

July 8, 2008

MR. JOSE G. HORTELANO
Biasong, Balamban
6041 Cebu

Dear Mr. Hortelano:

This has reference to your letter dated July 02, 2008, requesting legal opinion on filling of vacancy in the sangguniang barangay.

In reply thereto, please be advised that as provided in Section 45(a)(3) permanent vacancies in the sangguniang barangay shall be filled by appointment by the city or municipal mayor upon the recommendation of the sangguniang barangay. The requirement regarding the recommendation by the sangguniang barangay concerned is mandatory. The mayor cannot appoint a person who is not recommended by the sangguniang barangay (DILG Legal Opinion 46-1995).

As regards the candidate who garnered the 8th highest number of votes in the last barangay election, he does not have the right to succeed the 7th slot. Automatic succession applies only to members of the sanggunian, not to losers in the election (DILG Legal Opinion Nos. 127-1994 & 73-1995). He can be appointed to fill the vacancy, provided he is recommended by the sangguniang barangay concerned.

On the last issued raised in your letter, for as long as there could still be quorum to validly conduct a session, it will be up to the sangguniang barangay whether or not to submit its recommendation to the Mayor the appointment of a person to fill the vacancy therein.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director