



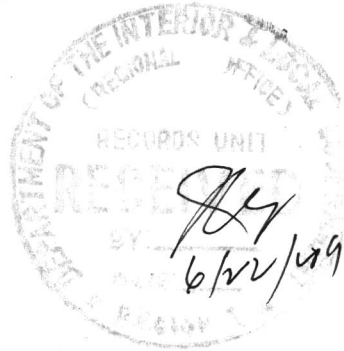
REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

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June 21, 2011

ROGELIO A. LORENZANA
Acting -Mayor
Municipality of Tagudin
Ilocos Sur



Dear Hon. Lorenzana;

This refers to your letter requesting for legal opinion pertaining to the power of the vice mayor to appoint and to discipline employees.

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

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* -

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(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

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(v) Appoint all officials and employees whose salaries and wages are wholly or mainly paid out of municipal funds and whose appointments are not otherwise provided for in this Code, as well as those he may be authorized by law to appoint;

xxx

On the other hand, Section 445 vests on the Vice-Mayor the power to, among others:

Section 445. Powers, Duties and Compensation. -

(a) The vice-mayor shall:

(1) Be the presiding officer of the sangguniang bayan and sign all warrants drawn on the municipal treasury for all expenditures appropriated for the operation of the sangguniang bayan;

(2) Subject to civil service law, rules and regulations, appoint all officials and employees of the sangguniang bayan, except those whose manner of appointment is specifically provided in this Code;

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In Atienza vs. Villarosa, 458 SCRA 385 [May 10, 2005] The authority of the Vice-Governor to appoint the officials and employees of the Sangguniang Panlalawigan is anchored on the fact that the salaries of these employees are derived from the appropriation specifically for the said local legislative body. Indeed, the budget source of their salaries is what sets the employees and officials of the Sangguniang Panlalawigan apart from the other employees and officials of the province. Accordingly, the appointing power of the Vice-Governor is limited to those employees of the Sangguniang Panlalawigan, as well as those of the Office of the Vice-Governor, whose salaries are paid out of the funds appropriated for the Sangguniang Panlalawigan. As a corollary, if the salary of an employee or official is charged against the provincial funds, even if this employee reports to the Vice-Governor or is assigned to his office, the Governor retains the authority to appoint the said employee pursuant to Section 465(b)(v) of Rep. Act No. 7160.

However, in this case, it does not appear whether the contractual/job order employees, whose appointments were terminated or cancelled by the Memorandum dated July 1, 2002 issued by the respondent Governor, were paid out of the provincial funds or the funds of the Sangguniang Panlalawigan. Nonetheless, the validity of the said memorandum cannot be upheld because it absolutely prohibited the respondent Vice-Governor from exercising his authority to appoint the employees, whether regular or contractual/job order, of the Sangguniang Panlalawigan and restricted such authority to one of recommendatory nature only.[26] This clearly constituted an encroachment on the appointment power of the respondent Vice-Governor under Section 466(a)(2) of Rep. Act No. 7160.

Dwelling on the issues, this Office opines that the power to appoint carries with it the power to suspend and remove. Now, being appointed by the Municipal Vice-Mayor of Tagudin and subsequently assigned with the Legislative Branch of the said Municipality, it is crystal clear that the Vice-Mayor is the disciplining authority. It cannot be the Municipal Mayor because Mrs.

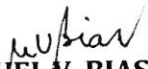
Edelvina P. Gaburno was not appointed by the Hon. Mayor Verzosa, Jr. Hence, being the appointing authority, the Vice-Mayor is the disciplining authority of Mrs. Gaburno.

Being the appointing authority, the Municipal Vice-mayor has the legal capacity to organize the committee to hear the complaint filed against Mrs. Gaburno. It is not the Mayor who can organize an ad hoc committee because, in doing so, it will encroach the power of the Vice-Mayor to appoint, suspend or remove employees of the Sangguniang Bayan. It will restrict the power of the Vice-Mayor from exercising such power given by the Local Government Code of 1991.

However, the Vice-Mayor can exercise the power to discipline employees of the Sangguniang Bayan with the Office of the Ombudsman if the charges involved graft-related cases or with the Civil Service Commission (CSC) if the employee is with the career service. Hence, The Vice Mayor has concurrent jurisdiction with the Ombudsman or with the CSC.

We hope that we have addressed your concern accordingly.

Very truly yours,


MANUEL W. BIASON, CESO III
Regional Director