

**BASIC : LETTER DATED FEBRUARY 27, 2008, FROM TALISAY CITY
SANGGUNIANG PANLUNGSOD MEMBER ALAN G. BUCAO**

2nd Indorsement

March 4, 2008

Respectfully returned to Mr. Edmundo J. Jamisola, Provincial Director, DILG Cebu Provincial Office, the herein basic communication from Talisay City Sangguniang Panlungsod member Alan G. Bucao with this Office's response to the queries/concerns raised therein.

The Internal House Rules must be consistent with the Local Government Code of 1991 (DILG Legal Opinion No. 08-1997). The provisions therein must not contravene the provisions of the Code. Let it be emphasized that internal rules are merely procedural rules which do not have the force and effect of a law. They may be waived, disregarded or suspended by the deliberative body (*Alberto Romulo vs. Nicanor Yñiguez*, L-71908, February 04, 1986). They do not have the imprints of permanence and obligatoriness as they are subject to revocation, modification or waiver at the pleasure of the body adopting them (*Santiago and Tatad vs. Guingona*, G.R. No. 134577, November 18, 1998).

As regards the regular presiding officer, Section 49 of the Local Government Code of 1991 provides that the vice-governor shall be presiding officer of the sangguniang panlalawigan; the city vice-mayor, of the sangguniang panlungsod; the municipal vice-mayor, of the sangguniang bayan; and the punong barangay, of the sangguniang barangay. And under the appropriate sections of the Code on the powers, duties and functions of the vice-governor, vice-mayor and the punong barangay, they shall be the presiding officer of their respective sanggunians. As such, they are the regular presiding officer.

The Acting Vice Mayor is not considered as a regular presiding officer. And in the absence of the duly elected Vice Mayor/Presiding Officer, who shall preside the council session? In the past, our Department has consistently opined that when the highest ranking sanggunian member assumes the office of the vice-mayor in an acting

capacity by virtue of the temporary vacancy in the office of the vice-mayor, it necessarily carries with it the right to exercise all the powers and duties appertaining to the office of the vice-mayor, including that of presiding over the session of the sanggunian as mandated by Sections 49(a), 445(a)(1), 456(a)(1) of the Local Government Code of 1991. However, by virtue of the pronouncement of the Supreme Court in the case of Gamboa vs. Aguirre, 310 SCRA 867, July 20, 1999, our Department deemed it necessary to modify its previous opinion in order to harmonize it with said ruling. In said case, the Supreme Court declared –

“ x x x To repeat, the creation of a temporary vacancy in the office of the Governor creates the corresponding temporary vacancy in the office of the Vice-Governor whenever the latter acts as Governor by virtue of such temporary vacancy. This event constitutes an “inability” on the part of the regular presiding officer (Vice Governor) to preside during SP sessions, which thus calls for the operation of the remedy set in Section 49(b) of the Local Government Code – concerning the election of a temporary presiding officer. x x x”

Pursuant to the above Supreme Court ruling and applying the same to the existence of a temporary vacancy in the office of the vice-mayor, necessitates the election among the members of the sangguniang panlungsod as to who shall act as temporary presiding officer. Be that as it may, it is nonetheless the duty and responsibility of the highest ranking sanggunian member and in his capacity as acting vice-mayor to convene and call for the sanggunian session and thereafter facilitate the election of a temporary presiding officer pursuant to Section 49(b) of the Local Government Code. Pending election of a temporary presiding officer, it is the acting vice-mayor’s duty and mandate to convene the sanggunian, the non-performance of which may be a valid ground for a charge of dereliction of duty (DILG Legal Opinion No. 104 S2002, July 17, 2002).

If ever there is a provision in the sanggunian’s house rules for the majority floor leader to preside in the absence of the vice-mayor, said rule validly applies only where there is no temporary vacancy in the office of the vice-mayor, and that the latter is merely absent or indisposed for that particular session. The Supreme Court in the aforecited case of Gamboa vs. Aguirre only called for the application of Section 49(b) of the Local Government Code of 1991, and never did it state as a remedy the application or adoption of the internal rules of procedure of each sanggunian in the determination as to who shall act as temporary presiding officer in case of temporary vacancy in the office of the vice-mayor.

PEDRO A. NOVAL, JR.
Regional Director

