

June 5, 2007

HON. PEDRO N. REBUCIAS  
Barangay Kagawad  
Barangay Hall  
Pondol, Balamban  
6041 Cebu

Dear Kagawad RebuCIAS:

This has reference to your letter dated May 23, 2007, on the mode of filling the vacancy in the sangguning barangay.

Please be advised that Section 45 of the Local Government Code of 1991 provides for the filling of vacancy in the sanggunigan barangay. In accordance therewith, the vacancy shall be filled by appointment by the city or municipal mayor upon recommendation of the sangguniang barangay concerned.

In view of the foregoing provision of law, the mayor cannot appoint a person who is not recommended by the sangguniang barangay (DILG Legal Opinion Nos. 13-1995 & 46-1995). The requirement regarding the recommendation of the sangguniang barangay concerned is mandatory. In the case of *Fariñas vs. Barba*, G.R. No. 116763, April 19, 1996, the Supreme Court opined that the recommendation must be considered a condition **sine qua non** for the validity of the appointment. It becomes a ministerial duty on the part of the mayor to issue the necessary appointment if the recommendee possesses all the required qualifications for an elective official and none of the disqualifications (Sections 39 and 40, R.A. 7160). Should there be more than one recommendee, the sangguniang barangay merely gives the mayor wider latitude of choice (DILG Legal Opinion No. 153 S1999).

We hope we have enlightened you on the matter.

Truly yours,

PEDRO A. NOVAL, JR.  
Regional Director

.cc: Atty. G. J. Emeterio S. Moreno, Jr.  
Director, Legal Service  
DILG Central Office

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