



February 20, 2015

GERALD D. GALLARDO
Municipal Local Government Operations Officer
Cervantes, Ilocos Sur

THRU: OIG-PD FEDERICO R. BITONIO
DILG – Ilocos Sur Provincial Office

Dear MLGOO Gallardo:

This has reference to your letter seeking clarification on the following issues, to wit:

1. *What is the required number of votes needed to pass an appropriation ordinance in a 10-member Sanggunian?*
2. *If the required number of votes is just the simple majority of all the members present, there being a quorum, is the five (5) affirmative votes in favor for its approval sufficient or considered a majority votes against the four (4) votes?*
3. *In determining the presence of simple majority, is the Vice mayor/Presiding Officer considered in counting, considering the fact that he is a composite member of the SB but only allowed to vote to break a tie?*
4. *Can the three (3) members of the SB inhibit themselves to vote and waive their rights to participate in all deliberations relative to the budget?*
5. *Is the five (5) affirmative votes sufficient to consider/approve the budget on its Third and Final reading?*
6. *In determining the presence of simple majority, do we still need to consider the three (3) other members who inhibit themselves, or they will be excluded since they already waived their rights to vote?*
7. *As a collegial body, are member/s of the Sanggunian obliged to affix their signature in all resolutions and ordinances passed by the Sanggunian though their votes is on the negative during the votation?*
8. *Lastly, is the LGU operating under re-enacted budget pending review of the 2015 Annual Budget by the SP assuming that the five (5) votes in favor for its approval will suffice the requirement of the law on the authorization of annual budget?*

Per your letter, the 10-member Sanggunian is composed of the eight (8) regular Sanggunian Bayan, one (1) ex-officio Sangguniang Bayan and the Vice Mayor as the Presiding Officer.

Having determined the composition of your Sanggunian, we shall answer your first, second and third queries in one (1) discussion considering that they are interrelated.



Completed
by Madhu
on 2.27.15



The Vice Mayor or Presiding Officer is not considered in determining the presence of simple majority in the voting process in the Sanggunian. The Vice Mayor, being the presiding officer, shall only cast his/her vote in case there is a tie but not to create a tie. Hence, he/she will only vote in case there is a tie among the Sanggunian. He/she does not enjoy the same right to vote as compared to the nine (9) Sanggunian members.

In the case of *Perez vs. Dela Cruz, L-29458, 27 SCRA 587*, it was held that: *“Contrary to her claim that she is the presiding officer and also a member of the board, the Vice Mayor of Naga is not both the presiding officer and a constituent member of the board. She cannot, therefore, vote twice, once to create a tie as a constituent member and the second time, to break such tie with another vote.”*

Therefore, of the 10-member Sanggunian, only nine (9) Sanggunian have the power to vote.

To determine the simple majority of the nine (9) Sanggunian, the Supreme Court in the case of *Santiago vs. Guingona, et al (G.R. No. 134577, 18 November 1998)* defined “Majority” as that which is greater than half of the membership of the body or that number which is $50\% + 1$ of the entire membership.

In said case, there are two (2) formulas in determining the majority. The first formula is that “which is greater than half of the membership of the body” and the second formula is “ $50\% + 1$ of the entire membership”.

Of the two formulas, the first formula is more applicable in your Sanggunian considering its composition. To illustrate, using the said formula, the half of 9 members is 4.5. Hence, 5, in relation to 4.5, is definitely greater than the latter.

On the other hand, $50\%+1$ of the 9 members is 5.5. The 5.5 is purely mathematics. It is not applicable in your Sanggunian because the voting power of one (1) Sanggunian is one (1) whole vote which cannot be divided. Hence, this formula is more suitable to Sanggunian whose membership falls on an even number and not on odd number.

Thus, the required number of votes needed to pass an appropriation ordinance in your Sanggunian is five (5) affirmative votes. So, the five (5) affirmative votes obtained satisfy the required majority votes.

On the fourth, fifth and sixth queries, members of the Sanggunian can inhibit themselves from enacting of an ordinance or resolution based on reasonable ground like “conflict of interest” pursuant to Section 51 of RA 7160. Based on the facts given, the three (3) members did not inhibit but they just abstained from voting.

Abstention and inhibition are not the same. Abstention is the act of not taking a stand, one way or the other, on every issue or measure submitted for decision, (*Handbook on Local Legislation, Revised Edition, Reverendo M. Dihan, MGM, CESO, 1998, p.251*), while, inhibition means restraining one’s self from participating in the deliberation of a measure

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due to "conflict of interest" as defined in **Section 51(a) par. 2 of RA 7160**. Abstention is very specific in scope since the right to vote is only being waived, while in inhibition, the rights to deliberate and to vote are being waived.

Abstention, if ever allowed to a member, shall not be considered in computing the majority vote. Since abstention is not a vote, it does not count either way. Mere silence and abstention are not the equivalent of affirmative votes nor of negative votes. (*Quien vs. Serina*, 17 SCRA 567, 1966; *Ortix vs. Posadas*, 55 Phil. 741; 62CJS, p. 761). Hence, in the determination of simple majority, those three (3) members who abstained were no longer included in the determination of simple majority since they waived their rights to vote.

The five (5) affirmative votes is sufficient in approving the budget on its third and final reading because it is more than the majority votes taking into account the three (3) members who abstained from voting the annual budget.

On the seventh issue, the standard format for a resolution or an ordinance is that the Secretary certifies to the correctness of the resolution or an ordinance which was adopted by the members of the Sanggunian. And the Presiding Officer attests to the fact that the resolution or ordinance was duly adopted. Hence, there is no need for the members to sign the resolution or ordinance even if they voted for its passage or not. In short, members of the Sanggunian are not obligated to affix their signature in all resolutions and ordinances passed by them. (*Handbook on Local Legislation, Revised Edition, Reverendo M. Dihan, MGM, CESO, 1998, p.148*).

However, some LGUs have different format in their resolution or ordinance, where the signatures of the members, who voted for its passage, affixed on said resolution or ordinance while those who voted against its passage do not affix their signature. This is a common practice among local Sanggunian which have long been accepted and never been questioned in proper court. The act of signing is related to approval and acceptance. Once, the member disapproved the measure being passed, he/she will not signed on said measure.

On the last query, this office could not issue an opinion considering that the 2015 Annual Budget of your LGU will still be reviewed by the Office of the Sangguniang Panlalawigan. This office is not in the position to pre-empt any decision to be rendered by the Sangguniang Panlalawigan of Ilocos Sur by virtue of their review power.

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

Legal/joa

