

KSTMS



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
DILG-NAPOLCOM Center, EDSA corner Quezon Avenue, West Triangle, Quezon City
<http://www.dilg.com.ph>

30 JAN 2020

DILG OPINION NO. 17 S. 2020

HON. IYO CHRISTIAN C. BERNARDO
Vice Mayor
PASIG CITY

HON. GEORGIA LYNNE P. CLEMENTE
SK Federation President
Pasig City

Dear Sir/Madame:

This has reference to your letters dated 19 September 2019 and 18 September 2019, respectively, both requesting legal opinion relative to SK Federation resolutions resolutions declaring positions of the officers of the said federation vacant and setting a date for the election of new set of officers.

On one hand, the letter of SK Federation President Georgia Lynne P. Clemente, provides the following facts:

1. SK Federation Memorandum dated 16 September 2019 was issued. Said Memorandum is a notice of a Special Session on 17 September 2019 indicating therein several agenda to be discussed, among others;
2. SK Federation President Clemente attended and presided over the said session despite said Memorandum not passing through her office for approval;
3. The Special Session was attended by only three (3) officers. Per SK Federation President, there was no quorum obtained. Considering that there was no quorum, SK Federation President officially adjourned the meeting;
4. Despite said adjournment, the meeting pushed through with additional members but with the same number of officers in attendance;
5. Thereafter, there were two (2) resolutions passed: (1) Resolution No. 1 (R1), series of 2019 and (2) Resolution No. 2, series of 2019 (R2). R1 declares all positions of the SK Federation of Pasig City officers vacant effective on September 17, 2019 primarily because of failure of SK Federation President in her official duties. R2 confirms the date, time, and venue of the conduct of elections to fill the said vacancies;
6. Per SK Federation President, said resolutions are invalid mainly because of absence of quorum to even transact any official business;

Accordingly, SK Federation President requests this Department to:

1. Thoroughly investigate this matter;
2. Cancel the special elections scheduled on 29 September 2019 for failure to observe due process and lack of basis; and
3. Give the accused the chance to defend themselves and present evidence, documentary and/or oral, in their favor.

On the other hand, in the letter of Vice Mayor Bernardo, he requests for legal guidance relative to the said resolutions issued by the SK Federation.

We find that the issues and/or concerns are hinged on whether or not resolutions subject of this legal opinion are proper.

Our view is in the negative. We opine that said resolutions, in effect, removed all SK Federation officers of Pasig City not in accordance to the governing rules on the matter.

Section 21(c) of Republic Act No. 10742, otherwise known as Sangguniang Kabataan Reform Act of 2015, is relevant. It states:

SEC. 21. Pederasyon ng Sangguniang Kabataan. - (a) There shall be an organization of the Pederasyon ng mga Sangguniang Kabataan to be known as follows: xxx

(c) The manner of election, suspension and removal of the officers of the Pederasyon at all levels and the term of office of the other officers of the Pederasyon shall be governed by the guidelines to be jointly issued by the DILG, the COMELEC and the Commission within sixty (60) days upon the effectivity of this Act.

Accordingly, DILG-COMELEC-NYC issued Joint Memorandum Circular No. 2017-01 (JMC 2017-01), dated 23 June 2017, which sets the guidelines on the conduct of SK Federation election and rules governing terms of office, suspension and removal of all SK Federation officers. Sections 31(a), 32 (a) and 35 thereof state:

SECTION 31. GROUNDS FOR DISCIPLINARY ACTIONS

- b. Any SK Pederasyon Officer may be disciplined, suspended, or removed from office, after due notice and hearing, on any of the following grounds:*
 - 1. Abuse of authority;*
 - 2. Commission of any offense involving moral turpitude or an offense punishable by at least prison mayor (6 years and 1 day to 12 years) imprisonment;*
 - 3. Failure to perform official duties and functions as Pederasyon Officer;*

4. *Commission of any violations cited in the respective IRP of the concerned Pederasyon; and*
5. *Such other grounds as may be provided under the Local Government Code of 1991, this JMC and all other applicable general and special laws.*

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SECTION 32. FORM AND FILING OF COMPLAINTS. – A verified complaint against any Pederasyon Officer shall be initiated only by any officer or member of the concerned Pederasyon and shall be filed before the following:

- b. Office of the President, in the case of Panlalawigan, Panlungsod/Bayan Pederasyon Presidents who are ex-officio members of the Sanggunian Panlalawigan, Panlungsod (HUC, ICC, or Component City), and the Pederasyon President of Pateros, NCR, respectively;” xxx*

SECTION 35. SUSPENSION AND REMOVAL FROM OFFICE. – Any elected SK Pederasyon officer at all levels, after due process, may be suspended for not more than six (6) months, or removed from the office of the concerned Pederasyon, by a majority vote of all the members of the Sangguniang Panlungsod/Bayan or Panlalawigan concerned, or by the higher authorities, on grounds stated in Section 31(a)(b) of this JMC.

It is clear in the foregoing that for an SK Pederasyon Officer may be removed from office in two ways: (1) By filing a verified complaint before the Office of the President only by any officer or member of the SK Federation concerned stating any of the grounds mentioned in Section 31(a) of JMC 2017-01; and (2) By a majority vote of all the members of the Sanggunian Panlungsod.

There being no resort to any of the two, the positions held by the incumbent SK Federation president and the rest of the officers may not just be casually declared vacant through resolution of the SK Federation. Nowhere in the rules does it provide declaration of vacancy or removal of officers through a mere resolution.

Thus, we are of the view that said resolutions are not proper for not being in compliance with the established rules i.e. JMC 2017-01.

As to the request of the incumbent SK Federation President, we shall refer the matter to this Department's regional office for further fact-finding and monitoring. As to the cancellation of the special elections, we shall no longer delve into the matter for being moot and academic. As to giving the accused due process, we are of the view that this is not a criminal case nor a criminal

procedure. This is a mere executive opinion on queries posed and we find none of the personalities involved to be properly referred as accused.

We hope to have enlightened you on the matter.

Thank you.

Very truly yours,
By the authority of the Secretary


MARIVEL C. SACENDONCILLO
Undersecretary for Local Government

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