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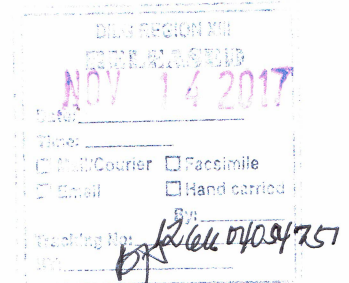
Republic of the Philippines  
**Department of the Interior and Local Government**  
Region 13 (Caraga)

RECEIVED  
ATTY: Aslen

October 27, 2017

**MS. GEMMA AVENIDO ARELLANO**

Barangay Secretary  
Brgy. 5 – Datu Silongan  
Butuan City



**Dear Ms. Arellano:**

This refers to your letter, which was forwarded to this level by City Director Charissa T. Guerta, on the matter of your termination as Barangay Secretary of Brgy. 5 – Datu Silongan, Butuan City by Punong Barangay Alain James Buque.

DILG Legal Opinion No. 18 S. 2008 issued on 10 April 2008 is instructive in your case. We are attaching a copy of the particular legal opinion for your information and proper guidance.

God bless!

Truly yours,

  
**LILIBETH A. FAMACION, CESO III**  
Regional Director 

cc: CD Charissa Guerta  
PB Alain James Buque

/amg dlo 2017-017

**"Matino, Mahusay at Maaasahan"**

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Republic of the Philippines  
**DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT**  
Francisco Gold Condominium II, EDSA cor. Mapagmahal St.  
Diliman, Quezon City

**OFFICE OF THE UNDERSECRETARY FOR LOCAL GOVERNMENT**

WLD OFFICE NO. 18 S. 2008

10 April 2008

**MR. MARIO L. PADILLA, SR.**  
Barangay Secretary  
Barangay Bahay Pare, Candaba  
Pampanga

Dear Mr. Padilla:

This has reference to your letter dated 27 March 2008 seeking our legal opinion on your alleged illegal termination as Barangay Secretary by Punong Barangay Emy P. Gozales, Barangay Pare, Candaba, Pampanga.

Per your letter, you represented that Punong Barangay Emy P. Gonzales appointed you as Barangay Secretary on 30 November 2007 which, according to you, was perhaps a reward for helping her win in the recently concluded Synchronized Barangay and Sangguniang Kabataan Elections. On even date, the Sangguniang Barangay unanimously concurred to your appointment. However, a week after your appointment, PB Gonzales started to make you do paper works (e.g. draft resolutions appointing Norberto Manarang as Chief of Bantay Bayan when in fact, Macelino Evangelista was already validly appointed to the same position) which you think are legally infirmed. You were very vocal with your opposition against the Punong Barangay. Hence, in a letter dated 06 January 2008, PB Gonzales terminated you as Barangay Secretary effective on the next day due to inefficiency, unbecoming behavior and lack of trust and confidence. Thereafter, in a special session, the Sangguniang Barangay reinstated you to your position. However, on 18 February 2008, PB Gonzales again terminated you citing the same grounds. For the second time, the Sangguniang Barangay exonerated you and restored you to your position. On 19 March 2008, PB Gonzales, for the third time, terminated you from your position, this time on the ground that you did not meet the qualifications, i.e. a qualified voter in the barangay, required for the position of Barangay Secretary as provided in Chapter V, Section 394, paragraph (b) of the Local Government Code of 1991 (RA 7160). Hence, your query.

In reply to your query, may we invite your attention to Section 394 of the Local Government Code of 1991 (RA 7160) which provides and we quote:

***"SEC. 394. Barangay Secretary: Appointment, Qualification, Powers and Duties.- (a) The barangay secretary shall be appointed by the punong barangay***



with the concurrence of the majority of the sangguniang barangay members. The appointment of the Barangay Secretary shall not be subject to attestation by the Civil Service Commission.

(b) The barangay secretary shall be of legal age, a qualified voter and an actual resident of the barangay concerned.

(c) No person shall be appointed barangay secretary if he is a sangguniang barangay member, a government employee, or a relative of the punong barangay within the fourth civil degree of consanguinity or affinity. xxx" (Emphasis Supplied)

Based on the aforequoted provision, particularly paragraph (a), the appointment of a barangay secretary involves the issuance by the punong barangay of the corresponding appointment and the submission of the same to the sangguniang barangay for concurrence. The punong barangay must perform the operative act of appointing the barangay secretary and the sangguniang barangay will signify its concurrence thereto. In deliberating whether or not to concur with the appointment made by the Punong Barangay, the Sangguniang Barangay shall be guided by simply determining whether or not the appointee of the Punong Barangay possesses all the qualifications and none of the disqualifications cited under the aforequoted provision.

In the case of Alquizola vs. Ocol (G.R. No. 132413, 27 August 1999), the Supreme Court held that the power to appoint a barangay secretary or other appointive barangay officials is conjointly exercised by the Punong Barangay and the Sangguniang Barangay.

After the act of appointment is complete, the appointing authority may no longer revoke its former appointment, specifically where the appointee has already taken his oath of office and assumed the same. At this point, let it be noted that the appointment of the barangay secretary shall become effective and complete only upon the concurrence of a majority of all the members of the sangguniang barangay pursuant to a well settled rule that where the assent or confirmation of some officers or body is required, the appointment may be complete only when such assent or confirmation is obtained (Corpus vs. C.A., 285 SCRA 23).

It may be well to note that DILG Memorandum Circular No. 2002-150, entitled: "Guidelines on the Appointment of Barangay Secretaries, Treasurers and Other Appointive Barangay Officials" dated 18 September 2002, also lays down the guidelines on the removal of barangay appointive officials. Based on this issuance, a barangay secretary may be removed from office with or without cause. If it be without cause, his removal by the Punong Barangay shall require the concurrence of the majority of all the Sangguniang Barangay members (citing the case of Alquizola vs. Ocol, *supra*). On the other hand, if it were



for cause, his removal was due to an administrative case filed against him and the hearings conducted in accordance with the pertinent Civil Service law, rules and regulations. In removal with cause, the concurrence of the majority of all the Sangguniang Barangay members is not anymore required. It is therefore apparent that either the appointing or the concurring authority cannot unilaterally make the removal from office without cause of a barangay secretary.

Taking into consideration the foregoing rules, we are of the view that the three (3) incidents of unilateral termination made by PB Gonzales against you are legally infirmed.

We shall first discuss the termination made by PB Gonzales on the ground of your alleged "*inefficiency, unbecoming behavior and lost of trust and confidence*". It is settled that your appointment as Barangay Secretary has already been completed, the same having been already concurred. In fact, you already took your oath of office, assumed said position and as of the date of your letter, you are still discharging the duties and functions as barangay secretary. For all legal intents and purposes, you already acquired security of tenure in the position and could be removed therefrom only for any of the causes, and conformably to the procedure, prescribed under the CSC rules, per our discussion above. Otherwise stated, it is only after an administrative case is filed against you and that hearings were conducted thereon in accordance with the pertinent Civil Service law, rules and regulations, that you can be removed as barangay secretary.

We shall now discuss your termination due to your alleged disqualification to the position as barangay secretary for not having met the qualifications required for said position as provided in Chapter V, Section 394, paragraph (b) of the Local Government Code of 1991 (RA 7160). May we again respectfully remind you that since your appointment as Barangay Secretary has already been completed, you already acquired security of tenure in the position and could be removed therefrom only conformably to the procedure prescribed under established rules. The ratiocination given by the Supreme Court in the case of Docena, vs. The Sangguniang Panlalawigan of Eastern Samar, et al (G.R. No. 96817, 25 June 1991) is very instructive. The Supreme Court held in this case that since the appointment having been issued and accepted, and the appointee having already assumed office, his appointment could not just thereafter be recalled unilaterally by the punong barangay. The appointee has already acquired security of tenure in the position and could be removed therefrom only for any of the causes, and conformably to the procedure, prescribed under the pertinent rules as aforestated. These requirements could not be circumvented by the simple process of recalling his appointment.


Under the rules, if the appointment is limited so that only a person having certain prescribed qualifications may be selected, the courts may, in an appropriate proceeding, determine whether the one appointed has the requisite qualifications and, if it is found that he has not, declare his title to the office void (42 Am. Jur. 985-986).



Furthermore, may we advise you that for appointing someone not qualified for the position as Barangay Secretary and for concurring to such appointment, the Punong Barangay and the Sangguniang Barangay, respectively, are susceptible for administrative cases as for abuse of authority.

We hope that we have addressed your concern accordingly.

Very truly yours,

  
**AUSTERE A. PANADERO**  
Undersecretary 

Legal/17  
c

cc: Director Josefina Castilla-Go  
DILG Regional Office No. 03  
San Fernando City, Pampanga