code, which mandates the Commission on Election to promulgate rules and regulations to effectively provide for the election of sectoral representative have been repealed.*
4. *Whether or not the assumption to office of Hon. Danilo B. Salonga is considered to be an ex officio membership in the Sanggunian along with the league of local officials expressly provided under Sec. 41 (b) of the Local Government Code.*
5. *Whether or not the term of office of Hon. Danilo B. Salonga extends beyond the term of office of the incumbent members of the Sangguniang Pambalawigan who will serve until noon of June 30, 2016."*

For your letter, the National Commission on Indigenous Peoples (NCHP) Region III issued on 26 February 2014 a Certificate of Affirmation to Hon. Danilo B. Salonga therein, for "Hon. Salonga") "for having been selected and chosen xxx as the mandatory representative or ex officio member representing the Indigenous Peoples Indigenous cultural communities in the Sangguniang Pambalawigan of Bataan".

On 07 April 2014, DILG-Region III issued a Certificate of Affirmation to Hon. Salonga "for having been affirmed by the National Commission on Indigenous People pursuant to Section 16 (b) of NCIP Administrative Order No. 001, Series of 2009 and as enshrined under Section 467 (b) of the Local Government Code and Article 93 (a)(1) & (2) of the Rules and Regulations Implementing the Local Government Code as the mandatory representative or ex officio member to represent the Indigenous Peoples/Indigenous Cultural Communities (IPs/ICCs) in the Sangguniang Pambalawigan of Bataan".

By virtue of the aforesaid Certificates of Affirmation and Recognition, Hon. Salonga took his oath of office on 05 May 2014 as "*Kinatawan ng Sangguniang Pambalawigan ng Bataan (IPMR)*" before Hon. Albert S. Garcia, Governor of Bataan.

Hence, your queries:

We shall answer your above enumerated queries in seriatim.

As to the first issue, may we invite your attention to following provisions of NCIP Administrative Order No. 001, series of 2009, entitled "*National Guidelines for the Mandatory Representation of Indigenous Peoples in Local Legislative Councils*," which states:

"SECTION 12. Selection and Assumption to Office.

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Assumption to Office shall take place as soon as the selection process is formally certified by the concerned NCIP Regional Director, upon recommendation of the Provincial or Community Service Center head, as the case may be, to be in accordance with this Administrative Order, and the person chosen takes the appropriate oath before an authorized officer and informs the appropriate bodies of his/her assumption."

"SECTION 16. Duties of the Regional Office. It shall be the task of the Regional Office to:

- a. Evaluate the documents and results of the proceedings; if found meritorious, it shall issue a Certificate of Affirmation (COA) to the selected representative. Otherwise, the same shall be returned to the recommending NCIP Field Office with specific instructions for compliance.*
- 1. Submit to DILG for recognition a copy of its issued COA of selected representative including all documents appurtenant thereto, copy furnished the NCIP Central Office through the Office of Empowerment and Human Rights (OEHHR)."*

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Based on the aforementioned provisions of NCIP Administrative Order No. 001, series of 2009, the Indigenous Peoples Mandatory Representative (IPMR) may already assume as such in the local sanggunian upon compliance with/issuance of the following:

- a. A formal certification by the concerned NCIP Regional Director, upon recommendation of the Provincial or Community Service Center head, as the case may be, that the selection process is in accordance with NCIP Administrative Order No. 001, series of 2009;
- b. The IPMR takes the appropriate oath before an authorized officer;
- c. The IPMR informs the appropriate body of his/her assumption;
- d. The NCIP Regional Office issues a Certificate of Affirmation (COA) in favor of the IPMR;
- e. On the basis of such NCIP issued COA, the DILG Regional Office issues a Certificate of Recognition in favor of the IPMR.

Aside from COA and Certificate of Recognition, there are three (3) more requirements that the IPMR should comply with, namely, the concerned NCIP Regional Director issues a formal certification regarding the compliance of the selection process with NCIP Administrative Order No. 001, series of 2009; take the appropriate oath of office before an authorized officer; and inform the sanggunian about his/her assumption as such.

As to your second and third queries, may we invite your attention to the following provisions of Republic Act No. 7160 or the Local Government Code of 1991, to wit:

Section 41 (b) and (c) of the Local Government Code of 1991

"SECTION 41. Manner of Election. xxx

(b) The regular members of the sangguniang panlalawigan, sangguniang panlungsod, and sangguniang bayan shall be elected by district, as may be provided for by law. Sangguniang barangay members shall be elected at large. The presidents of the leagues of sanggunian members of component cities and municipalities shall serve as ex officio members of the sangguniang panlalawigan concerned. The presidents of the liga ng mga barangay and the pederasyon ng mga sangguniang kabataan elected by their respective chapters, as provided in this Code, shall serve as ex officio members of the sangguniang panlalawigan, sangguniang panlungsod, and sangguniang bayan.

(c) In addition thereto, there shall be one (1) sectoral representative from the women, one (1) from the workers, and one (1) from any of the following sectors: the urban poor, indigenous cultural communities, disabled persons, or any other sector as may be determined by the sanggunian concerned within ninety (90) days prior to the holding of the next local elections, as may be provided for by law. The COMELEC,

shall promulgate the rules and regulations to effectively provide for the election of such sectoral representatives."

Section 467 of the Local Government Code of 1991

"SEC. 467. Composition. (a) The sangguniang panlalawigan, the legislative body of the province, shall be composed of the provincial vice-governor as presiding officer, the regular sanggunian members, the president of the provincial chapter of the liga ng mga barangay, the president of the panlalawigang pederasyon ng mga sangguniang kabataan, the president of the provincial federation of the sanggunian members of municipalities and component cities, and the sectoral representatives, as members.

(b) In addition thereto, there shall be three (3) sectoral representatives: one (1) from the women and, as shall be determined by the sanggunian concerned within ninety (90) days prior to the holding of the local elections, one (1) from the agricultural or industrial workers and one (1) from the other sectors, including the urban poor, indigenous cultural minorities, or disabled persons.

(c) The regular members of the sangguniang panlungsod and the sectoral representatives shall be elected in the manner as may be provided for by law." (Emphasis Supplied)

Based on the foregoing, the Sangguniang Panlalawigan shall be composed of the vice-governor, regular members, the president of the provincial chapter of the liga ng mga barangay, the president of the panlalawigang pederasyon ng mga sangguniang kabataan, the president of the provincial federation of the sanggunian members of municipalities and component cities, and the sectoral representatives.

All the aforementioned positions in the local sanggunians are being filled up with the exception of the sectoral representatives. The reason for this is that the Congress has yet to pass a law providing for the manner of electing the sectoral representatives in all the local sanggunians as provided under the aforementioned provisions of the Local Government Code of 1991.

Meantime, on 29 October 1997, Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (hereinafter "RA 8371") was approved and signed into law. Said law recognizes the policy of the State in affording the indigenous people communities adequate representations in the local government sanggunians at all levels. Precisely, pursuant to Section 6, Rule IV of the Implementing Rules and Regulations of RA 8371, it is mandated that indigenous peoples shall be represented in all sanggunians at all levels whose representatives shall be selected in accordance with the customs and traditions of the indigenous people concerned. Along this line, it is noted that it was the NCIP, which was mandated by law to come up with the Implementing Rules and Regulations.

The Department has consistently opined that RA 8371 and its Implementing Rules and Regulations issued by the NCIP are already sufficient as an enabling law to install the indigenous peoples representatives in the different sanggunians of LGUs.

Hence, among the different sectors mentioned in Sections 41 (1) and 467 (b) of the Local Government Code of 1991, only the sector of indigenous cultural minorities has an enabling law to install them in the different sanggunians of LGUs.

Hence, in reply to your second query, the requirement of a prior determination by the Sanggunian within ninety (90) days prior to the holding of the local elections on which sector shall be represented cannot yet be applied as it was already mentioned, there is yet no enabling law passed by Congress providing for the manner of electing them, except in the case of the indigenous cultural minorities.

As to your third query, insofar as the indigenous cultural minorities are concerned, Section 41 (c) of the Local Government Code of 1991 has already been amended by RA 8371 when the latter law mandated instead the NCIP to come up with the Implementing Rules and Regulations which the NCIP did when they promulgated NCIP Administrative Order No. 001, series of 2009 to set up the processes and mechanisms for the mandatory representation of Indigenous Peoples in local legislative councils.

As to your fourth query, this Department consistently considers the president of the provincial chapter of the *liga ng mga barangay*, the president of the *panlalawigan ng pederasyon ng mga sangguniang kabataan*, the president of the provincial federation of the sanggunian members of municipalities and component cities, and the sectoral representatives *ex officio* members.

As to your fifth query, Section 11 of NCIP Administrative Order No. 001, series of 2009 in relation to Section 12 thereof, is instructive, thus:

"SECTION 11. Term of and Removal from Office. The term of office of the IPs mandatory representative in the local legislative councils shall be for a period of three (3) years from the date of assumption to office and can be re-indorsed for another term by the LGU's constituents but in no case shall the representative serve for more than three (3) consecutive terms. For LGUs with more than one (1) LGU's IPs residing within its jurisdiction, all LGU's IPs tribes in said LGU may agree on a term sharing agreement based on population ratio, or on whatever local arrangement they may deem suited and applicable to address the cultural peculiarities in said LGU.

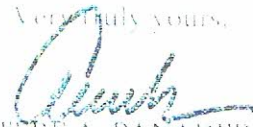
The IPs mandatory representative can be replaced anytime by the LGU's IPs who selected him/her to the position in accordance with their local guidelines on recall/removal from office."

Based on the aforementioned provision of NCIP Administrative Order No. 001, series of 2009, the term of office of the IPMR shall be for a period of three (3) years. Nowhere can we find in the aforesaid provision that such term of office of the IPMR shall be made simultaneous with the term of office of the incumbent members of the local sanggunians. If this is the intent of the NCIP, it could have categorically provided in its issuance.

Such being the case, the term of office of the IPMR shall be for a period of three (3) years to be reckoned from the date of his/her assumption to office which per Section 12 of NCIP Administrative Order No. 001, series of 2009 *"xxx shall take place as soon as the selection process is formally certified by the concerned NCIP Regional Director, upon recommendation of the Provincial or Community Service Center head, as the case may be, to be in accordance with this Administrative Order, and the person chosen takes the appropriate oath before an authorized officer and informs the appropriate bodyies of his/her assumption."*

We hope to have addressed your concerns accordingly.

Very truly yours,



AUSTERE A. PANADERO

Undersecretary

Is it?

Copy to IPMR head?



EDITH BORDIA M. BAYAN
IPMR Region III
Rm. Municipal City of San Fernando
Pampanga