



March 17, 2015

HON. MAURICIO P. CANUTAB
Vice-Mayor
San Gabriel, La Union



Dear VM Canutab:

This has reference to your letter seeking clarification on the following issues pertaining to the appointing power of the Punong Barangay, to wit:

1. To whom the phrase "and other appointive officials" under section 389(5) is referring to, those resigned, died or incapacitated elected barangay officials or the semi volunteer officers such as the BNS, BHW, BDCW, BT and Lupon members?
2. Who is the proper appointing officer of the BNS, BHW, BDCW, BT and Lupon members?

Before dwelling on the issue, may we invite your attention to sections 389 and 399 of RA 7160, otherwise known as The Local Government Code of 1991.

Section 389. Chief Executive: Powers, Duties, and Functions. -

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

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(5) Upon approval by a majority of all the members of the sangguniang barangay, appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials;

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Section 399. Lupong Tagapamayapa. -

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(d) The **punong barangay**, taking into consideration any opposition to the proposed appointment or any recommendations for appointment as may have been made within the period of posting, shall within ten (10) days thereafter, **appoint** as members those whom he determines to be suitable therefor. Appointments shall be in writing, signed by the punong barangay, and attested to by the barangay secretary.

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Based on the foregoing, the phrase “and other appointive officials” refers to the Barangay Nutrition Scholars (BNS), Barangay Health Workers (BHW), Barangay Day Care Workers (BDCW), Barangay Tanod (BT) and Lupon Members because Section 389 (5) of said Code refers to the appointing power of the Punong Barangay which is being exercised within the bounds of the barangay and with the approval of the majority of the Sanggunian Barangay.

It does not refer to those elected barangay officials who died, resigned or incapacitated because the manner of their appointment in case of vacancy is to be filled up by the Municipal/City Mayor upon the recommendation of the Sanggunian Barangay. (Section 45 (3) of RA 7160). Hence, the Punong Barangay does not have the power to appoint elective barangay officials for such case belongs to the Municipal Mayor.

DILG Memorandum Circular No. 2010-147 provides that ***“the Punong Barangay and the Sangguniang Barangay Members are hereby strongly encouraged to reappoint BHW, BNS and BDCW unless it is proven that they are not performing effectively while in the service in the past barangay administrations.”*** Clearly, this Department recognized the appointing power of the Punong Barangay over the said barangay workers.

With respect to Lupon members, section 399 of RA 7160 expressly gives the power to appoint Lupon members to the Punong Barangay. Hence, the Punong Barangay has the authority to appoint Lupon members.

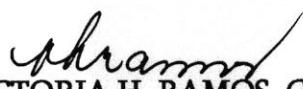
The Barangay Tanod is created by the Barangay through the Sanggunian Barangay, pursuant to Section 391 (16) of RA 7160 for the purpose of carrying out peace and order in the barangay. Thus, the qualifications, duties and functions of barangay tanod is governed by the barangay ordinance enacted by the Sanggunian Barangay and the appointing authority is automatically vested with the Punong Barangay because such position in the barangay is created by the Sanggunian Barangay.

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.

JULIE J. DAQUIOAG, Ph.D., CESO IV
Officer-In-Charge

By;


VICTORIA H. RAMOS, CESO V
OIC-Asst. Regional Director

Legal/joa