

September 24, 2010

HON. EUSEBIO A. DUNGOG
Mayor
Municipal Hall
Tabogon, Cebu

Dear Mayor Dungog:

This has reference to your letter dated September 21, 2010, requesting legal opinion on the hiring of a losing candidate, Engr. Merlino R. Alivio, in the May 2010 election as a consultant, whether or not it is covered by the prohibition under Section 94(b) of the Local Government Code of 1991.

In reply thereto, please be informed that the prohibition under Section 94(b) of the Local Government Code against losing candidates to hold appointive government office within one (1) year after the election cannot be made to apply to Engr. Merlino R. Alivio considering that consultancy services, pursuant to Section 2(a), Rule XI of CSC Memorandum Circular No 40 S 1998, dated December 14, 1998, are classified as non-government service and one where no employer-employee relationship exists (DILG Legal Opinion No. 26 S 2001 & No. 67 S2001, September 11, 2001).

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director