

February 1, 2011

HON. RAMON "NITO" D. DURANO III  
Vice Mayor  
Danao City Hall  
Cebu

Dear Vice Mayor Durano:

This has reference to your letter dated January 28, 2011, requesting legal opinion on the authority to appoint the Sangguniang Bayan Secretary and other officials and employees of the sanggunian and the Office of the Vice Mayor including job order and casual employees, on the authority to sign warrants drawn on the city treasury for all expenditures appropriated for the operation of the sangguniang panlungsod and the authority to issue travel order to the members of the sanggunian.

On the first concern, it expressly provided in Section 456(b) of the Local Government Code of 1991 that the Vice Mayor shall appoint all officials and employees of the sangguniang panlungsod, except those whose manner of appointment is specifically provided in the Code. A perusal of the Local Government Code yields that there is no mention of any official or employee in the sanggunian whose manner of appointment is vested in any other body or office other than that of the Vice Mayor (DILG Legal Opinion No. 076-99). Moreover, the Civil Service Commission has consistently held that it is the Vice Mayor who has the power to appoint employees of the sanggunian in its Resolution Nos. 92-111, 691-93 and 1754-94 (DILG Legal Opinion No. 87, June 14, 2002). And in the case of *Atienza vs Villarosa*, G.R. No. 161081 (May 10, 2005), the Supreme Court ruled that the authority to appoint casual and job order employees of the sanggunian and the Office of the Vice Governor/Vice Mayor belongs to the Vice Governor/Vice Mayor. The authority of the Vice Governor/Vice Mayor to appoint the officials and employees of the sanggunian and his office is anchored on the fact that the salaries of these employees are derived from the appropriation specifically for the said legislative body. The budget source of the salaries is what sets the employees and officials of the sanggunian apart from the other employees and officials of the local government unit. Accordingly, the appointing power of the Vice Governor/Vice Mayor is limited to those employees of the sanggunian, as well as those of the Office of the Vice Governor/Vice Mayor whose salaries are paid out of the funds appropriated for the sanggunian.

On the authority to sign checks/warrants and disbursement vouchers relative to all expenditures appropriated for the operation of the sangguniang panlungsod (bayan) and the Office of the Vice Mayor, such authority is vested with the Vice Mayor. It is one of the mandated tasks of the Vice Mayor under Section 456 of the Local Government Code. Corollarily, the 3<sup>rd</sup> sentence of Sec. 43 of COA Circular No. 92-382 dated July 03, 1992 (Prescribing the Accounting and Auditing Rules and Regulations Implementing the Provisions of

the Local Government Code), provides that in the case of expenditures appropriated for the operation of the sanggunian, checks drawn thereon shall be countersigned by the Vice Mayor. On the basis thereof, our Department has issued Memorandum Circular No. 2003-84 on April 25, 2003, directing all concerned local authorities to comply with, and faithfully observe the mandate of the law and related issuances on the authority of the Vice Governor/Vice Mayor to sign all warrants drawn on the municipal, city and provincial treasury for all expenditures appropriated for the operation of the sangguniang bayan, sangguniang panlungsod and the sangguniang panlalawigan.

On the authority to issue travel order, it bears to emphasize that official trips of city officials and employees outside of the city have to be authorized by the Mayor per Section 455(b)(1)(xv) of the Local Government Code. Since the members of the sangguniang panlungsod including the Vice Mayor are also enumerated in Section 454 of the Code as “city officials”, their official travels outside the city are likewise subject to the prior authorization of the Mayor. However, there has to be a distinction between discretionary and ministerial approval by the Mayor.

Under Section 456 of the Local Government Code of 1991, the Vice Mayor is given the authority to sign all warrants drawn on the city treasury for all expenditures appropriated for the operation of the sangguniang bayan. It is worth mentioning that 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 municipality.

Accordingly, if the travel expenses of the Vice Mayor and/or that of the members of the sangguniang panlungsod are chargeable to the general fund of the city, the approval of the Mayor is discretionary. On the other hand, if such travel expenses are chargeable to the sanggunian funds, the recommendation of the Vice Mayor is necessary and the approval of the Mayor becomes a ministerial function. As such, it becomes a ministerial duty on the part of the Mayor to authorize official trips, including the issuance of corresponding travel orders therefor, of members of the sangguniang panlungsod whenever the Vice Mayor had already issued his prior recommendation thereto and had already signed the warrants drawn on the city treasury for all expenditures necessary for such official travel chargeable to the sanggunian funds. If the local chief executive will, nonetheless, not approve the travel, our Department is of the considered view that the expenditures may still pass on audit subject to compliance of other requirements under government auditing and accounting rules. Said conclusion is arrived at, taking into primordial consideration the well-settled principle of separation of powers and functions (DILG Legal Opinion No. 129 S2002, August 22, 2002).

Truly yours,

PEDRO A. NOVAL, JR.  
Regional Director