



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (CARAGA REGION)
1559 Matimco Bldg., Km.4, Libertad, Butuan City
Telefax. Nos. (085) 342-2134/815-1299
website: caraga.dilg.gov.ph; email address: dilgxiii@yahoo.com



**DILG RO XIII
FILE**

DILG-13 OPINION NO. ^{UPC R9916157748}
April 23, 2013

DILG-REGION XIII RELEASED	
DATE:	MAY 06 2013
TIME:	4:20 PM
BY:	<i>[Signature]</i>

Mr. ROMEO O. DELA TORRE
LP Chairperson
Liberal Party Municipal Headquarters
Purok 11, Poblacion
Sibagat, Agusan del Sur

Dear Mr. Torre:

This refers to your letter seeking guidance on the following issues:

- 1) Whether barangay elective officials can campaign for or against a national or local candidates for this coming May 13, 2013 National and Local Synchronized Elections; and
- 2) The inaction of the barangay and municipal officials on your application for permit to conduct rally.

Your first question may have been brought about due to Section 38 of the Batas Pambansa Blg. 881 (Omnibus Election Code), which states:

Sec. 38. Conduct of elections. - The barangay election shall be non-partisan and shall be conducted in an expeditious and inexpensive manner.

No person who files a certificate of candidacy shall represent or allow himself to be represented as a candidate of any political party or any other organization; and no political party, political group, political committee, civic, religious, professional, or other organization or organized group of whatever nature shall intervene in his nomination or in the filing of his certificate of candidacy or give aid or support, directly or indirectly, material or otherwise favorable to or against his campaign for election: Provided, That this provision shall not apply to the members of the family of a candidate within the fourth civil degree of

consanguinity or affinity nor to the personal campaign staff of the candidate which shall not be more than one for every one hundred registered voters in his barangay: Provided, however, That without prejudice to any liability that may be incurred, no permit to hold a public meeting shall be denied on the ground that the provisions of this paragraph may or will be violated.

Nothing in this section, however, shall be construed as in any manner affecting or constituting an impairment of the freedom of individuals to support or oppose any candidate for any barangay office.

Based on the foregoing, any person who files a certificate of candidacy for any elective barangay position are prohibited from representing or allowing himself to be represented as a candidate of any political party or any other organization. The law is explicit in saying that the prohibition applies only at the time of filing of a candidate's certificate of candidacy for elective barangay position. Thus, it is clear that what is prohibited under the law is for a person to run and be elected in a barangay elective position under a political party.

Nowhere can we find in the aforementioned provision of law that the prohibition on partisanship shall be made general so as to encompass absolute prohibition against barangay elective officials from affiliating and ultimately, becoming members of any political party. On the contrary, there are many legal justifications to conclude that, in fact they can affiliate.

To conclude that barangay elective officials are prohibited from affiliating and becoming members of any political party would be violative of the right of any person to associate as guaranteed under Section 8, Article III of the 1987 Constitution, which provides:

Section 8. The rights of the people, including those employed in the public and private sectors, to form unions, association or societies for purposes not contrary to law shall not be abridged."

The term "associations" mentioned therein includes political parties, among others. Well settled is the rule that the right to form these association, includes the right to join the same (Nachura, *Outline Reviewer in Political Law*, p. 157 (2006)).

It is true that in the first paragraph of the aforementioned Section 38 of the OEC, barangay elections was made to be non-partisan in nature. Let it be noted, however, that the word "**non-partisan**" herein refers to the phrase "**barangay elections**". To our mind, if it was really the intention of the legislature to generally prohibit barangay elective officials from affiliating and ultimately, becoming members of any political party, they should have used the term "**barangay elective officials**" instead of "**barangay elections**".

Obviously, the phrase “barangay elective officials” differs from “barangay elections”. The former pertains to persons while the latter pertains to a political event.

To conclude that barangay elective officials are prohibited from affiliating and becoming members of any political party would be to render nugatory to Memorandum Circular No. 02, series of 1992, issued by the Civil Service Commission (CSC) which clarify that the inhibitions on government officials and employees from engaging in any electioneering or in any partisan political activities or campaign shall not be made to apply to elective officials, among others. The term “election campaign” or “partisan political activity” refers to an act designed to promote the election or defeat of a particular candidate (Sec. 79 (b). OEC), DILG Opinion No. 17, s. 2007)

For your second concerned, COMELEC Resolution No. 9615 dated January 15, 2013) (RULES AND REGULATIONS IMPLEMENTING REPUBLIC ACT NO. 9006, OTHERWISE KNOWN AS THE “FAIR ELECTION ACT”, IN CONNECTION TO THE 13 MAY 2013 NATIONAL AND LOCAL ELECTIONS, AND SUBSEQUENT ELECTIONS) would enlightened us on your issue. Sections 28, 29 and 30 of the said Resolution provide:

***SECTION 28. Rallies, Meetings and Other Political Activities.** - Subject to the requirements of local ordinances on the issuance of permits, any political party supporting official candidates and parties or any candidate, individually or jointly with other aspirants, may hold peaceful political meetings, rallies or other similar activities during the campaign period.*

Any party or candidate shall notify the election officer concerned of any public rally said party or candidate intends to organize and hold in the city or municipality. The notice must be submitted three (3) working days prior to the date thereof, and must include the venue and its address, as well as a commitment to submit a Statement of Expenses, and within seven (7) working days thereafter submit to the election officer a Statement of Expenses incurred in connection therewith. The prescribed forms for Notice of Public Rally and Statement of Expenses are provided in Comelec Resolution No. 9476. (for emphasis)

***SECTION 29. Application for Permit to Hold Public Meetings, Rallies or Other Political Activities.** - All applications for permits to hold public meetings, rallies and other similar political activities shall be filed with the authorized city or municipal official who shall acknowledge receipt thereof in writing. Immediately after its filing, the application shall be posted in a conspicuous place in the city hall or municipal building.*

The official before whom the application is filed shall submit to the Election Officer (EO) concerned on the first working day of each week the

list of applications, if any, filed during the previous week and the action taken thereon.

SECTION 30. Action on Application for Permit. - Within three (3) days after the filing of an application for permit to hold public meetings, rallies or other political activities, the local authority concerned shall act in writing on said application. Any application not acted upon within three (3) days from the date of its filing shall be deemed approved.


In acting on the application, the approving official shall give all candidates and parties equal and fair opportunity as to date, time and place, to hold public political meetings or rallies. In the last week of the campaign period, all independent candidates and parties shall be entitled to hold at least one public meeting or rally, at the time to be chosen by the applicant, in the public plaza or place where public political meetings or rallies are usually held.

An application for permit shall be denied only on the ground that a prior written application by another candidate or party for the same purpose has been approved. Denial on any application may be appealed to x x x the Regional Election Director who shall decide the same within forty-eight (48) hours after the filing of the appeal, and shall give notice of the decision to the parties. The decision shall be final and executory. (for emphasis)

Therefore and based on the aforementioned Resolution, the application for permit to rally shall be considered approved if not acted upon within three (3) days and any denial of the application shall be appealed to the Regional Election Director whose decision is final and executory.

We hope to have clarified you on this matter.

Very truly yours,


LILIBETH A. FAMACION, CESO IV
OIC-Regional Director