



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

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June 25, 2013

MA. MARY GRACE O. MENDOZA
Board Secretary
Pangasinan III Electric Cooperative
Urdaneta City, Pangasinan



Dear Ms. Mendoza,

This refers to your letter seeking the office opinion on the status of local elective and appointive Municipal/Barangay officials and employees who are at the same time employees of Pangasinan III Electric Cooperative, a cooperative duly organized and existing in accordance with Philippine laws and registered with the Cooperative Development Authority.

Before dwelling on the issues, may we first invite your attention to the provisions of the Local Government Code of 1991, Section 90 and 94 to wit:

Section 90. Practice of Profession. -

(a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

(b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during session hours: Provided, That sanggunian members who are also members of the Bar shall not:

(1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;

(2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office.

(3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and

(4) Use property and personnel of the government except when the sanggunian member concerned is defending the interest of the government.

(c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: Provided, That the officials concerned do not derive monetary compensation therefrom. xxx





Section 94. Appointment of Elective and Appointive Local Officials; Candidates Who Lost in an Election. - (a) No elective or appointive local official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no elective or appointive local official shall hold any other office or employment in the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

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With respect to local elective officials who, at the same time, are employed in a private company, the Department already answered said query in DILG OPINION NO. 29, S. 2011 and DILG OPINION NO.13, S. 2005 citing Section 90 and 94 of RA 7160 or the LOCAL GOVERNMENT CODE OF 1991 (LGC).

In DILG Opinion No. 29, S. 2011, citing Section 90 of the LGC, Governors and City/Municipal Mayors are absolutely prohibited from practicing their profession. However, Punong Barangays are excluded from that prohibition therefore allowing them to practice their profession or hold another employment provided that he/she must first obtain prior written permission from the Secretary of the Department of the Interior and Local Government as required under Section 12, Rule XVIII of the Revised CSC Rules and in the case of Wilfredo M. Catu vs. Atty. Vicente G. Rellosa, A.C. No. 5738, February 19, 2008. Absent said written permission, the Punong Barangay cannot practice his/her profession or engage in private employment.

DILG Opinion No. 13, S. 2005 provides that members of the Sanggunian are allowed to engage in another employment so long as their attendance during session days is not affected. As provided in Section 7 (b)(1) of RA 6713 otherwise known as the Code of Ethical Standards for Government Officials and Employees, public officials and employees during their incumbency shall not be involved in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law. Provided further in Section 7 (b)(2), public officials and employees during their incumbency shall not engage in the practice of their profession unless authorized by the constitution or law, given that such practice will not conflict or tend to conflict with their official functions. Accordingly, public officials are allowed to engage in private undertakings provided that they will comply with the requirements under Section 90 of the Code and that such engagement will not constitute a violation of Section 7 of RA 6713.

As regards to public employment, Section 94 (a) of RA 7160 states that unless otherwise allowed by the primary functions of his/her office, employment in the government or any subdivision, agency or instrumentality thereof, including government-owned and controlled corporations or their subsidiaries, is strictly prohibited.

In this regard, given that the Pangasinan III Electric Cooperative is a private enterprise, we are of view that there is no legal impediment for private employment of





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public officials (specifically the PB and members of the Sanggunian) as long as it does not affect his/her official functions, or violate the conflict of interest rule and that necessary requirements are satisfied or complied with. Hence, it is not obligatory for the concerned officials or employees to resign from their public office in order to retain their position in your cooperative or vice versa.

For the appointive local officials, this office opined that the concerned employees should resign from their public position in order to retain their employment in your cooperative or should resign from your cooperative and shall retain their public office. Section 7(b)(1) of RA No 6713 otherwise known as the "Code of Conduct and Ethical Standards for public officials and employees" provides that:

Section 7. Prohibited Acts and transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitutes prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

xxx

(b) Outside employment and other activities related thereto. – Public officials and employees during their incumbency shall not:

(1) Own, control, manage, or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law. xxx

Based on the above-cited law, appointive local officials are prohibited from accepting outside employment from their public office. The law covers elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount. However, with respect to elective officials, RA 7160 provided some exemptions from the coverage of RA 6713 particularly on acceptance of private employment. The exemption did not extend to appointive local officials. Hence, RA 6713 shall be applied and governed the employment of local appointive officials. Therefore, appointive local officials should resign from their public position in order to retain their employment in your cooperative or should resign from your cooperative and shall retain their public office.

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.

CORAZON P. GURAY, CESO III
 Regional Director

LEGAL/JOA