

March 10, 2008

ATTY. OMAR B. REDULA
City Attorney
City Hall
Mandaue City

Dear Atty. Redula:

This has reference to your letter dated March 10, 2008, requesting clarification as to the validity of Section 2 of Mandaue City Ordinance No. 11-2007-428 wherein it is provided that the appropriations for “Other Programs and Projects” shall be used and/or disbursed only through the corresponding enabling resolution of the Sangguniang Panlungsod pursuant to Section 77 of RA 7160.

It can be surmised that in view of such provision there was a delay in the release of salaries and wages for job orders and casual employees, prompting Mayor Jonas C. Cortes to issue Executive Order No. 13-S2008 directing the Office of the City Administrator, City Accounting Office, City Budget Office and the City Treasurer’s Office to set aside and disregard Section 2 of Mandaue City Ordinance No. 11-2007-428 as it is illegal, invalid and violates Section 77 of the Local Government Code of 1991.

In reply to your request, please be advised that our Department does not have the authority to pass upon the validity of an ordinance nor of an executive order issued by the mayor. An ordinance is presumed valid until it declared otherwise by the Court. In the same manner, official acts and declarations issued by a public official (such as the Mayor) in the discharge of his constitutional and statutory powers conferred by the sovereign deserves respect and compliance. Any perceived illegality in the issuance of said official acts or declarations cannot legally justify any defiance thereof under the pretext of adherence to the rule of law. On the contrary, his perception of illegality notwithstanding, that same principle of “rule of law” would even dictate the person aggrieved or affected thereby to resort only to remedies as may be made available to him by law, rules and regulations (DILG Legal Opinion No. 11-A S2000, March 14, 2000).

Be that as it may, we could share to you our observation.

Section 2 of City Ordinance No. 11-2007-428 provides that the appropriations for “Other Programs and Projects” shall be used and/or disbursed only through the corresponding enabling resolution of the sangguniang panlungsod citing Section 77 of the Local Government Code of 1991 as basis. Section 77 provides –

“Section 77. Responsibility for Human Resources and Development. – The chief executive of every local government unit shall be responsible for human resources and development in his unit and shall take all personnel actions in accordance with the Constitutional provisions on civil

service pertinent laws and rules and regulations thereon, including such policies, guidelines and standards as the Civil Service Commission may establish: Provided, That the local chief executive may employ emergency or casual employees or laborers paid on a daily wage or piecework basis and hired through job orders for local projects authorized by the sanggunian concerned, without need of approval or attestation by the Civil Service Commission: Provided, further, That the period of employment of emergency or casual laborers as provided in this Section shall not exceed six (6) months.”

It could be clearly understood from a perusal of the aforecited provisions of the law that the mayor possesses the power to appoint casual or emergency employees sans any approval or attestation by the Civil Service Commission but subject to the condition that said employees are hired to work on local projects which are authorized by the sanggunian. Such power is inherently conferred on upon him under the general welfare clause. It would not be also amiss to note that nowhere in the Code can a provision be found requiring confirmation of the hired casual or emergency employees by the sanggunian. Thus, our Department holds the considered view that the mayor can, *motu proprio*, appoint or hire casual or emergency employees to work on sanggunian approved projects without the requisite authority from said sanggunian (DILG Legal Opinion No. 101, August 31, 1995). **The need to secure the authority of the sanggunian concerned is not with regard to the hiring of the emergency or casual employees or laborers but for the “local projects”**, in line with the doctrine of last antecedent in statutory construction that were the sentence contains several antecedents, the following qualifying or relative phrase should be applied only to its immediate antecedent, and not to the other remote preceding words or word association (People vs. Salazar 18 C.A.R. (2S) 387).

And what is meant by an “enabling resolution”? In the case of “Municipality of Parañaque vs. V.M. Realty Corporation”, G.R. No. 127820, July 20, 1998, the Supreme Court made a distinction between ordinance and a resolution. An ordinance is a law, but a resolution is merely a declaration of the sentiment or opinion of law-making body on a specific matter. An ordinance possesses a general and permanent character, but a resolution is temporary nature.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director

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