Dear Mayor Fabella:

This refers to your letter dated 13 October 2014 seeking this Department’s opinion on the issues concerning the claims for refund of deductions on the terminal leave credits of former Sangguniang Bayan (SB) members arising from the issuance of DILG Legal Opinion No. 15, Series of 2014 interpreting Items 7.1 and 7.5 of the Local Budget Circular No. 103, dated May 13, 2013.

Per your letter, previous members of the SB who were given their terminal pay after their term ended on 30 June 2013, are now claiming reimbursement for the deductions of their terminal leave credits by virtue of their absences from regular and special sessions. Said DILG Opinion clarified that “the work performed by members of local sanggunians is not limited or confined to attendance during the sessions.”

These former SB members alleged that the deductions had no legal basis because while the said DILG Opinion was issued last 22 April 2014, the jurisprudence used was from the Macatangay vs. The Chairman of the Commission on Audit[^1] case, which was promulgated on 30 September 1982. Hence, according to them, they are included in the ambit of the said DILG Opinion.

The following issues were raised in your letter:

a. Whether or not the former SB members are entitled to such refund?

b. Up to what period the claim should be countenanced? Will it retroact to the date of the promulgation of the Macatangay case on 30 September 1982?

c. Will the national government provide additional funds to the LGUs or will the LGUs provide it in their future budgets?

[^1]: G.R. No. L-38728, wherein the Supreme Court held that: “xxx. Elective officials, indeed, are deemed in the service of their constituents regardless of time and place. xxx.”
The following are the discussions relative to the foregoing queries:

Inapplicability of Macatangay vs. The Chairman of the Commission on Audit (G.R. No. L-38728. 30 September 1982) to a Local Official’s Claim for Refund of Deductions from Terminal Leave Credits

The Supreme Court’s ruling in Macatangay vs. The Chairman of the Commission on Audit (G.R. No. L-38728. 30 September 1982) should not be made to apply in the claims for refund of claimants as said case is diametrically opposed to the proposition of claimants. Note that the Supreme Court in said case affirmed the decision of the Chairman of the COA refusing to allow in audit the claim of petitioner for the commutation of his leave earned as municipal mayor based on the Court’s findings that there is no specific provision of law authorizing leave privileges, nor commutation thereof, for elective officials, in general, Viz.:

"3. Indeed, there is no specific provision of law authorizing leave privileges, nor commutation thereof, for elective officials, in general, and municipal mayors in particular, as in the instant case. Section 2187 of the Revised Administrative Code and Section 12(c) of Commonwealth Act No. 186, as amended by Republic Act No. 4968, cited by petitioner to support his contention that a municipal mayor is entitled to leave privileges, are likewise, unavailing. A perusal of Section 2187 of the Revised Administrative Code reveals that what is granted therein is the right of municipal mayors to receive full salary only during their absence due to illness contracted through no fault of their own, for a period of not more than thirty (30) days during the year. No mention is made therein about the mayor having to apply for leave of absence to enjoy his right to receive full salary. Neither does this provision of law authorize accumulation of such leave. Hence, no commutation of leave is possible. Indeed, if it were the intention of Section 2187 to allow accumulation and commutation of unused leave for mayors, it could have easily so provided as in the case of appointive government officers and employees under Section 286 of the Revised Administrative Code.

Section 12(c) of Commonwealth Act 186 is likewise inapplicable. This provision of law does not also grant a leave privilege. Although it included elective officials as among those allowed to retire thereunder, nevertheless, the extension of retirement benefits to elective officials did not automatically entitle the latter to the commutation of "unused vacation and sick leave." Such pecuniary privilege would depend on the existence of a law expressly and categorically granting them leave privileges as what was envisioned in the Leave Law. In fact, this must have been the conclusion implicit in the last sentence of the first paragraph of Section 12(c), supra, which provides as follows:
Officials and employees retired under this Act shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of their retirement.

Thus, the unused vacation and sick leave which a retiring official or employee may commute is that which he may have to his credit at the time of retirement. If he has no such leave credit then he enjoys no such right of commutation for there is nothing to commute. Certainly, in order to earn leave credits, he must, first of all, be entitled to leave privileges as granted by law. Simply taken, Section 12(c) presupposes the existence of a law or an explicit statutory provision granting and authorizing leave privileges, ”[Emphasis supplied]

It should be emphasized that the observations of the court in said case anent the work schedule of elective officials, i.e., elective officials are deemed in the service of their constituents regardless of time and place, as cited in DILG Opinion No. 15, s. 2014, supports the conclusion of the Court that local elective officials are not entitled to leave credits and the commutation thereof on the bases of the laws governing the issues at that time.

Moreover, the above observation of the Court was advanced in DILG Opinion No. 15, s. 2014 in relation to the interpretation of Items 7.1 and 7.5 of Local Budget Circular No. 103, s. 2013.

Inapplicability of Local Budget Circular No. 103, s. 2013 to Claims for Refund of Deductions on Terminal Leave Benefits

Local Budget Circular No. 103, s. 2013, as discussed in DILG Opinion No. 15, s. 2014, is inapplicable to claims for refund on deductions of terminal leave credits. Note that the computation and funding of terminal leave benefits is governed by DBM Budget Circular No. 2002-1, s. 2002.

Clearly, DILG Opinion No. 15, s. 2014 is inapplicable to terminal leave benefits.

We hope to have enlightened you on the matter.

Very truly yours,

AUSTERE A. PANADERO
Undersecretary