

January 27, 2011

HON. HERMIS E. PERNITEZ
Punong Barangay
Calmante, Tudela
Cebu

Dear Punong Barangay Pernitez:

This has reference to your letter dated December 16, 2010, requesting legal opinion on the authority to appoint barangay officials and employees, on the qualifications of the barangay treasurer and on the constitution and composition of the Bids and Awards Committee.

In reply to the first concern, please be advised that the authority to appoint the barangay secretary, the barangay treasurer, the tanods and other barangay officials and employees is vested with the Punong Barangay, subject however to the concurrence of the majority of all the members of the sangguniang barangay. This is so provided in the Local Government Code of 1991 under the powers, duties and functions of the Punong Barangay, and as ruled and reiterated by the Supreme Court in the case of *Alquizola vs. Ocol*. And under DILG MC No. 2002-150, the role of the sangguniang barangay in concurring the appointment issued by the Punong Barangay is to ascertain whether the appointee has the qualifications and none of the disqualifications provided by law, particularly the positions of the barangay secretary and barangay treasurer. Said Memorandum Circular further provides that whimsical withholding of the concurrence by the sangguniang barangay may result in the imposition of administrative sanctions. It might interest you to know that several cases involving whimsical and arbitrary withholding of concurrence have been referred and acted by the Office of the Ombudsman (Visayas).

On the qualifications of the barangay treasurer, Section 395(b) of the Local Government Code provides that he/she shall be of legal age, a qualified voter and an actual resident of the barangay. The law speaks of qualified voter, not registered voter. Who is a qualified voter? The answer is found in Section 117 of the Omnibus Election Code -

“Sec. 117. Qualifications of a voter. - Every citizen of the Philippines, not otherwise disqualified by law, eighteen years of age or over, who shall have resided in the Philippines for one year and in the city or municipality wherein he proposes to vote for at least six months immediately preceding the election, may be registered as a voter”.

It can be noted from the foregoing provision of law that a citizen of the Philippines who is eighteen years of age, has resided in the country for one year, and in the city or municipality where he proposes to vote for at least six months immediately preceding the election and not otherwise disqualified by law, is a qualified voter and may be registered as a voter. And who are disqualified to vote? Section 118 of the Omnibus Election Code provides –

“Sec. 118. Disqualifications. - The following shall be disqualified from voting:

(a) Any person who has been sentenced by final judgment to suffer imprisonment for not less than one year, such disability not having been removed by plenary pardon or granted amnesty: Provided, however, That any person disqualified to vote under this paragraph shall automatically reacquire the right to vote upon expiration of five years after service of sentence.

(b) Any person who has been adjudged by final judgment by competent court or tribunal of having committed any crime involving disloyalty to the duly constituted government such as rebellion, sedition, violation of the anti-subversion and firearms laws, or any crime against national security, unless restored to his full civil and political rights in accordance with law: Provided, That he shall regain his right to vote automatically upon expiration of five years after service of sentence.

(c) Insane or incompetent persons as declared by competent authority.

From the facts you narrated, your nominee/appointee as the barangay treasurers is a qualified voter despite the fact that he has not transferred his registration as a voter.

On the creation and composition of the Bids and Awards Committee, you as the head of the procuring agency being the Punong Barangay has the authority to appoint the members of the Bids and Awards Committee from among the sannguniang barangay members.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director

