



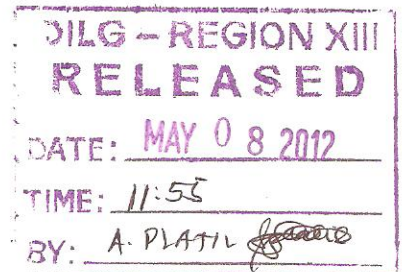
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DILG-13 OPINION NO. 17

May 8, 2012

Hon. RENATO S. MUÑEZ, MD.  
Municipal Vice Mayor  
La Paz, Agusan del Sur



Dear Vice Mayor Muñoz:

This refers to your undated letter asking this Office regarding the following issues:

- 1) Can the mayor withhold the release of the second quarter allotment of the sanggunian budget office (SBO) when there are funds available and when the LGU is operating on a re-enacted budget?
- 2) Is the mayor authorized by law to decide which MOOE budget is essential or non-essential under the SBO budget? And
- 3) Can the mayor suspend some disbursements under the SBO when there is a separate budget for the SBO headed by the municipal vice mayor just because the budget for 2012 is not yet approved?

Please be informed that Sec. 323 of the Local Government Code (R.A. No. 7160) provides that "x x x in case the sanggunian fails to pass the ordinance authorizing the annual appropriations at the beginning of the ensuing fiscal year, the ordinance authorizing the appropriations of the preceding year shall be deemed reenacted x x x" (underlining supplied).

The word "deemed", as defined in Black's Law Dictionary, means "to consider". The word "reenact" means "to enact again". Hence the phrase "deemed reenacted" would mean "consider as enacted again". Such being the case, the annual budget for the preceding fiscal year is to be considered as enacted again.

A reenacted budget is as valid and effective as that of previous year's budget. There is no need to determine what are those essential maintenance operating and other expenses (MOOE) in a reenacted budget because the MOOE of the previous year's budget is reenacted in its entirety.

The determination by the local chief executive on what are those essential MOOE happens only if the revised income estimate is lesser than the reenacted budget. However,

the reduction needs the affirmative act of the sanggunian concerned. Sec. 323 of the Code partly provides:

*“in case the revised income estimate is lesser than the reenacted appropriations, the local treasurer concern shall accordingly advise the sanggunian concerned which shall, within ten (10) days from receipt of such advice, make the necessary adjustments or reductions. The revised appropriations authorized by the sanggunian concerned shall be the basis for disbursements.”*

Since the MOOE of the previous year’s budget is reenacted in its entirety, we believed that the reduction and withholding of the MOOE of the sangguniang bayan by the mayor is not proper.

In *Atienza vs. Villaroza (G.R. No. 161081, May 10, 2005)*, the Supreme Court ruled that the vice governor has the power to approve purchase orders issued in connection with the procurement of supplies, materials, equipment, including fuel, repairs and maintenance of the *Sangguniang Panlalawigan*. While the issue in that case is about procurement and pertains to sangguniang panlalawigan we believe that the same is applicable to your case.

Applying the above-mentioned ruling, we believed that the Local Executive Order-Directive (LEO-D) No. 04-2012 dated March 13, 2012 and Memorandum No. 2012-19 dated April 10, 2012 issued by the Mayor encroaches upon the authority and prerogative of the vice mayor. The assailed issuances are not in keeping with the intent of R.A. No. 7160 which is to vest on the *Sangguniang Bayan* independence in the exercise of its legislative functions *vis-a-vis* the discharge by the Mayor of the executive functions. The withholding of funds due to the sanggunian curtailed the latter’s independence.

In *Atienza*, the Supreme Court ruled that either legislative or executive department now comprises different and non-intermingling official personalities with the end in view of ensuring a better delivery of public service and provide a system of check and balance between the two. The idea is to distribute powers among elective local officials so that the legislative, which is the Sanggunian, can properly check the executive, which is the Governor or the Mayor and vice versa and exercise their functions without any undue interference from one by the other.

We hope to have clarified you on this matter.

Very truly yours,

  
LILIBETH A. FAMACION, CESO IV  
OIC-Regional Director