

September 25, 2007

HON. SALOMA P. CUSTODIO
Punong Barangay
Luyang, Carmen
6005 Cebu

Dear Punong Barangay Custodio:

This has reference to your letter dated September 03, 2007, addressed to Sec. Ronaldo V. Puno requesting legal opinion on the filling of vacancy in the sangguniang barangay. Said letter was referred to us for reply.

The Local Government Code of 1991, Section 45(a)(3), provides that the permanent vacancy in the sangguniang barangay shall be filled by appointment by the Mayor upon the recommendation of the sanggunian concerned. The appointing authority is limited to appoint only those recommended to him by the sangguniang barangay (Fariñas vs. Barba, G.R. No. 116763, April 19, 1996). The Supreme Court opined that the recommendation must be considered a condition sine qua non for the validity of the appointment. The appointment issued without the recommendation of the sangguniang barangay is legally infirmed. However, since it is an official act of the appointing authority, it is accorded with the presumption of regularity; a court action is needed to declare the appointment as invalid.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director

.cc : Dir. Elias F. Fernandez, Jr.
NBOO, DILG Central Office

.ord/legal