



REPUBLIC OF THE PHILIPPINES

**DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT**

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June 14, 2011

JOSE B. BASALLO  
Vice-Mayor  
Municipality of Pugo  
La Union

Dear VM Basallo;



This refers to your letter requesting for legal opinion on the queries, which we hereunder quoted in toto, viz:

1. Whether the Municipal Mayor is empowered to prescribe limitations on the powers of the acting municipal mayor whenever she is on leave of absence.
2. What sanction may be imposed on the municipal mayor if it is not within her power to limit the powers of the acting municipal mayor during her absence.

Before dwelling on the issue, may we first invite your attention to the provision of the **Local Government Code of 1991**, to wit;

**Section 46. Temporary Vacancy in the Office of the Local Chief Executive. -**

(a) When the governor, city or municipal mayor, or punong barangay is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office, the vice-governor, city or municipal vice-mayor, or the highest ranking sangguniang barangay member shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend, or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days.

(b) Said temporary incapacity shall terminate upon submission to the appropriate sanggunian of a written declaration by the local chief executive concerned that he has reported back to office. In cases where the temporary incapacity is due to legal causes, the local chief executive concerned shall also submit necessary documents showing that said legal causes no longer exist.

(c) When the incumbent local chief executive is traveling within the country but outside his territorial jurisdiction for a period not exceeding three (3) consecutive days, he may designate in writing the officer-in-charge of the said office. Such authorization shall specify the powers and functions that the local official concerned shall exercise in the absence of the local chief executive except the power to appoint, suspend, or dismiss employees.

(d) In the event, however, that the local chief executive concerned fails or refuses to issue such authorization, the vice-governor, the city or municipal vice-mayor, or the highest ranking sangguniang barangay member, as the case may be, shall have the right to assume the powers, duties, and functions of the said office on the fourth (4th) day of absence of the said local chief executive, subject to the limitations provided in subsection (c) hereof.

(e) Except as provided above, the local chief executive shall in no case authorize any local official to assume the powers, duties, and functions of the office, other than the vice-governor, the city or municipal vice-mayor, or the highest ranking sangguniang barangay member, as the case may be.

Dwelling on the issues, this Office opines that Mayor Balloguing does not have the power to prescribe limitations on the powers of the acting municipal mayor whenever she is on leave for 30 days (July 3, 2010 – August 2, 2010). It is crystal clear that a mayor can only prescribe limitation when he/she is on leave for a period not exceeding three (3) consecutive days but he/she is travelling within the country.

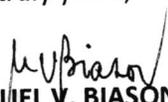
The memorandum prescribing limitation on the power of the acting mayor is invalid because it is contrary to sec. 46 of the Local Government Code of 1991. Hence, even if issued by the mayor-on-leave, the acting mayor can still perform the function, duties and powers of a mayor except the power to appoint, suspend and the power to dismiss, regardless of the existence of said memorandum.

As to what sanction, this Office opines that there is no specific sanction that could be imposed because an administrative case for abuse of authority, if proper, should first be filed in view of one's right to due process.

This is a legal opinion; parties are not precluded from seeking legal opinion from higher authorities.

We hope that we have addressed your concern accordingly.

Very truly yours,

  
**MANUEL V. BIASON, CESO III**  
Regional Director