



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (CARAGA REGION)
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May 29, 2013
DILG-13 OPINION NO. 14

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DILG - REGION XIII
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BY: [Signature]

Ms. FELIVIV C. CUANAN
MLGOO - DILG
Loreto, Agusan del Sur

Thru: Ms. Arleen Ann R. Sanchez
Provincial Director, DILG
Agusan del Sur

Dear Ms. Cuanan:

This refers to your letter May 6, 2013 seeking guidance from this level relative to the following issues:

- 1) Is the attendance to regular session basis for the monthly salary of the sangguniang bayan members?
- 2) Can the members of the legislative body anytime/consecutively absent in the regular session because of the policy incorporated in the IRP which states that members shall be penalized?
- 3) What are the sanctions that can be imposed to SB members who frequently absent in the regular session and to the presiding officer who has the authority to discipline members of the Sangguniang Bayan but failed to do so;
- 4) Who are the rightful agency or person to discipline local officials who negligently perform the duties and responsibilities?
- 5) Can the Department impose disciplinary action to the local officials for the unauthorized absence during session? If affirmative, what are the process and procedure?

- 6) If the answer in no. 5 is negative, what are the intervention that the Department could possibly improve the compliance of the legislative body to conduct regular session since mostly believed that DILG has the authority to discipline local officials because of the delegated general power of supervision over local government units;
- 7) As DILG who assists LGU to improve governance, can we tolerate the non-compliance to weekly conduct of session?
- 8) Are the absence of the SB Members deductible to earned leave even without approved leave application? If yes, what is the basis for deduction?
- 9) Is the record/logbook during session of the Sangguniang Bayan members serve as a proof/basis for deduction to earned leave since there is no leave application filed by the concerned SB member;
- 10) Is payment of fines/penalty of the SB members for the incurred absences suffice that they could not be disciplined by the Vice-Mayor and the deducted in the earned leave;
- 11) Can the HRMO compel legislative body to file leave application on their previous absences based on the record book of attendance to session? If not, who will compel them to file a leave of absence? and
- 12) Are the local officials not required to file a leave of absences because of the 24/7 services rendered? How do we qualify 24/7 services when a certain local officials is only present during session because the residence is outside the municipality where they are elected and busy attending personal transactions.

Since your queries are interrelated, it is prudent for us to consolidate our answers to your questions.

Please be informed that neither the Local Government Code of 1991 (Code) nor any regulation has fixed the office hours of elective officials. The rationale for this is understandable for it violate the very nature of the work of elective officials who are considered on call anytime of the day. Fixing their working hours would unnecessarily delimit their services to the prejudice of their constituents and ultimately the public service (DILG Opinion No. 24 S, 2010). However if they will be absent during their session they have to file their respective leaves of absence before the concerned persons. Sec. 47 (a) (2) of the Code states:

Section 47. Approval of Leaves of Absence. -- (a) Leaves of absence of local elective officials shall be approved as follows:

x x x

(2) Leaves of absence of a x x x municipal vice mayor shall be approved by the local chief executive concerned; Provided, That the leaves of absence of the members of the sangguniang shall be approved by the x x x municipal vice mayor concerned;

x x x

Based on the abovementioned provision the vice mayor is approving authority in the application for leaves of absence of members of the sanggunian. Being the approving authority, the vice mayor is then mandated to act on such application for leaves of absence whether to approve or disapprove such application based on sound judgment. On the other hand, Section 81 of the Code grants leave privileges to elective local officials with the same leave privileges as those enjoyed by appointive local officials, including the cumulation and commutation thereof. And since the cumulation and commutation is the same as those of appointive local official, then said SB members are entitled to their monthly compensation and RATA so long as they have earned leave credits. However if they are absent without approved leave, they shall not be entitled to receive their salary corresponding to the period of his unauthorized leave of absence. It is understood, however, that his absence shall no longer be deducted from his accumulated leave credits, if there are any (Sec. 50, Omnibus Rules of Leave). The presence or absence in the session can be proven by the entry in the minutes or logbook.

We believe that the mayor as immediate supervisor of the vice-mayor, and the latter, as immediate supervisor of the members of the sangguniang bayan, should have monitored the whereabouts of their subordinates and asked them to apply for vacation leave of absence at least five (5) days prior to actual leave or after their return in case of sick leave. Otherwise their respective subordinates shall be considered absent if they failed to file the leave. The payment of fine by the absentee members pursuant to their internal rules of procedures (IRP) will not exempt them from complying rules of leaves or other disciplinary measures.

Aside from this, any member of the sanggunian who incurred unauthorized absences for at least four (4) consecutive sessions are liable administratively pursuant to Article 124 (a) (6) of IRR of the Code. They are liable if the following conditions exist: (a) unauthorized absences and (b) four (4) consecutive sessions. If either of these is absent, the official is not liable under the Code but may be liable only pursuant to their IRP, if any.

As to what the DILG can do regarding the absences of the members of the sanggunian resulting to no sessions due to lack of quorum, please be informed that


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pursuant to the power of supervision of the President over all local government units, which was delegated to the DILG Secretary by virtue of Administrative Order No. 267 dated February 18, 1992, the Secretary of DILG exercises general supervision over local government units. The power of supervision is defined as "the power of superior office to see to it that lower officers performed their functions in accordance to the law" (Bito-Onon vs. Fernandez, G.R. No. 139813, 31 July 2001). If the subordinate officers fail or neglect to fulfill them the supervisor may take such action or step as prescribed by law to make them perform their duties. (Mondano vs. Silvosa, G.R. No. L-7708, May 30, 1955). Thus, what the DILG can do is to remind these officials not to incur unauthorized absence for four (4) consecutive sessions or if it is necessary to be absent, file a leave of absence. If they will not heed, then the DILG, as supervisor, may file an action against erring officials before the Office of the Ombudsman or the Sangguniang Panlalawigan of Agusan del Sur.

In finale, elected officials are accountable to the people because they occupy their office by virtue of the mandate of the electorate. They are elected to an office for a definite term and may be removed therefrom only upon stringent conditions. When the people elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any (Salumbides vs. Ombudsman, G.R. No. 180917, April 23, 2010).

We hope to have clarified you on this matter.

Very truly yours,


LILIBETH A. FAMACION, CESO IV
OIC-Regional Director

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