

September 15, 2009

HON. JOEL C. GARGANERA
Member
Sangguniang Barangay of Tinago
Cebu City

Dear Kagawad Garganera:

This has reference to your undated letter requesting legal opinion on whether or not the Punong Barangay can hire employees without the concurrence of the sangguniang barangay based on Section 77 of the Local Government Code of 1991. Reportedly, Punong Barangay Domingo Lopez appointed Mrs. Elizabeth Suson, the wife of one of the members of the sangguniang barangay of Tinago, as a Clean and Green Worker. At first, Punong Barangay D. Lopez wanted the appointment issued to Mrs. E. Suson concurred by the sangguniang barangay. The sanggunian did not. However, upon consulting with the DILG Cebu City Office, Punong Barangay Lopez now contends that the employment of Mrs. Elizabeth Suson does not need the concurrence of the sangguniang barangay since allegedly she is hired to work on a particular project already approved by the sangguniang barangay in accordance with Section 77 of the Code.

The reliance on Section 77 of the Local Government Code of 1991 is misplaced. The Code specifically provides that the Punong Barangay shall appoint or replace the barangay treasurer, the barangay secretary and other appointive barangay officials upon the approval by a majority of all the members of the sangguniang barangay.

Section 78 of the Code, provides that all matters pertinent to human resources and development in local government units shall be governed by the civil service laws, rules and regulations. Under civil service rules, the appointing authority is defined as the head of the agency or the chief executive who has the expressed authority to employ or hire personnel and who has the prerogative to fill up vacant positions in any mode prescribed by law. Hence, the employment or hiring of emergency or casual employees or laborers for local projects authorized by the sanggunian is an exercise of the appointing authority.

In the case of *Alquizola vs. Ocol*, G.R. No. 132413, August 27, 1999, the Supreme Court ruled that the Local Government Code of 1991 explicitly vests on the punong barangay, upon approval by the a majority of all the members of the sangguniang barangay, the power to appoint or replace the brangay treasurer, the barangay secretary, and other appointive barangay officials. Thus, the power of appointment is to be exercised conjointly by the punong barangay and a majority of all the members of the sangguniang barangay. Without such conjoint action, neither an appointment or replacement can be effectual.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director

