

May 20, 2008

HON. DOROTEO M. SALAZAR
Vice Mayor
Madridejos Municipal Hall
6053 Cebu

Dear Vice Mayor Salazar:

This has reference to your letter dated May 19, 2008, requesting for our comments on the recent actions of Mayor Salvador S. Dela Fuente which reportedly greatly affected the operations of your office and that of the sanggunian..

As regards the termination of services of Ms. Bisaya Tayo as your Secretary and of Ms. Margarita Boltron as casual utility worker assigned at the sangguniang bayan, it is noted that the appointment of these persons as casual employees of the municipality was issued by Mayor Dela Fuente. Hence, it was up to the appointing authority whether or not to extend the employment of said casual employees. It would have been different if you were the one who appointed the concerned employees in the exercise of your authority as provided in Section 445(2) the Local Government Code and their wages were paid out of the appropriations of the sanggunian. The mayor in such instance cannot terminate their services.

On the withholding of the salary Ms. Bella Bacolod and Mr. Gabriel Suyko with the corresponding threat by Mayor Dela Fuente of criminal prosecution, the underlying reason therefor based on the documents you presented was both allegedly were hired during the election period which was then prohibited. This we can say that there should have been a complaint filed with the appropriate agency such as COMELEC and a ruling made before the salaries of said employee could be withheld. Moreover, the threat to the concerned employees is misplaced as they are not the ones liable for the violation during the election period but the appointing authority.

With regard to the issuance of travel order to sangguniang members and the payment of expenses incurred in connection with such travel, our Department has held in Legal Opinion No. 129 S2002, dated August 22, 2002, that if the expenses are chargeable against sanggunian appropriations, the approval of the Mayor of the travel order becomes a ministerial function. Said conclusion is arrived at taking into consideration the well-settled principle of separation of powers and functions. In the case of Gamboa vs. Aguirre, 310 SCRA 867, the Supreme Court clarified the separation of powers and functions between the Governor or Mayor as the executive and the Vice Governor or Vice Mayor and the members of the sanggunian as the legislative body of the local government unit. This is further bolstered by the fact that the sanggunian is operating on a separate budget though forming part of the entire budget of the local government unit. If the Mayor still would not approve the travel order and the expenses are chargeable against sanggunian funds, it is the Department's considered view that the expenditure may still pass on audit subject to compliance of other requirements under auditing and accounting rules.

On the defiance of the Order of the Office of the Ombudsman relative to the payment of terminal benefits, it is suggested the matter be brought to the attention of said office.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director

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