



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

Regional Office No. I, San Fernando City, La Union
Tel. Nos. (072) 888-21-08; 700-57-46; 888-22-89; 700-27-01; 700-36-79; 607-12-45
Fax Nos. 888-22-94; 700-27-03



November 15, 2011

HON. DIONISIO G. CABURAO, JR.
Vice-Mayor
Sual, Pangasinan



Dear Vice-Mayor:

This has reference to your letter requesting this Office a clarification on the following issues, to wit:

1. Is it proper and legal for the appointing authority (Municipal Mayor Arcinue) to continue reappointing a person whose appointment was already rejected?
2. What then is the nature of appointment of Juvenile M. Pastor to the Office of the Municipal Assessor if the Sanggunian will not to (sic) give its concurrence whenever her appointment is submitted for the Sanggunian's action?
3. What is the remedy of the Sangguniang Bayan to enjoin the Mayor in no longer reappointing Juvenili M. Pastor as the Municipal Assessor of Sual, Pangasinan whose appointment was already rejected?

Before dwelling on the issues, may we first invite your attention to the provisions of the Local Government Code of 1991, Sec. 443 (a) and (d) to wit:

Section 443. Officials of the Municipal Government. -

(a) There shall be in each municipality xxx a municipal assessor xxx.

xxx

(d) Unless otherwise provided herein, heads of departments and offices shall be appointed by the municipal mayor with the concurrence of the majority of all the sangguniang bayan members, subject to civil service law, rules and regulations. The sangguniang bayan shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed. xxx



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We also invite your attention in a case decided by the Supreme Court with similar facts and issues:

In Montuerto vs. Ty, G.R. No. 177736 [October 6, 2008] The Supreme Court held that: Under Section 443(a) and (d) of Republic Act (R.A.) No. 7160⁵ or the Local Government Code, the head of a department or office in the municipal government, such as the Municipal Budget Officer, shall be appointed by the mayor with the concurrence of the majority of all Sangguniang Bayan members⁶ subject to civil service law, rules and regulations. Per records, the appointment of petitioner was never submitted to the *Sangguniang Bayan* for its concurrence or, even if so submitted, no such concurrence was obtained. Such factual finding of quasi-judicial agencies, especially if adopted and affirmed by the CA, is deemed final and conclusive and may not be reviewed on appeal by this Court. This Court is not a trier of facts and generally, does not weigh anew evidence already passed upon by the CA. Absent a showing that this case falls under any of the exceptions to this general rule, this Court will refrain from disturbing the findings of fact of the tribunals below.

Moreover, we agree with the ruling of the CA that the verbal concurrence allegedly given by the *Sanggunian*, as postulated by the petitioner, is not the concurrence required and envisioned under R.A. No. 7160. The *Sanggunian*, as a body, acts through a resolution or an ordinance. Absent such resolution of concurrence, the appointment of petitioner failed to comply with the mandatory requirement of Section 443(a) and (d) of R.A. No. 7160. Without a valid appointment, petitioner acquired no legal title to the Office of Municipal Budget Officer, even if she had served as such for ten years.

Dwelling on the second issue, this Office opines that the concurrence of the Sangguniang Bayan is a mandatory requirement as held by the Supreme Court in the appointment of a Department Head in the Municipality, such as the Municipal Assessor. Absence of such concurrence will materially affect the validity of the appointment. Hence, the employee appointed but without the concurrence of the majority of the Sangguniang Bayan will acquire no legal title to such position as a Department Head. The rejection of the appointment of Ms. Pastor by the Sanggunian, in a resolution, is a testament that she acquired no legal title to such position.

On the first issue. The concurrence of the Sangguniang Bayan is a mandatory requirement in the appointment of Division Chief in a Local Government Unit. However, in case the concurrence is not given, the appointment is not valid. The absence of the SB's concurrence is based on a material ground that will disqualify the appointee to hold the position. Disqualification, under the law, means the failure of the appointee to obtain the requirements as provided for by law.

The concurrence of the Sanggunian is a formal mandatory requisite under the Local Government Code. This means that it will affect the validity and legality of the appointment itself and not the qualification of the person to be appointed. However, if the rejection is based on the possession of the disqualification as provided for by law, it would affect the qualification of the appointee.

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So, in line with the above-mentioned issues, the propriety of reappointing a person whose appointment was already rejected is based on the qualifications and possession of the non-disqualifications. In other word, as long as the person is qualified to hold such position even if the Sanggunian did not concur to such appointment, the appointing authority can make reappointment and subject such appointment for Sangguninan's approval. It is because the absence of Sanggunian's concurrence only affects the validity or legality of the appointment and not the qualification of the person to be appointed. Hence, the appointment of Ms. Pastor made by the Mayor which was previously rejected would still go the Sanggunian's approval.

Pending the outcome of the administrative complaint against Ms. Pastor, this office would defer from commenting or rendering its opinion as to the qualification of Ms. Pastor in order not to interfere with the disposition of the Civil Service Commission.

As to the remedy, we could not provide a definite remedy since the Mayor is only exercising his power of appointment under the law. A remedy to enjoin the Mayor to make reappointment would mean preventing the Mayor to exercise his power to appoint.

We hope to have enlightened you on the issues at hand. Our opinion, however, is without prejudice to any ruling or opinion rendered by a higher authority or a competent tribunal.

Warm regards.


DR. JULIE J. DAQUIOAG. CESE
OIC-Regional Director

LEGAL/JOA