



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

DILG 13 Legal Opinion No. 2016-030
September 21, 2016

SALUTARIO B. CUASITO
Member, Sangguniang Panlalawigan
Agusan del Norte

Dear Hon. Cuasito:

This refers to your letter dated August 26, 2016 requesting the Secretary of the Interior and Local Government, Hon. Ismael D. Sueno for enlightenment on the following matters:

1. Whether or not the Intelligence Fund (IF) of a Local Chief Executive can be re-enacted in case there is a re-enacted budget due to the failure of the sanggunian to enact the annual appropriation;
2. Whether or not the wages/honoraria of persons falling under contract of service/job orders can be re-enacted in case there is a re-enacted budget due to the failure of the sanggunian to enact annual appropriation;
3. What are those specific items considered as essential operating expenses deemed re-enacted in case the sanggunian fails to authorize the annual appropriation.

The above letter was referred by the DILG-Central Office Legal and Legislative Liaison Service to this level in a letter dated 14 September 2016, received by this level on September 19, 2016, for appropriate action and disposition.

Let us answer your three questions in one discussion since the issues presented are interrelated.

The pertinent provision of law relative to your request for enlightenment is Section 323 of the Local Government Code of 1991 (R.A. 7160), which states:

Section 323. Failure to Enact the Annual Appropriations. - In case the sanggunian concerned fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year, it shall continue to hold sessions, without additional remuneration for its members, until such ordinance is approved, and no other business may be taken up during such sessions. If the sanggunian still fails to enact such ordinance after ninety (90) days from the beginning of the fiscal year, the

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ordinance authorizing the appropriations of the preceding year shall be deemed reenacted and shall remain in force and effect until the ordinance authorizing the proposed appropriations is passed by the sanggunian concerned. However, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted and disbursement of funds shall be in accordance therewith. (Emphasis supplied)

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The aforementioned provision clearly provides the consequence in case the Sanggunian fails to enact the annual appropriations, that is, the budget of the preceding year is reenacted. In case of reenacted budget, only the annual appropriations for salaries and wages of existing positions, statutory and contractual obligations, and essential operating expenses authorized in the annual and supplemental budgets for the preceding year shall be deemed reenacted. This was reiterated by the Supreme Court in the case of Villanueva vs. Ople. (DILG Legal Opinion No. 44 s. 2012 dated July 10, 2012.)

It should be observed that, as indicated by the word only preceding the above enumeration in Sec. 323, the items for which disbursements may be made under a reenacted budget are exclusive. Clearly, contractual obligations which were not included in the previous year's annual and supplemental budgets cannot be disbursed by the local government unit. (Quisumbing, et. al vs. Garcia, et. al, G.R. No. 175527)

DILG Opinion No. 13 s. 2010 dated 09 February 2010 states:

Pursuant to the old Government Accounting and Auditing Manual and COA Circular No. 2002-005, the New Government Accounting and Auditing Manual, MOOE includes expenses necessary for the regular operations of the agency. It particularly includes expenses for local and foreign travel, communication services, repair and maintenance of government facilities, use, repairs and maintenance of government vehicles, transportations services, supplies and materials, rents, interests, awards and indemnities, loan repayments and sinking fund contributions, losses, depreciation, depletion, water, illumination and power service, social security benefits, rewards and other claims, auditing services, training and seminars, extraordinary and miscellaneous expenses, confidential and intelligence expenses, anti-insurgency, contingency, emergency expenses, taxes and other duties, trading/production, advertising and publication expenses, fidelity bond and insurance premiums, loss on foreign exchange, commitment fees, and other charges. (Emphasis supplied)

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As could be gleaned from the enumeration, we could logically conclude that there are items in the MOOE which, though may be necessary for the regular operation of the local government unit, may not at all (sic) necessary for its basic operation. Accordingly, the expenses referred to by the phrase "essential operating expenses" could refer to some items in the MOOE which are essential for the continued basic operation and existence of a local government unit.

While essential operating expenses does (sic) not cover all of the above enumerated MOOE items, however; (sic) should there still be available funds after the essential operating expenses are satisfied, a local government unit may include other items in the MOOE of the previous fiscal year's budget as re-enacted.

Further, DILG Legal Opinion No. 30, s. 2015 dated 22 July 2015 states:

Salaries of Permanent, Casual & Job Orders

The salaries of personnel holding permanent and casual appointments are covered under the re-enacted budget as they are considered existing positions in the government service.

Job Orders, on the other hand, covers (sic) piece of work or intermittent job of short duration not exceeding six months on a daily basis and are not considered government service but are in the nature of contracts which is under the supervision and regulation of DBM and the COA pursuant to Section 1, Rule XI of Civil Service Commission (CSC) Memorandum Circular (MC) No. 40, s. 1998, as amended, and CSC No. 01, s. 2007. Hence the same may be covered under the reenacted budget provided said contractual obligation was authorized in the annual and supplemental budget for the preceding year.

Finally, this same Opinion also reiterated the implied disadvantages of a re-enacted budget as enumerated in the DBM's Budget Operations Manual (BOM) for Local Government Units (An Updated Version of the June 2005 Edition), such as, but not limited to, the following:

1. No creation of positions;
2. No new programs, projects, and activities;
3. No utilization of the increase in IRA allocation for the year since the same is not covered by an Appropriation Ordinance;
4. Non-implementation of non-recurring activities no matter how vital they may be;
5. No supplemental appropriations.

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We hope to have satisfactorily addressed your concerns.

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

Very truly yours,

(SGD) LILIBETH A. FAMACION, CESO III
Regional Director

cc: Romeo A. Solis
Provincial Director
DILG-Agusan del Norte

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