



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
Francisco Gold Condominium II, EDSA cor. Mapagmahal St.
Diliman, Quezon City

OFFICE OF THE SECRETARY

OFFICE OF THE SECRETARY NO. 89 S. 2007

October 16, 2007

MR. ERNESTO S. CARREON
Vice-President, Liga ng mga Barangay
San Pablo City, Laguna

Dear Sir:

This pertains to your letter dated September 21, 2007 where you posited the following queries to wit:

- 1) *Can a Punong Barangay who is serving his third term of office in one barangay but has already established his residence in another barangay for more than a year and thus, has already become a registered voter therein, still run for the position of Punong Barangay where he transferred his residence and his voter's registry?*
- 2) *Is it necessary for Barangay Kagawads who assumed their offices by virtue of appointment to fill-up permanent vacancies in the Sangguniang Barangay, to resign upon filing of their certificate of candidacy?*

In line with your first query, we would like to invite your attention to the case of *Borja vs. COMELEC* (G.R. No. 133495, September 3, 1998) where the Supreme Court held that for the three term limit rule to apply to elective local officials the following requisites should concur:

- 1) *The elective official must have served three consecutive terms without interruption;*
- 2) *The elective official must have been elected to the same position for the same number of times.*

Relatedly, in the case of *Latasa vs. COMELEC* (G.R. No. 154289, December 10, 2003), the Supreme Court had occasion to elaborate on the concept of what constitutes running for the same position. The Court declared that a candidate is deemed running for the same elective position if the following requisites concur:

- 1) *If the same number of inhabitants elect the same set of elective officials;*
- 2) *The elective official is elected to the same territorial jurisdiction which remains geographically unchanged.*

Thus in that case, the Court concluded that an elective local official who has previously served for three consecutive terms as municipal mayor is effectively barred from running for city mayor despite the conversion of the municipality to a component city as he is deemed, in effect, still running for the same position.

Departing from this ruling of the Supreme Court in the said case, it may be argued that since you are contemplating to run in a local government unit which has a different territorial jurisdiction and a different set of inhabitants, it can be fairly argued that the three term limit as proscribed under existing laws and *Borja vs. COMELEC supra* is not applicable to the case at bar which means to say that you can run as barangay chairman in the adjacent barangay. We would like to remind you, however, that under the law and jurisprudence, qualifications of elective local officials are continuing, meaning, they should be possessed thereof from the time of election, except citizenship which may be possessed on the day of assumption and until the expiration of the term of office. Any loss of qualifications obtaining prior to the expiration of the term of office could be a ground to assail your incumbency in the office.

Anent your second concern, please take note that in DILG Opinion No. 33, series of 2007, we had occasion to opine the following:

"Taking into account the foregoing premises, we are of the considered view that Section 66 of the Omnibus Election Code cannot apply to the case of appointed City Councilors of Pasay City, the reason being that while their entry into the government service was through appointment as it was the manner provided for by law in filling vacancies in the Sangguniang Panlungsod, the fact remains that they are not holding a public appointive office or position but elective positions.

On the other hand, their being City Councilors chosen in the manner provided for under Section 45 of the Local Government Code make them fall under the category of elective officials in cities pursuant to Article 71 of the Implementing Rules and Regulations of the Local Government Code."

Since under COMELEC Resolutions Nos. 7799 and 8297, it is specifically provided that:

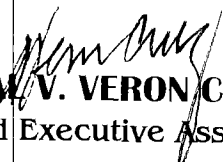
"SEC. 4. Effects of Filing Certificates of Candidacy. - a) Any person holding a public appointive office or position including active members of the Armed Forces of the Philippines, and other officers and employees in government-owned or controlled corporations, shall be considered ipso facto resigned from his office upon the filing of his certificate of candidacy; b) Any elective official, whether national or local, running for any office shall not be considered resigned upon the filing of his certificate of candidacy." (COMELEC Resolution No. 7799 dated 05 January 2007),

it is our considered view that barangay kagawads who assumed their offices by virtue of appointment to fill-up permanent vacancies in the sanggunian Barangay remain elective officials under contemplation of law, ergo they are not deemed resigned upon the filing of their certificates of candidacy for this year's synchronized barangay and SK elections.

We hope we have enlightened you on the matter.

Very truly yours,

By Authority of the Secretary:


PASCUAL V. VERON CRUZ, JR.
Head Executive Assistant

cc.: DIRECTOR ROBERTO C. ABEJERO
DILG, Region IV-A
FTI Complex, Taguig City

Legal:09/Merle