



Republic of the Philippines  
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT  
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OFFICE OF THE UNDERSECRETARY FOR LOCAL GOVERNMENT

DILG OPINION NO. 12 S. 2009  
19 February 2009

**ATTY. ANA LIZA A. PERALTA**  
**MR. ARSENIO A. MAURICIO, JR.**  
Sangguniang Bayan Members  
San Marcelino, Zambales

**MR. DANIEL A. FABUNAN**  
Punong Barangay  
Barangay Lucero  
San Marcelino, Zambales

Dear Atty. Peralta and Messrs. Mauricio and Fabunan:

This has reference to your earlier separate letters, which we herein consolidated, considering that your queries all boil down to one issue, that is, on the validity of the Resolution passed by the Sangguniang Bayan of San Marcelino, Zambales imposing unto PB Fabunan a 60-day preventive suspension.

Per your letters, an administrative complaint for conduct unbecoming a barangay official was filed against PB Fabunan before the Sangguniang Bayan. Thereafter, according to the letter of Atty. Peralta, the issue as to whether a preventive suspension should be imposed against PB Fabunan was submitted for votation by the Sangguniang Bayan. Where eleven (11) members of the Sangguniang Bayan were present in the session, the result of the votation in the Sangguniang Bayan was as follows: Yes-4; No-3; Inhibited-2; and Abstained-1.

On the other hand, upon reading the letter of Sangguniang Bayan Member Mauricio, we noticed that the issue that was submitted for votation by the Sangguniang Bayan was rather the duration of the preventive suspension to be imposed against PB Fabunan. The result of the votation in the Sangguniang Bayan was as follows: for 60 days-4; for 30 days-3; abstained-1; and inhibited-2.



Be that as it may, it is however undisputed that the Sangguniang Bayan has approved Resolution No. 2008-048 recommending a sixty (60)-day preventive suspension against PB Fabunan. Accordingly, the Municipal Mayor thereat imposed the preventive suspension against PB Fabunan. Subsequently, however, the validity of said imposition as well as the Resolution of the Sangguniang Bayan recommending a sixty (60)-day preventive suspension were questioned by PB Fabunan. In fact, this utter

dissent and/or non-recognition of PB Fabunan was succinctly quoted in the letter of Sangguniang Bayan Member Mauricio, thus: *“With due respect, I write to let you know, that I am not recognizing the legitimacy of your order placing me under Preventive suspension because the same is anchored in an illegitimate resolution passed by the Sangguniang Bayan of San Marcelino – Resolution No. 2008-048 which legislative measure has no force and effect under the law, since the same was not approved by the majority of the members of said Sanggunian.”* By reason thereof, according to the letter of Atty. Peralta, the Mayor filed before the Sangguniang Bayan an administrative case for Grave Misconduct, Insubordination, etc. against PB Fabunan. During a series of follow-ups made, it was represented that PB Fabunan has also filed a case before the regular court assailing the validity of Sangguniang Bayan Resolution No. 2008-048 recommending a sixty (60)-day preventive suspension against him. Hence, your query.

In reply thereto, please be informed that this Department is bereft of any authority to declare invalid or illegal any legislative measure passed by local sanggunians such as Sangguniang Bayan Resolution No. 2008-048 recommending a sixty (60)-day preventive suspension against PB Fabunan enacted by the Sangguniang Bayan, that Municipality. Only courts can make such declaration upon filing of a proper action before the proper forum. Since, as represented, there is already a case filed before the regular court questioning the validity of the subject Sangguniang Bayan Resolution, the issue is already within the domain of the judicial branch of the government. This Department, which is under the executive branch, is no longer at good liberty to render an opinion on the issue as we might be accused of violating the sub-judice rule, which is considered as contumacious act against the court.

We hope that we have addressed your concern accordingly.

Very truly yours,

  
**AUSTERE A. PANADERO**  
Undersecretary 

Cc: Director Renato L. Brion  
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San Fernando City, Pampanga

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