

November 12, 2009

HON. TOMAS R. OSMEÑA
Mayor
City Hall
Cebu City

Re : Rejoinder to the Comments on the Legal Opinion on the Disciplinary
Authority of the Vice Mayor over Sanggunian Officials & Employees

Sir:

This has reference to your undated letter in reaction to the legal opinion rendered on the disciplining authority of the Vice Mayor over sanggunian officials and employees.

As a rejoinder thereto, it is paramount to consider further the provisions of the Local Government Code of 1991 (R.A. 7160) which, insofar as pertinent, declare that:

“Sec. 84. Administrative Discipline. – Investigation and adjudication of administrative complaints against appointive local officials and employees as well as their suspension and removal shall be in accordance with the civil service law and rules and other pertinent laws. x x x.”

“Sec. 85. Preventive Suspension of Appointive Local Officials and Employees. – (a) The local chief executive may preventively suspend xxx any subordinate official or employee under his authority pending investigation x x x.”

“Sec. 87. Disciplinary Jurisdiction. – Except as otherwise provided by law, the local chief executive may impose the penalty of removal from service, demotion in rank, suspension x x x or reprimand and otherwise discipline subordinate officials and employees under his jurisdiction. x x xxx” (underscoring supplied)

Administrative complaints against appointive local officials and employees are made, filed and disposed of in accordance with the civil service law and its rules and regulations. Thus, Sections 26 and 32, Rule XIV of the Omnibus Civil Service Rules and Regulations (CSC Resolution No. 92-1631), in relation to Book V of the Administrative Code of 1987 (E.O. 292) provide in part, that:

“Sec. 26. The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending investigation xxx.”

“Sec. 32. The xxx heads of agencies and instrumentalities, provinces cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under jurisdiction. xxx (underscoring supplied)

The civil service rules vest upon heads of local government units the power to investigate and decide matters involving disciplinary actions against appointive officers and employees under their respective jurisdictions [Sec. 37(b), PD 807]. However, the power of local government heads to impose administrative disciplinary actions is limited to officials and employees appointed by them. It has been a generally accepted principle that in the absence of any provision of law, the power of removal is deemed to be reposed in the public officer having the power to appoint (Mechem, Public Offices and Officers, Sec. 463).

Relevantly, under Section 456(a)(2) of R.A. 7160, the city vice mayor shall “appoint all officials and employees of the sangguniang panlungsod, except those whose manner of appointment is specifically provided in this Code.” Considering that sanggunian employees are appointees of the vice mayor, they are, therefore, within the latter’s administrative supervisory authority, as all their duties and functions relate to services to be rendered in the sanggunian. Moreover, in the case of *Atienza vs. Villamor* G.R. No. 161081, May 10, 2005, the Supreme Court ruled that the authority to appoint employees of the sanggunian belongs to the vice chief executive. Such authority is anchored on the fact that the salaries of these employees are derived from the appropriation specifically for the said local legislative body. Accordingly, the appointing power of the vice chief executive is limited to those employees of the sanggunian as well as those of the vice governor (and vice mayor) whose salaries are paid out of the funds appropriated for the sanggunian concerned. It being so, the imposition of disciplinary actions/measures against officials and employees of the sanggunian are within the jurisdiction of the vice mayor or vice governor.

Along this line, the language of the aforementioned provisions that “the local chief executive may preventively suspend any subordinate official and employee under his authority” clearly points out that the mayor could take disciplinary actions over those officials and employees under his authority, necessarily excluding therefrom the sanggunian employees. This conclusion has been arrived at from an examination of the powers, duties and functions of the mayor, among which is to “ensure that all executive

officials and employees of the city faithfully discharge their duties and functions xxx” [Sec. 455(b)(1)(x), RA 7160].

In the light of the foregoing premises, this Department so holds the considered view that the disciplinary authority over officials and employees of the sangguniang panglungsod shall be the city vice-mayor. This opinion is without prejudice, however, to a more authoritative view or ruling that any constitutional or judicial body may hold to the contrary.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director

.cc : Civil Service Commission – Region VII
Office of the Vice Mayor –City of Cebu
Human Resources Development Office – City of Cebu
City Attorney’s Office – City of Cebu

.ord/legal