



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

Opinion No. 102, s. 2007

09 November 2007

MS. MARIE ANTOINETTE S. MENDOZA
Barangay Blue Ridge A
Quezon City

Dear Ms. Mendoza:

This pertains to your letter requesting our legal opinion on the following matters, which we hereunder quote, to wit:

- “1. What is the status of the personnel hired by the previous Council?
 - a. Do they have security of tenure?*
 - b. If we choose not to rehire them, are we obligated to give them separation and/or retirement pay?*
 - c. Are there contractual and permanent barangay employees?*
 - d. Are barangay employees civil service eligible and conversely, are they required to be civil service eligible?**
- 2. With regard to the Barangay Budget, will the 2008 budget already be in place or are we allowed to prepare a new budget, subject of course, to the provisions of the law?*

3. *Are the following changes in the budget allowed by law?*
- a. *Reducing the number of BPSOs without changing the compensation of each BPSO*
 - b. *Increasing the number of BPSOs and reducing the compensation of each to comply with compensation requirements of the Local Government Code*
 - c. *Reducing the number of personnel and what happens to budget allocated for such personnel*
 - d. *Are there specific amounts or percentages which must be allocated apart from the compensation requirement of 55% maximum?*
 - e. *Is it possible to give a higher compensation to barangay employees than the Chairman and Kagawads to attract better workers and at the same time, comply with the 55% cap requirement of the law?*
 - f. *Can savings from allocated expenses be used for other purposes within the same fiscal year?*

4. *What are the official committees?"*

In reply to your query no. 1, please be informed that under Article 118 of the Implementing Rules and Regulations of the Local Government Code, the mandatory appointive barangay officials are the Barangay Secretary and the Barangay Treasurer. In addition thereto, there shall also be Barangay Tanod Brigades which shall not be more than 20 in each barangay, as provided for under Section 393 of the Local Government Code. On top of these appointive barangay officials, the barangay, pursuant to Section 387 (b) of the same Code, may also create such other positions or offices as may be deemed necessary to carry out the purposes of the barangay government. The creation has to be done by way of an ordinance providing therein the qualification standards and compensation for the newly created positions.

In an Opinion dated 28 July 1998 addressed to then DILG Legal

Service Director Almario M. delos Santos, the Civil Service, in reply to our query on the status of appointments and term of office of the Barangay Secretary, Barangay Treasurer and other barangay appointive officials, responded by saying that: *“there is no existing Civil Service rule or regulation relative to the appointment of Barangay Treasurer, Barangay Secretary and other appointive officials. We believe, however, that by their nature, the same are either coterminus with the appointing authority or co-existent with the tenure of the appointing authority or at his pleasure”*.

Clearly, therefore, the foregoing appointive barangay officials are considered coterminus with or serving at the pleasure of the appointing authority. Such being the case, these kinds of officials belong to the class of non-career service in government. Thus, being non-career, Civil Service eligibility is not a requirement.

- In the case of Alquizola Sr. vs. Ocol (G.R. No. 132413, 27 August 1999), the Supreme Court ruled that the power of appointment of Barangay Secretary, Barangay Treasurer and other barangay appointive officials is to be exercised conjointly by the Punong Barangay and a majority of all the members of the Sangguniang Barangay, the reason being that under Section 389 of the Code, the law explicitly vests unto the Punong Barangay, upon approval by a majority of all the members of the Sangguniang Barangay, the power to appoint or replace the Barangay Secretary, Barangay Treasurer and other barangay appointive officials.

In the same case, the Supreme Court likewise held that the power of removal is also to be conjointly exercised by the Punong Barangay and the majority of all the members of the Sangguniang Barangay since the law provides that the removal of these officials must also be subject to the approval of all the members of the Sangguniang Barangay. The Supreme Court finally declared that: *“without such conjoint action, neither an appointment nor a replacement can be effectual”*.

Thus, while technically speaking, these barangay appointive officials are coterminus with the appointing authority, to a certain extent, however, they enjoy security of tenure insofar as they can only be removed after following the procedures provided for under the Local Government Code, and that is, to be removed by the Punong Barangay and such removal is approved by the majority of all the members of the Sangguniang Barangay.

In the present situation however, with the change of barangay

appointive barangay officials is not removal but expiration of term of office considering that they are coterminus with the appointing authority. Consequently, with the expiration of the term of office of the Punong Barangay and the Sangguniang Barangay Members come 30 November 2007, the appointment of barangay appointive officials, being coterminus with the appointing authority, would likewise expire. Hence, if you choose to rehire them, there is a need for an issuance of a new appointment which should comply with the requirements provided for under the Local Government Code and its Implementing Rules and Regulations, that is, appointment by the Punong Barangay and concurrence or approval by the majority of all the members of the Sangguniang Barangay.

This is true even assuming that the Punong Barangay and the members of the Sangguniang Barangay were re-elected because pursuant to the ruling of the Civil Service Commission in *"Briones, Antonio V., CSC No. 97-3426, dated 24 June 1997"*, the Commission ruled that *"since Briones was originally occupying a position which is coterminus in nature, his appointment was considered automatically lapsed upon the expiration of the term of office of Mayor Tenorio on June 30, 1995. The re-election of Mayor Tenorio does not revive the lapsed appointment of Mr. Briones. In order for him to qualify to his former position, a new appointment must be issued and the same must be concurred in by the Sangguniang Bayan of Labo, Camarines Norte"*.

On the issue of expiration and retirement pay, since barangay appointive officials are paid by way of honoraria, they are not entitled to separation and retirement pay.

As to whether or not there can be contractual and permanent employees in the barangay, it is well to note that the Local Government Code did not categorically provide for such contractual and permanent barangay employees. However, should the barangay, by way of an ordinance, invoke its authority under Section 387 (b) of the Local Government Code to create other positions or offices deemed necessary and the ordinance so provided for the hiring of contractual and permanent employees based on the qualification standards provided for thereunder, then said barangay officials hired under the same ordinance are considered contractual and permanent employees. Ultimately, it will be left to the wisdom of the barangay ordinance whether such positions created are to be occupied by permanent and contractual employees.

In reply to your query no. 2, if the barangay budget for fiscal year

2008 has already been approved, the new Sangguniang Barangay is not anymore allowed to prepare a new budget. However, changes in the approved barangay budget for 2008 may be done through the passage of a supplemental budget subject to the requirements of the Local Government Code.

With respect to query no. 3, if what is meant by BPSO is really the Barangay Tanods, it bears to emphasize that Section 393 of the Local Government Code fixed the maximum number of barangay tanods to not more than 20. Since the Local Government Code did not provide for the minimum, the number of BPSO may be reduced based on the best judgment of the Punong Barangay.

With respect to increasing the number of BPSO, we believe that your barangay can do so but it should not exceed 20 per Section 393 of the Local Government Code.

In fine, replying to your query no. 3 (a), (b) and (c), we are of the view that you can increase the number of your BPSO but not to exceed 20 or you can decrease the number of the BPSO and increase their honoraria but in any event, the 55% personal services limitations under the Local Government Code should always be complied with.

In reply to your query no. 3 (d), reducing the number of personnel would mean abolition of some barangay offices. In abolition, the barangay, by way of an ordinance, cannot abolish positions created by law, such as Barangay Treasurer, Barangay Secretary and Barangay Tanods. Hence, it can only abolish positions created through a barangay ordinance. The budget, therefore, allocated for offices abolished by the barangay ordinance can be considered as savings of the barangay.

In reply to your query no. 3 (e), may we note that the 55% maximum is a limitation on appropriations for personal services of a barangay for one fiscal year. It is more of a ceiling rather than a grant. Hence, as to your query whether or not there are amounts or percentages which must be allocated apart from the compensation requirement of 55% maximum, please be informed of the provisions under RA 8185 (An Act Amending Section 324 [d] of the Local Government Code) which mandates all local government units to set aside 5% as calamity fund. We have also Section 287 of the Local Government Code, which mandates all local government units to set aside not less than 20% of the IRA share for development projects as development fund and such other provisions of the Local Government Code, such as Discretionary Fund, where applicable.

In reply to your query no. 3 (f), please be informed that it is not possible to give a higher compensation to barangay employees than the Punong Barangay and Kagawads, the reason being that under Local Budget Circular No. 63, the amount of honorarium of the Punong Barangay was fixed to that amount which is equivalent to Salary Grade 14; Sangguniang Barangay Members, Barangay Secretary and Barangay Treasurer to that amount which is equivalent to Salary Grade 10; and for other barangay appointive officials to that amount which is equivalent to compensation ranging from Salary Grade 1 to Grade 8.

With respect to your query no. 3 (g), savings from allocated expenses can be used for other purposes within the same fiscal year for as long as the use thereof is supported by a supplemental budget.

In reply to your query no. 4, Section 50 of the Local Government Code provides that: *"(b) The rules of procedures shall provide for the following: (1) the organization of the Sanggunian and the election of its officers as well as the creation of standing committees which shall include, but shall not be limited to the Committees on Appropriations, Women and Family, Human Rights, Youth and Sports Development, Environmental Protection and Cooperatives xxx"*.

From the foregoing, it is clear that your Sanggunian, based on your sound judgment, may create committees as you may deem necessary in effectively and efficiently discharging the functions of the Sangguniang Barangay.

We hope to have enlightened you accordingly.

Very truly yours,

By Authority of the Secretary:


PASCUAL V. VERON CRUZ, JR.
Head Executive Assistant

Legal:43/La

cc: Director Rodolfo S. Feraren
DILG – National Capital Region
LMP Building, Ermin Garcia St.
Cubao, Quezon City