



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

18 May 2009

MEMORANDUM NO. 23 S. 2009.

DIRECTOR QUIRINO M. LIBUNAO
DILG-Region XI
58 McArthur Highway Matina
Davao City

Dear Director Libunao:

This has reference to your letter-query sent to Director John M. Castañeda, National Barangay Operations Office (NBOO), this Department, through facsimile seeking clarification on the status of barangay officials who are currently serving their alleged fourth term in office.

At the outset, may we invite your attention to Section 2 of Republic Act 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"*, thus:

"SEC. 2. Term of Office.—The term of office of all barangay and sangguniang kabataan officials after the effectivity of this Act shall be three (3) years.

No barangay elective official shall serve for more than three (3) consecutive terms in the same position: Provided, however, That the term of office shall be reckoned from the 1994 barangay elections. Voluntary renunciation of office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official was elected." (Emphasis Supplied)

This aforementioned provision is the legal basis for the so-called three-term limit rule for barangay elective officials, which disqualifies them from running for the same position after serving the same for three consecutive terms.

However, it might happen that notwithstanding this rule, or perhaps by lack of knowledge on the three-term limit rule, or by deliberate disregard thereof, certain barangay officials were still successfully elected and, in fact, currently serving their alleged fourth consecutive term in the same office. Either of these situations might have happened in the case at hand. For this reason, may we respectfully stress that the discovery of such violation on the three-term limit rule does not *ipso facto* result to the disqualification/removal of these barangay officials. A proper legal action, using this violation/disqualification as ground therefore, must still be filed before the proper forum.

As to what are these legal actions and where to file it, may we again invite your attention to Sections 10 and 11 of COMELEC Resolution No. 8297 dated 06 September 2007 and Section 253, 2nd paragraph of BP 881, otherwise known as the Omnibus Election Code, thus:

“SECTION 10 - Petitions to deny due course to or cancellation of a certificate of candidacy.—A verified petition to deny due course to or cancel a certificate of candidacy pursuant to Section 69 (nuisance candidate) or Section 78 (material misrepresentation in the certificate of candidacy) of the Omnibus Election Code shall be filed directly with the Office of the Provincial Election Supervisor concerned by any registered candidate for the same office personally or through a duly authorized representative within five (5) days from the last day for filing of certificate of candidacy. In the National Capital Region, the same shall be filed directly with the Office of the Regional Election Director.

In provinces where the designated Provincial Election Supervisor is not a lawyer the petition shall be filed with the Regional Election Director concerned.

Filing by mail is not allowed.

Within twenty-four hours from receipt of the petition, the Provincial Election Supervisor or the Regional Election Director of the National Capital Region, as the case may be, shall issue the corresponding summons requiring the respondent candidate to answer the petition within three (3)

days from receipt. Immediately upon receipt of the answer, the petition shall be set for hearing for the reception of evidence of the parties but not later than five (5) days from the service of summons. The Resolution of the Hearing Officer shall be submitted to the Commission through the Clerk of the Commission within fifteen (15) days from receipt of the petition."

"SECTION 11 - Petition for disqualification - a verified petition to disqualify a candidate on the ground of ineligibility or under Section 68 of the Omnibus Election Code may be filed at anytime before the proclamation of the winning candidates by any registered voter or any candidate for the same office. The procedure prescribed in the preceding section shall be applicable."

"SECTION 253. Petition for quo warranto -

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Any voter contesting the election of any municipal or barangay officer on the ground of ineligibility or disloyalty to the Republic of the Philippines shall file a sworn petition for quo warranto with the Regional Trial Court, or Metropolitan or Municipal Trial Court respectively, within ten (10) days after the proclamation of the result of the election."

Based on the foregoing, there are two (2) remedies that may be availed of by any registered voter or any candidate to question/assail the qualification of a candidate or nullification of proclamation of a candidate on the ground that he is disqualified. First is the filing of a Petition for disqualification in accordance with Section 11, in relation to Section 10 of COMELEC Resolution No. 8291, or second, the filing of a Petition for Quo Warranto in accordance with Section 253, 2nd paragraph of BP 881.

In relation to the first remedy, the petition for disqualification shall be filed directly with the Office of the Provincial Election Supervisor by any registered voter or any candidate for the same office within five (5) days from the last day of filing of Certificate of Candidacy. On the other hand, as to the second remedy, the petition for quo warranto under Section 253, 2nd paragraph of BP 881 against the elective barangay officials shall be filed by any voter within ten (10) days after the proclamation with the Metropolitan or Municipal Trial Court.

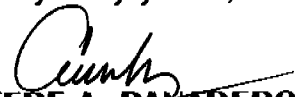
In the event that the above remedies were not availed of within the prescribed period, just like in the case at hand, the right of any registered voter to question the qualification of a candidate or to have the

proclamation annulled on the ineligibility will be foreclosed by prescription. However, one possible option left would be to file a petition for quo warranto but this time pursuant to Rule 66 of the Rules of Court. This should be filed by the Solicitor General in the name of the Republic of the Philippines or by any person claiming title thereto against the elected barangay officials.

Finally, please note that until and unless the proper forum will decide against these barangay officials, they remain to be legitimately holding their respective offices. This principle of giving them such status is not really for their protection but that of the transacting public who are expected and supposed to rely on their authority as represented to the public. As such, these barangay officials shall still occupy and discharge the functions of their respective offices, the same offices where they ran for and were duly proclaimed. As a consequence, they are definitely entitled to allowances and other benefits appurtenant to the office as barangay elective officials since all their acts are in the meantime valid and effective.

We hope that we have addressed your concern accordingly.

Very truly yours,


AUSTERE A. PANADERO
Undersecretary 