



October 21, 2013

HON. RICARDO GAYO
OIC-PUNONG BARANGAY
San Joaquin Sur, Agoo, La Union



Dear OIC-PB Gayo:

This is in relation to your request for legal opinion seeking clarification if you are still eligible to run in same position (Sangguniang Barangay) this coming October 28, 2013.

Please be informed that this office already made a verbal opinion to OIC-MLGOO Veronica B. Nisperos, DILG Agoo, La Union last October 10, 2013. However, for your future reference, we will discuss your eligibility to run for this coming election.

In your letter, you disclosed that you are a THIRD TERMER Sangguniang Barangay Member and that became an OIC Punong Barangay from July 5, 2013 up to September 2, 2013 due to the 60 days preventive suspension imposed against PB Leonardo Camat. After the lapsed of the 60 days preventive suspension, PB Camat failed to report back to office and you are again designated as OIC Punong Barangay due to his continued absence.

In the case of *Aldovino, Jr. vs. COMELEC*, (G.R. No. 184836, December 23, 2009) the Supreme Court held that *"the three-term limit rule demands that preventive suspension should not be considered an interruption that allows and elective official's stay in office beyond three terms. A preventive suspension cannot simply be a term interruption because a suspended official continues to stay in office although he is barred from exercising the functions and prerogatives of the office within the suspension period. The best indicator of the suspended official's continuity in office is the absence of a permanent replacement and the lack of the authority to appoint one since no vacancy exists."*

Applying the case of *Aldovino, Jr. vs. COMELEC*, there is no vacancy in the Office of Punong Barangay so to speak because the elected Punong Barangay was only suspended preventively. In short, he is still the elected Punong Barangay but cannot perform the duties and functions of his office.

In order that your assumption to higher office (Punong Barangay) be considered an interruption, there must be a permanent vacancy in said office as provided for by Section 44 (d) of the Local Government Code, to wit: *"xxx for purposes of this Chapter, a permanent vacancy arises when an elective local official fills a higher vacant office,*

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refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns or is otherwise permanently incapacitated to discharge the functions of his office."

Based on the given law, there is no permanent vacancy in the office of the punong barangay wherein succession thereof be considered as an interruption in your term as Sangguniang Barangay Member.

Since there is no permanent vacancy to said position, your designation as OIC Punong Barangay is not an interruption to your position as Sangguniang Barangay Member. Therefore, you are no longer eligible to run this coming barangay election for you have served your three-term.

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.

For your information and reference.


CORAZON F. GURAY, CESO III
Regional Director

Legal/joa
