

January 19, 2011

ATTY. JOSELITO RAMON O. CASTILLO
Calderon Davide Trinidad Tolentino & Castillo Law Office
Suite 408, M. Diaz Building
Osmeña Boulevard corner Avila Street
Cebu City

Dear Atty. Castillo:

This has reference to your letter dated January 10, 2011, requesting legal opinion whether or not the requirement on the concurrence by the majority of all the members of the sangguniang barangay of the appointment issued by the Punong Barangay applies to all appointed positions in the barangay.

In reply thereto, the concurrence by the majority of all the members of the sangguniang barangay of the appointment issued by the Punong Barangay applies to all appointed positions in the barangay as a rule. This can be gleaned from Section 389(b)(5) of the Local Government Code of 1991.

However, the barangay is authorized to create such other positions or offices as may be deemed necessary to carry out the purpose of the barangay government in accordance with the needs of public service, subject to the budgetary limitations on personal services prescribed under Title Five, Book II of the Local Government Code (Sec. 387b, LGC). Hence, there may be positions in the barangay created by the sangguniang barangay through an ordinance. The barangay ordinance creating the office or position may or may not require the approval of the sangguniang barangay on the appointment issued by the Punong Barangay, depending on the provisions of the barangay ordinance which created the new positions. If the barangay ordinance expressly provides that the approval from the sangguniang barangay is not required for the appointment issued by the Punong Barangay, then the appointment issued by the Punong Barangay is sufficient to commence official relation as employees of the barangay for those persons so appointed. On the other hand, if such approval is required, then the appointment of the Punong Barangay is incomplete without the approval of the sangguniang barangay. If the ordinance creating the new position is silent as to the requirement of approval by the sangguniang barangay, then Section 389(b)(5) of the Local Government Code, the general law on the matter, will apply.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director