

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**

**DILG OPINION NO. 35 S. 2007**

18 April 2007

**MR. OSCAR T. TUGADE**  
Barangay Kagawad  
San Gabriel, Tuguegarao City

Dear Sir:

This refers to your letter requesting this Department to render its opinion or decision regarding your claim for unpaid benefits from November 2003 to August 2005 as Barangay Kagawad thereat. You further requested that the Department shall issue an order to the Sangguniang Barangay for the release and payment of your unpaid benefits.

As represented, you are a Member of the Sangguniang Barangay of San Gabriel, Tuguegarao City. On several occasions, the Sangguniang Barangay had been conducting its barangay meetings at the residence of the Punong Barangay and you are against it. Thus, you refused to attend such meetings. Consequently, after several absences, the Sangguniang Barangay stopped the payment of your honoraria, bonuses, insurance coverage and other emoluments allegedly without prior notice. You now seek our opinion on the propriety of such action by the Sangguniang Barangay.

It is your contention that the refusal of the Sangguniang Barangay to pay your unpaid benefits, bonuses, insurance coverage and other emoluments were unjustified because there was no prior notice given to you. This is, therefore, in violation of due process. The holding of the barangay sessions in the residence of the Punong Barangay is precisely the one you complained of; thus, you cannot be expected to attend as this might affect your cause of action; that since there was already a pending case before the Sangguniang Panlungsod of Tuguegarao City regarding the matter, it is only the Sangguniang Panlungsod, as incident of its jurisdiction, that has the power to issue the necessary orders or instruction as to the legal rights of the parties pending its final resolution.

Along this line, you argued that the Sangguniang Panlungsod never issued an order directing you to attend said barangay meetings; that your refusal to attend the sessions at the residence of the Punong Barangay is based on the fact that you were already previously threatened by the Punong Barangay, which fact was properly recorded in the police blotter; and lastly, it is your contention that there can be no occasions to reconsider elective local officials absent from work since their presence at such specified time and place is not a prerequisite in their collection of salaries for services rendered.

In response thereto, we wish to point out that under Department of Budget and Management (DBM) Local Budget Circular No. 63, it is provided that elective barangay officials, such as you, are paid in the form of honoraria and shall receive

the same only for services actually rendered. This is even the ruling of the Supreme Court in "Santiago vs. Commission on Audit" (G.R. No. 92284, 12 July 1991). With this, it has been our considered view that in measuring the services actually rendered by an elective barangay official, the basic consideration shall be his attendance in regular and special sessions. Thus, should an elective barangay official be absent in a session of the council for reasons other than the performance of his public duty outside of the office, such as attending to the problems of the constituents, he may suffer a proportionate reduction of his honoraria. And if an elective barangay official has incurred absences for more than four (4) consecutive sessions, he could be subjected to disciplinary action pursuant to Article 124 (a) (6), Rule XIX of the Rules and Regulations Implementing the Local Government Code.



With regard to sessions being held at the residence of the Punong Barangay instead of the barangay hall, may we point out Section 52 of the Local Government Code which mandates that on the first day of the session immediately following the election of its members, the Sangguniang shall, by resolution, fix the date, time and place of its regular sessions. Thus, any session held outside of what has been fixed by that Sanggunian Resolution implementing Section 52 of the Local Government Code, would be highly questionable unless in the meantime the Sanggunian members, by a vote made in accordance with its Internal Rules of Procedure, shall have earlier changed the date, time and place of the barangay sessions.

With regard to your request for an order from this Department ordering the Sanggunian Barangay to release and pay your unpaid benefits, it bears to note that your request is in the nature of directing a specific performance or collection of sum of money where a person or entity, whether public or private, is to be directed to perform a specific act to pay a sum of money after notice and hearing. This kind of cause of action is judicial in character and thus, must be sought from the regular courts of justice, i.e. Municipal Trial Court and Regional Trial Court as the case may be. Hence, it is with much regret to inform you that the Department, not being vested with judicial powers, cannot issue an order directing a specific performance. You are, therefore, advised that your unpaid claims should be properly brought before the courts of justice so that the court, after notice and hearing, can determine your claim and properly direct the Sangguniang Barangay to pay your unpaid benefits.

Corollarily, we wish to inform you that Section 512 of the Local Government Code provides that willful and malicious withholding of any of the benefits accorded to barangay officials under Section 593 shall be punished with suspension or dismissal from office of the official or employee responsible therefor. In this regard, to establish willful and malicious withholding of your benefits, an administrative case should first be filed where the existence of the same shall be ascertained.

We hope to have enlightened you on the matter.

Very truly yours,

  
AUSTERE A. PANADERO  
OIC Undersecretary 

cc.: DIR. RENATO L. BRION  
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