



August 16, 2013

MR. JULIAN L. CAWANG  
Sangguniang Bayan Member  
Pugo, La Union



Dear SBM Cawang:

This refers to your letter seeking the Department's opinion relative to the following issues, to wit:

1. In approving the Local Budget by the Sangguniang Bayan how many votes from the Sangguniang Bayan concern (sic) is needed?
2. When does a quorum exist?
3. Do five (5) votes from the Sangguniang Bayan present make an appropriation ordinance legal? What is the nature of its effectivity?
4. How does an ordinance be amended or corrected?
5. Can be (sic) an ordinance be amended or corrected during the approval of the minutes journal of the Sangguniang Bayan?
6. Does the corrected minutes/journal of the Sangguniang Bayan could amend an Ordinance? Could it justify its legality and effectivity?
7. Despite the fact that only five (5) members of the Sangguniang Bayan present approved an appropriation ordinance and on the same date the said appropriation ordinance was approved by the Local Chief Executive. It is legal? How about its effectivity?
8. Can the LGU withdraw funds accordingly to a questionable appropriation Ordinance?

Before dwelling on the issues, may we first invite your attention to the provision of the Local Government Code of 1991 and its Implementing Rules and Regulations to wit;

*Section 53. Quorum. -*

*(a) A majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business. Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.*





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**Section 54. Approval of Ordinances. -**

*(a) Every ordinance enacted by the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan shall be presented to the provincial governor or city or municipal mayor, as the case may be. If the local chief executive concerned approves the same, he shall affix his signature on each and every page thereof; otherwise, he shall veto it and return the same with his objections to the sanggunian, which may proceed to reconsider the same. The sanggunian concerned may override the veto of the local chief executive by two-thirds (2/3) vote of all its members, thereby making the ordinance or resolution effective for all legal intents and purposes.*

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**Section 56. Review of Component City and Municipal Ordinances or Resolutions by the Sangguniang Panlalawigan.**

*(a) Within three (3) days after approval, the secretary to the sanggunian panlungsod or sangguniang bayan shall forward to the sangguniang panlalawigan for review, copies of approved ordinances and the resolutions approving the local development plans and public investment programs formulated by the local development councils.*

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*(d) If no action has been taken by the sangguniang panlalawigan within thirty (30) days after submission of such an ordinance or resolution, the same shall be presumed consistent with law and therefore valid. xxx*

Since all the issues are correlated with each other, they will be discussed simultaneously. Now on the issues on local legislation, this office opines that in approving the Local Budget, affirmative majority votes of the Sanggunian members present must be obtained. Article 107 (g) of the Rules and Regulations implementing the Local Government Code of 1991 provides that *“No ordinance or resolution passed by the sanggunian in a regular or special session duly called for the purpose shall be valid unless approved by a majority of the members present, there being a quorum. Any ordinance or resolution authorizing or directing the payment of money or creating liability, shall require the affirmative vote of a majority of all the sanggunian members for its passage.”*

In determining the quorum, the term “majority” has been judicially defined as the number greater than half or more than half of any total. (Santiago vs. Guingona, et. al., G.R. No. 134577, November 18, 1998) “Quorum” is defined as that number of members of a body which, when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives its power to pass upon a law or ordinance or do any valid act. (Javellana vs. Tayo, G.R. No. L-18919, December 29, 1962).



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In computing a quorum, it should be based on the actual membership or incumbents which is limited to actual members who are not incapacitated to discharge their duties by reason of death or absence from the jurisdiction of the organization, or for other causes which make attendance of the member concerned impossible even through coercive process as provided for in Section 53 (b) of the Code. (*Avelino vs. Cuenco*, G.R. No. L-2821, March 4, 1949).

DILG Opinion No. 9, s. 2005, provides that when the city councilor or any other elected official is traveling outside his city within or outside the Philippines unofficially, he is effectively absent and/or temporarily incapacitated from acting on the official and business transactions of his office. He is excluded from determination of the quorum.

Hence, even if there were only five (5) votes casted during the enactment of the Local Budget, the appropriation ordinance can still be valid and legal as long as there is a quorum during session and said quorum was never questioned during that time. The appropriation ordinance which was already enacted and approved by your Local Chief Executive (LCE) is presumed valid which enjoys the presumption of regularity on the part of the Sanggunian.

A questionable appropriation ordinance is still valid and legal because it enjoys the presumption of regularity unless otherwise declared by the Sangguniang Panlalawigan, upon review, to be invalid for being *ultra vires* or enacted beyond the powers conferred to the Sanggunian concerned. Also if declared by an order of competent Court to be illegal or unconstitutional. Absent of any declaration from the Sangguniang Panlalawigan or from competent Court, the same is valid and legal. Hence, the LGU can withdraw funds based from the said ordinance or any similar transaction.

On the issue of amendments. This office opines that when an ordinance is already approved by the LCE, the only way to amend it is for the Sanggunian to enact same ordinance specifying the provisions being amended, modified or altered. However, if the ordinance is still in the Sanggunian, it can still be corrected or amended thereof. The ordinance at that time is not yet approved by the LCE. It does not have yet the force and effect of a law. And even if the ordinance is already for approval of the LCE, the same can still be changed, corrected or amended by virtue of the LCE's veto power as provided for by Section 54 of the Local Government Code.

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With respect to the issue of legality or effectivity of your ordinance being amended or corrected during the approval of the minutes or journal, this office defer to issue any opinion in relation thereto because the issue involved questions of facts that are justiciable in nature. Justiciable issues are those that require adjudication from the courts of law. Also the subject ordinance enjoys the presumption of regularity, hence, valid and legal.

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.

Very truly yours,

  
CORAZON P. GURAY, CESO III  
Regional Director 

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