

April 25, 2008

HON. CLINT M. MARATAS  
Vice Mayor  
Tudela Municipal Hall  
6051 Cebu

Dear Vice Mayor Maratas:

This has reference to your letter dated April 24, 2008, requesting legal opinion on the following issues –

1. Whether or not the sannguniang bayan and other offices under the executive department shall follow the order of the Mayor that all government properties be returned to the property custodian for inventory purposes;
2. Whether or not the Mayor has the sole authority to reorganize and transfer of offices in the local government unit;
3. Whether or not the sangguniang bayan is included in the reorganization and transfer of offices and would it not be in violation of Section 11(c) of the Local Government Code of 1991;
4. Whether or not the municipal budget officer can be compelled to sign vouchers for payment of job order employees without budget appropriation;

At the onset, let it be emphasized that we will not dwell on the validity of the executive orders issued by the Mayor as they are accorded with the presumption of regularity having been issued in the performance of his official duties and functions. At best, we will discuss or point out the provisions of law in connection with the issues raised.

As regards the first issue, it is worth mentioning that in the case of *Gamboa vs. Aguirre*, 310 SCRA 867, the Supreme Court clarified the separation of powers and functions between the local chief executive and the sanggunian as the legislative body, bolstered by the fact that the sanggunian is operating on a separate budget though forming part of the entire budget of the local government unit. Hence, properties acquired through the use of sanggunian funds or booked under sanngunian account are not covered by the order of the mayor. But for the proper inventory of properties, the Vice Mayor may issue a similar directive for the sanggunian.

On the second issue, the answer would depend on the concept of reorganization. If the purpose of the reorganization is the merger or consolidation of offices or the

creation of new offices or the abolition of offices, such power is vested with the sanggunian[ (Sec. 443(c)] If the reorganization only pertains to the physical structure, i.e. the transfer of office location or the allocation of offices or office space, then it is within the mayor's authority. Sec. 444(1)(ix) of the Local Government Code provides that the local chief executive shall allocate and assign office space to municipal and other officials and employees who by law or ordinance, are entitled to such space in the municipal hall and other buildings owned or leased by the municipal government. The allocation of office space is limited only to the municipal hall, other buildings already owned or leased by the municipality. Otherwise, if the transfer of offices and facilities is to another place other than the identified government site or seat of government, a public hearing is required as well as the concurrence of the majority of all the members of the sanggunian concerned in accordance with Section 11 of the Code. This answers the third issue herein raised.

With regard to the fourth and last issue, emphasis should be given on the phrase "without appropriation". It is basic rule or principle that there can be no disbursement of funds if there is no appropriation for such purpose or law or ordinance authorizing such disbursement. Likewise, there can be no hiring of personnel if there is no appropriation for the purpose. Section 342 of the Code provides that the local treasurer, accountant, budget officer or other accountable officer shall not be relieved of liability for illegal or improper use or application or deposit of government funds or property by reason of his having acted upon the direction of a superior officer, unless he/she registers his/her objection in writing.

Since this last issue is on the wages of job order employees, we wish to point out and as we have pointed out to Mayor R. Baquerfo, Sr. in our letter to him dated April 24, 2008, that under Section 77 of the Local Government Code it is the local chief executive who shall be responsible for human resources and development in his unit and shall take all personnel actions. In addition, under the same provision of the Code, the local chief executive may employ emergency, casual employees or laborers paid on a daily wage or piecework basis and hired through job orders for local projects authorized by the sanggunian concerned; provided the period of employment shall not exceed six (6) months. It can be clearly understood from the aforecited provision that the mayor possesses the power to appoint casual, emergency or job order employees without any approval or attestation from the Civil Service Commission to work on local projects authorized by the sanggunian. Such power is inherently conferred upon him under the general welfare clause. It would not be amiss to note that nowhere in the Code can a provision be found requiring confirmation of the hired employees by the sanggunian. Hence, **if the sanggunian has authorized the project (including appropriation or funding therefor)**, it will be up to the mayor to hire casual, emergency or job order employees to work such project without need of confirmation from the sanggunian on their employment (DILG Legal Opinion No. 101, August 31, 1995).

We hope we have provided you some enlightenment on the issues raised.

Truly yours,

PEDRO A. NOVAL, JR.  
Regional Director

