



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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Dillman, Quezon City

OFFICE OF THE SECRETARY

WLG OPINION NO. 16 S. 2007
14 February 2007

VICE MAYOR JOSE JECERELL C. CERRADO
Tuy, Batangas

Dear Vice Mayor Cerrado:

This is in reply to your letter seeking our legal opinion regarding legal issues affecting attendance of a Sangguniang Barangay Member in Sanggunian sessions.

You represented that the Sangguniang Barangay Members of Guinhawa, that municipality, following their election and assumption to office, adopted an agreement by which if a member is absent in a session, he/she will be penalized by paying a fine amounting to P300.00 and if he/she is again absent on the session following the first absence, his/her honorarium for one month will be withheld in favor of the barangay government. It was further agreed that absence for three consecutive sessions will be a ground for the Sangguniang Barangay Member's voluntary giving up of his/her position. One of the Sangguniang Barangay Members did not agree with the conditions while the rest declared concurrence.

Since 2003, or for a period of almost three years, the dissenting Sangguniang Barangay Member has been absent. The absentee-member alleged that whenever he attends a session, he is not recognized by the body, and thus, his continued non-appearance in sessions. Because of his continued absence, the barangay government withheld his honorarium. You now posed the following queries:

1. *"Can the aforementioned Sangguniang Barangay Member still claim the honorarium that was withheld by the barangay government?"*
2. *What can possibly be done if the concerned Sangguniang Barangay Member decides to attend sessions again and work as Barangay Kagawad but the rest of the members do not like to accept him again?"*
3. *What is/are the possible liability(ies) of the Sangguniang Barangay Member who is opposed to the agreement? Of the rest of the Sangguniang Barangay Members?"*

Before dwelling on your queries, please be informed that under the Civil Code of the Philippines, an agreement is binding to the parties. It is, however, a condition that the stipulations in the agreement must be consistent with law, public morals and public policy. Illegal conditions are deemed not written in the agreement.

In reply to your first query, please be informed that with or without the agreement, a Sangguniang Barangay Member may be legally deprived of his honorarium by reason of his unauthorized absences. It bears to note that under DBM Local Budget Circular No. 63, in relation to Section 393 of the Local Government Code, Sangguniang Barangay Members are paid in the form of honorarium. Corollary thereto, the Government Accounting and Auditing Manual defines honorarium as that remuneration given to a public official for services actually rendered. Hence, the grant of honorarium is based principally on services actually rendered by the claimant thereof.

Accordingly, other than other certain factors, the most convenient way of measuring the services actually rendered by a Sangguniang Barangay Member is attendance in sessions. Under the Local Government Code, Sangguniang Barangays are mandated to conduct two sessions a month. The honorarium can, therefore, be divided into two parts, each representing each session. Hence, if a Sangguniang Barangay Member will absent himself from sessions, he is not entitled to receive the proportionate amount of honorarium for services actually rendered. If he will be absent in both sessions for one month, then he can be deprived of his total honorarium for that month.

Stated differently, the barangay government can validly withhold the honorarium due to a Sangguniang Barangay Member who failed to render actual services due to his unauthorized absences from the Sanggunian session.

In reply to your second query, please take note that it is the fact of one's election as Sangguniang Barangay Member in an election conducted in accordance with law that will give him the right to assume the position as such and discharge the functions, powers and duties appurtenant to the said position.

Hence, the assumption is by virtue of his having been elected as Sangguniang Barangay Member. His assumption to the performance of his office cannot, therefore, be made dependent on whether or not the other Sangguniang Barangay Members will or will not accept and recognize him. The non-recognition by the Sangguniang Barangay Members may only be legally acceptable if the concerned Sangguniang Barangay Member has earlier resigned from office or has been removed from office for cause.

Along this line, may we bring your attention to one of the stipulations in the agreement adopted by the Sangguniang Barangay where it was stated that "*absence for three consecutive sessions will be a ground for*

his/her voluntary giving up of his/her position". This particular stipulation is contrary to law. Barangay elective officials enjoy security of tenure which is that period pertaining to his term of office as fixed by law. Under Section 2 of RA 9164, otherwise known as "*An Act Providing for Synchronized Barangay and Sangguniang Kabataan Elections, Amending Republic Act No. 7160, as amended, otherwise known as the Local Government Code of 1991, and For Other Purposes*", the term of office of barangay elective officials is fixed at three years. Hence, a Sangguniang Bayan Member's tenure in office can only be severed through expiration of his term of office, resignation, death, permanent incapacity, or removal from office for cause.

Hence, the stipulation that absence for three consecutive sessions will be a ground for his voluntary giving up of his position is not in accord with law. Some camps may, however, argue that under the Civil Code of the Philippines, rights can be waived but we have to note that while rights can be waived, the Civil Code of the Philippines, however, requires that such waiver is not contrary to law, public morals and public policy. Therefore, the separation from office by a Sangguniang Barangay Member can only be done under any of the recognized modes as aforementioned.

Considering this disquisition, it is, therefore, clear that the other Members of the Sangguniang Barangay are not at liberty whether to recognize or not a particular Sangguniang Barangay Member since the assumption to office by the latter is by virtue of authority of law. Nonetheless, for the absentee-Sangguniang Barangay Member, a disciplinary action may be filed against him for his unauthorized absences under Section 60 of the Local Government Code, and for which he may be imposed the appropriate disciplinary sanctions after notice and hearing.

In reply to your third query, mere opposition to an agreement will not render the Sangguniang Barangay Member liable. This is the essence of a free and democratic country where issues are resolved, especially in a legislative body, by a vote of majority. If, however, the opposing member shall incur absences which could be a ground for disciplinary action, disciplinary sanctions may be imposed upon him not on the ground of his opposition to an agreement but on the ground of his committing administrative infractions which constitute violation of law. Disciplinary sanctions, however, shall only be done after proper observance of due process which requires the twin conditions of notice and hearing.

As to the other Sangguniang Barangay Members, their act of not recognizing the absentee-Sangguniang Barangay Member, absent any of the recognized mode of the latter's separation from office, may constitute administrative infraction which could lead to disciplinary sanctions after observing due process or could be a ground for criminal prosecution under Section 3 (e) of RA 3019, otherwise known as the "*Anti-Graft and Corrupt Practices Act*" for having caused undue injury to the concerned Sangguniang Barangay Member by reason of their non-recognition without

valid justification.

Hope we have enlightened you on the matter.

Very truly yours,


RONALDO Y. PUNO
Secretary

Legal:28/La

cc: Director Roberto C. Abejero
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