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Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

A. Francisco Gold Condominium II Bldg, EDSA
corner Mapagmahal St., Diliman, Quezon City

OFFICE OF THE UNDERSECRETARY FOR LOCAL GOVERNMENT

DILG OPINION NO. 09 S. 2009

23 February 2009

ATTY. BUENAS AIRES C. DELA CRUZ

Municipal Legal Officer
Barotac Nuevo, Iloilo

Dear Atty. Dela Cruz:

This has reference to your earlier letter seeking our legal opinion with regard to the following issues, to wit:

1. Whether the Sangguniang Bayan can reclassify a piece of land from NON-AGRICULTURAL to AGRICULTURAL.
2. The status of a Member of the Sangguniang Bayan who applied for leave of absence for more than thirty (30) days who had already consumed his leave credits.
3. The authority of the Local Chief Executive in the demolition of a public property that was already long abandoned and declared by the building official as a hazard to safety, health or public welfare. Corollary thereto, whether or not the consent of the Sangguniang Bayan is required to be sought before the conduct of demolition.
4. May the Presiding Officer unilaterally adjourn a session without a proper motion from the Sanggunian Members.

In reply to your first query, may we invite your attention to Section 3, Article XII of the 1987 Constitution, which in part provides and we quote:

"Section 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted.

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Alienable lands of the public domain shall be limited to agricultural lands. xxx" (underlining ours)

From the aforequoted provision of the Constitution, the constitutional classification of lands of the public domain are as follows: agricultural land; forest or timber land; mineral land; and national parks. Among these lands, only agricultural lands of the public domain is declared by the Constitution to be alienable lands. It bears to stress that any reclassification/conversion of lands of public domain, as mentioned earlier, is the sole prerogative of the President of the Republic, upon the recommendation of the concerned Department head per Commonwealth Act No. 141. Being the only alienable land of the public domain, agricultural lands may be subjected to alienation or disposition.

May we note that the constitutional provision provides that agricultural lands of the public domain may be further classified by law according to the use thereof. Since the constitutional provision is not self-executing, Section 20 of the Local Government Code would become significant and relevant. Section 20 of the said law provides, in part, that:

"Section 20. Reclassification of Lands.- (a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: xxx."

Said Section 20 therefore is the law passed by Congress providing for the authority and procedure by which "agricultural lands" under the context of the constitutional classification is to be classified as to its use. Hence, it is evidently clear that the phrase "agricultural land" as appearing in Section 20 of the Local Government Code should be understood as referring to the constitutional classification of lands of public domain under Section 3 of the Constitution, the manner of utilization of which shall be provided for by law. Obviously, being the only alienable land of the public domain, Congress, by express authority from the Constitution, empowered the cities and municipalities to reclassify "agricultural lands" as to their use to which they may be devoted. The classification as to its use would pertain to residential, commercial, industrial and agricultural usage of the land.

Stated differently, the city or municipality cannot reclassify "agricultural lands" into forest land, timber land, mineral land or national parks as the sole authority and prerogative to reclassify this constitutional classification of lands is lodged with the President per Commonwealth Act No. 141. However, with respect to "agricultural lands" of public domain of the State, Congress, through

Section 20 of the Local Government Code, empowered the city or municipality, through an ordinance, to provide its classification as to the use thereof into commercial, residential, industrial or agricultural and such power would include any change of classification by the city or municipality as the need for it arises.

With the foregoing discussion, it is evident that lands devoted to residential, commercial, or industrial use can be reclassified by the city or municipality for agricultural use.

In reply to your second query, please be informed that per Section 81 of the Local Government Code, elective local officials, such as a Sangguniang Bayan Member, is entitled to the same leave privileges being enjoyed by appointive officials in the government.

In this regard, it bears to emphasize that in our system of government service, we observe the "no work, no pay" principle. This notwithstanding, our Civil Service laws also allows government workers to accumulate leave credits, which is also commonly known as the earned leave credits.

Taking cue from the foregoing ratiocination, a public official who will go on leave is not supposed to be entitled to receive pay while on leave based on the "no work, no pay" principle. However, if he has accumulated earned leave credits, he may be allowed to be paid while on leave, charged to his/her earned leave credits. If in the meantime, the earned leave credits of the concerned public official has already been exhausted and the subject official is still on leave, he will not be allowed to receive any pay as there are no more earned leave credits from which the pay may be charged.

In reply, therefore, to your query, per your representation, the Sanggunian Member who went on leave of absence had already consummated his leave credits. Such being the case, he is not anymore entitled to receive pay while on leave of absence based on the principle of "no work, no pay" and there being no more earned leave credits whereupon the pay can be charged.

In reply to your third query, it bears to emphasize that the primordial duty of a Municipal Mayor is to enforce all laws and ordinances. With respect to buildings posing hazards to safety, health and public welfare, the same is governed by the National Building Code. On the other hand, per Section 444 (a) (3) (vi) of the Local Government Code, Congress authorized the Mayor to demolish all houses, buildings or other structures for violation of law or ordinance. Since demolition of buildings posing hazards to public safety is an incident of enforcement of a law, no prior consent is necessary for the Mayor to issue an order of demolition as he is simply enforcing a law for that matter.

With regard to your fourth query, the question as to whether or not a Presiding Officer (PO) can unilaterally adjourn a session without a proper motion from the Sanggunian Members can be answered by your Internal Rules of Procedure (IRP).

May we note that in the hierarchy of the sources of parliamentary rules of procedure, namely: (1) Constitution; (2) Local Government Code and other related laws; (3) Judicial Decision of the Supreme Court; (4) Internal Rules of Procedure; (5) Parliamentary Practice; (6) Parliamentary Authors; and (7) Customs and Usage, nothing can be found from the first three sources any rule governing adjournment of Sanggunian sessions. There being none, the rules of adjournment can be properly dealt with in your IRP. Hence, if the IRP expressly allows the Presiding Officer to unilaterally adjourn a session, then it is binding to the Sanggunian Members. This is also true if the IRP expressly prohibits the PO to do so. If, however, the IRP is silent on this matter of adjournment, then in the succession of hierarchy of sources of parliamentary rules, parliamentary practice will come in.

Under parliamentary practice, a motion to adjourn is a privilege motion and it takes precedence over other motions. Clearly, therefore, adjournment should be taken by motion from the floor and not unilateral on the part of the Presiding Officer. Moreover, it bears to emphasize that a Sanggunian is a collective body. Hence, any important decision that the Sanggunian will render must always be done by applying the rule of majority.

We hope we have enlightened you on the matter.

Very truly yours,


AUSTERE A. PANADERO
Undersecretary 

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cc: Director Evelyn A. Trompeta
DILG Regional Office No. 06
Fort San Pedro, Iloilo City