

BASIC : LETTER DATED FEBRUARY 12, 2008, FROM BUSOGON (SAN REMIGIO, CEBU) SANGGUNIANG BARANGAY MEMBERS RODULFO BANQUISIO, GREGORIO BERCERO, CIPRIANO PACLIRAN AND JOELROI LOPEZ

2nd Indorsement

March 12, 2008

Respectfully returned to Mr. Edmundo J. Jamisola, Provincial Director, DILG Cebu Provincial Office, the herein basic communication from some members of the sangguniang barangay of Busogon, San Remigio, Cebu on the appointment of barangay officials, on the creation and chairmanship of barangay committees and on the turn over of accountabilities, with this Office's comments and opinion.

At the outset, let it be emphasized that our Department does not have the authority to adjudicate and grant the prayers of the complaining members of the sangguniang barangay of Busogon.

The power to appoint barangay personnel is lodged in the Punong Barangay but subject, however, to the approval or concurrence of the majority of all the members of the sangguniang barangay (Sec. 389, RA 7160). In the exercise of his appointing authority, the Punong Barangay enjoys a wide latitude of discretion to the extent of determining who should be appointed to the position. While it is true that the sangguniang barangay is conferred with the power to approve or concur the appointment issued by the Punong Barangay, said power, however, should not be interpreted in a manner as to give the sanggunian the power to exercise the discretion as to who should be appointed as this power lies with the Punong Barangay (DILG Opinion No. 072S2000).

The power of the sangguniang barangay to concur/approve the appointment issued by the Punong Barangay has to be exercised judiciously and reasonably such that if the appointee possesses all the qualifications and none of the disqualifications provided for by law or ordinance for the position, the sangguniang barangay cannot whimsically, arbitrarily and unjustifiably withhold the concurrence without valid legal grounds as said

act would tantamount to substituting the appointing discretion properly belonging to the Punong Barangay with that of the sangguniang barangay. As a consequence, the sangguniang barangay members may even expose themselves to administrative sanction as for abuse of authority or oppression (DILG MC No. 2002-150 dated September 18, 2002). The fact that the appointee or the candidate is related to the former punong barangay is not among the disqualifications provided by law. Hence, if the withholding of the concurrence of the appointment issued by the punong barangay is anchored thereon, it may be considered as arbitrary and whimsical.

The punong barangay as presiding officer cannot vote on matters presented and deliberated by the body, except to break a tie.

The creation of committees is within the prerogative of the sanggunian to do so, and is not left to the discretion of just one person. This is being conferred upon by the explicit provision of Section 50(b)(1) of the Local Government Code of 1991.

Failure of an accountable officer to render an account may subject him to the imposition of administrative, civil and criminal sanctions, even if he is no longer in public service. He will not be issued clearance from accountability. It is suggested that a request to conduct an examination of the books of account of the barangay be made to the Commission on Audit.

PEDRO A. NOVAL, JR.
Regional Director

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