

**MEMORANDUM –**

**FOR : HON. AUSTERE A. PANADERO**  
**Undersecretary for Local Government**  
**DILG Central Office**

**DATE : JUNE 23, 2010**

**RE : VACANCY & SUCCESSION**

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This pertains to the issue on who should succeed as Governor of Negros Oriental at noon time on June 30, 2010, with the demise of Gov. Emilio Macias who died before taking his oath of office as the reelected governor of the province in the May 10, 2010 election.

A person elected to a public office is usually required by law, before entering upon the performance of his duties, to do some acts by which he shall signify his acceptance of the office and his undertaking to execute the trust confided in him. The act is ordinarily termed qualification. It generally consists of the taking, and often of subscribing and filing of an official oath. On this regard, Section 92 of the Local Government Code of 1991 provides –

“Sec. 92. Oath – (a) All elective and appointive local officials and employees shall, upon assumption to office, subscribe to an oath or affirmation of office in the prescribed form. xxx”

Accordingly,, failure to take an oath and assume the powers, duties and functions of the office would result to a failure to qualify, which in turn, is one of the grounds enumerated under Section 44 of the Local Government Code that would render an office permanently vacant.

“Sec. 44. Permanent Vacancies in the Office of the Governor, Vice Governor, Mayor and Vice Mayor. – x x x

x x x x

xxx

xxx

For purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns or otherwise permanently incapacitated to discharge the functions of his office. x x x x” (underscoring supplied)

Applying the forecited provisions of law in the case of the Province of the Negros Oriental, the late Gov. Emilio Macias who was re-elected as governor of the province, could no longer take his oath of office and assume at noon of June 30, 2010, by reason of his death. There is now a situation where an elective official will fail to qualify. That fact would render his position permanently vacant. Such being the case, after the elected Vice Governor, Hon. Agustin Perdices, could have taken his oath of office as such and assumed the functions, powers and duties thereof on June 30, 2010, he can now succeed the permanently vacant office of the deceased Gov. Emilio Macias by simply applying the rule of succession under Section 44 of the Local Government Code of 1991 (R.A. 7160). (Ref. DILG Legal Opinion Nos. 56 dated July 06, 2004 & No. 25 dated April 15, 2008)

PEDRO A. NOVAL, JR.  
Regional Director