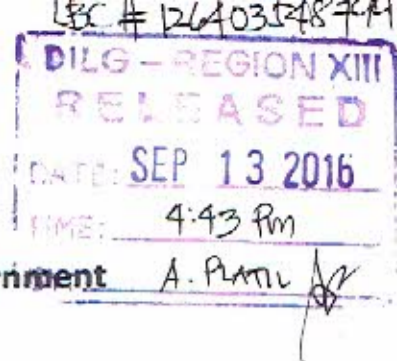




Republic of the Philippines
Department of the Interior and Local Government
Region 13 (Caraga)



DILG 13 Legal Opinion No. 2016-029
September 5, 2016

OTILLO B. ABAYA, JR.
P-6A, Montero St.,
Poblacion, Bislig City

file

Dear **Mr. Abaya**:

We acknowledge receipt of your letter dated August 23, 2016 forwarding to this level pertinent papers as to your qualification in your application for an appointment of (*sic*) the vacancy in the Sangguniang Panlalawigan in the 2nd District of the Province of Surigao del Sur.

You opined that election is about the number of votes and Party representation and hoped that this (*sic*) will confirm your appointment to fill-up one vacant seat in the Sangguniang Panlalawigan of the 2nd District of the Province of Surigao del Sur which was caused by the death of the Late Board Member Apolinario A. Suan.

We would like you to read with us the provision in the Local Government Code of 1991, particularly, Section 45, *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:*

(1) *The President, through the Executive Secretary, in the case of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities;*

(2) xxx

(3) xxx

(b) *Except for the sangguniang barangay, only the nominee of the political party under which the sanggunian member concerned had been elected and whose elevation to the position next higher in rank created the last vacancy in the sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the same political party as that of the sanggunian member who caused the vacancy and*

"Matino, Mahusay at Maaasahan"

1559 Matimco Bldg., Km. 4 Libertad, Butuan City
Tel. Nos.: (085) 342-2134, 341-1976, 342-2045

Email Address: official@caraga.dilg.gov.ph
Website: www.caraga.dilg.gov.ph



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shall serve the unexpired term of the vacant office. In the appointment herein mentioned, a nomination and a certificate of membership of the appointee from the highest official of the political party concerned are conditions sine qua non, and any appointment without such nomination and certification shall be null and void ab initio and shall be a ground for administrative action against the official responsible therefor. xxx (Emphasis supplied)

Upon initial review of your papers, we noted that you have attached the Certificate of Nomination and Acceptance of the National People's Coalition as the party's official candidate in the May 9, 2015 National and Local Elections for the position of Sangguniang Panlalawigan, District II, Province of Surigao del Sur signed by the Provincial Chairman. Reading the provision quoted above, we gleaned that what are required by law are a nomination, which necessarily is a nomination to fill the vacant position, and a certificate of membership of the appointee from the highest official of the political party concerned.

Moreover, with regard to the political party concerned and based on your attached Provincial Certificate of Canvass, we noted that the deceased SP Member Hon. Apolinario A. Suan of the NPC, was ranked 4 and was followed in rank by Hon. Raul Millan (Rank 5) of the LP. With the vacancy caused by the death of Hon. Suan, Hon. Millan is elevated to Rank 4 by operation of law. The vacant position to be filled is that of Rank 5.

Based on the Decision of the Court in the landmark case of Navarro v. Court of Appeals, G.R. No. 141307. March 28, 2001, we quote:

"What is crucial is the interpretation of Section 45 (b) providing that "xxx only the nominee of the political party under which the Sanggunian member concerned has been elected and whose elevation to the position next higher in rank created the last vacancy in the Sanggunian shall be appointed in the manner hereinabove provided. The appointee shall come from the political party as that of the Sanggunian member who caused the vacancy xxx."

The reason behind the right given to a political party to nominate a replacement where a permanent vacancy occurs in the Sanggunian is to maintain the party representation as willed by the people in the election."

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We would like to underscore that being Rank 6 in the recently concluded election does not automatically entitle that person to succeed or be appointed to any vacancy in the sanggunian, the manner of filling up vacancies and succession being expressly provided for by law.

More importantly, we would like to note following pertinent provisions of law:

SECTION 94. Appointment of Elective and Appointive Local Officials; Candidates Who Lost in Election. - (a) xxx

*(b) Except for losing candidates in barangay elections, **no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the government** or any government-owned or controlled corporations or in any of their subsidiaries. (Emphasis supplied)*


Section 6, Article IX-B of the 1987 Constitution states:

*Section 6. **No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government** or any Government-owned or controlled corporations or in any of their subsidiaries. (Emphasis supplied)*

We hope to have satisfactorily assisted and enlightened you in this matter.

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

Very truly yours,


LILIBETH A. FAMACION, CESO III
Regional Director

FD - ALA 101 - LBC # 10103548789

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