

**BASIC : LETTER DATED NOVEMBER 30, 2006, FROM PUNONG BARANGAY FELICISIMO C. RUPINTA OF ERMITA, CEBU CITY**

**2<sup>nd</sup> Indorsement**  
December 13, 2006

Respectfully returned to Dr. Patricio Gabuya, City Director, DILG Cebu City Office, the herein basic communication from Punong Barangay Felicisimo C. Rupinta of Ermita, Cebu City, requesting legal opinion on the temporary vacancy in the Office of the SK Chairman in his barangay. As reported, the duly elected SK Chairman of Ermita went on indefinite leave after he was arrested in connection with illegal drugs related crime. It is not, however, shown whether the arrested SK Chairman is still incarcerated and whether or not his indefinite leave was approved.

In reply to the first concern, Section 435 of the Local Government Code of 1991 authorizes the assumption of the highest ranking SK member to the Office of the SK Chair by reason of the duly elected Chairperson's incapacity to discharge his duties. Appointment or designation to the assumed position is not required (DILG Legal Opinion Nos. 75-1992 and 201-1992).

As to entitlement of benefits, the SK Chairperson on approved leave may still be entitled to receive his honorarium if he has sufficient leave credits as provided in Civil Service Commission and Department of Budget and Management Joint Circular No. 1 S2004, dated March 23, 2004. However, if he is incarcerated in connection with a criminal charge, he shall be considered on automatic leave of absence without pay; but such fact of incarceration, the same as in illness, should be brought to the attention of the local chief executive and the sanggunian (City Govt. of Makati v. Civil Service Commission & Eusebia Galzote, G.R. 131392, Feb. 06, 2002). As regards the Acting SK Chairperson, being the legal successor to the office, he shall then have right to exercise the powers, perform the duties and be entitled to the privileges of the office. Incident to the right to office is the right to compensation (DILG Legal Opinion No. 66 dated April 13, 1994)..

**RENE K. BURDEOS**  
Regional Director

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

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