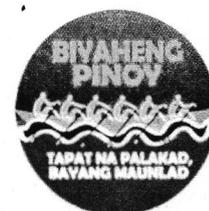




REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT

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June 17, 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, viz:

1. Can the Local Chief Executive (LCE) prohibit municipal officials/employees from attending sessions of the Sangguninang Bayan (SB) who were invited to give a briefing and enlighten the members on matters pertaining to the implementation of programs of the local government unit (LGU)?
2. If the LCE can prohibit municipal officials/employees from attending sessions of the SB, what other options are available to the SB in order to be able to obtain official information that is very important in the performance of its legislative task?
3. If the LCE is not in a position to prohibit officials/employees from attending sessions when they are being invited, what sanction can be imposed on the official/employee who refuses to attend?
4. Can the Municipal Administrator impose the orders of the municipal mayor who is on leave of absence due to travel abroad on municipal officials/employees when the order was tantamount to disobedience to the will of the acting mayor?

Before dwelling on the issues, may we first invite your attention to the provision of the Local Government Code of 1991, to wit:

CHAPTER III
Officials and Offices Common to All Municipalities
ARTICLE I
The Municipal Mayor

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* -

(a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

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

(1) Exercise **general supervision and control** over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

xxx

(x) Ensure that all executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law and this Code, and cause to be instituted administrative or judicial proceedings against any official or employee of the municipality who may have committed an offense in the performance of his official duties;

xxx

In **Drilon vs. Lim 335 SCRA 135, 141 [1994]** "The **power of supervision** is defined as "the power of a superior officer to see to it that lower officers perform their functions in accordance with law. And the **power of control** is "the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for the latter."

Dwelling on the issues, this Office opines that having the power of control and supervision over municipal officials/employees, the local chief executive has the discretion whether to allow or prohibit said official/employee from attending to legislative sessions. However, to prohibit such employee/official from attending legislative sessions while on leave is beyond the power of the Local Chief Executive because the power of control and supervision is now vested to the Acting Mayor pursuant to sec. 46 of the Local Government Code specifically. Hence, any memorandum or order prohibiting local officials from attending sessions while the mayor is on leave is tantamount to violation of the Local Government Code and such act can be a ground for administrative case.

Now, if the Acting Mayor ordered a municipal official/employee to attend legislative hearing and the municipal official/employee did not follow said order due to an order from the Mayor who is on leave, the municipal official/employee can be administratively liable for insubordination because the order from the Mayor who is on leave is invalid being contrary to **sec. 46** of the Local Government Code. He can be held for insubordination because he did not follow the order of the Acting Mayor.

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.

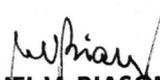
(e) Except as provided above, the local chief executive shall in no case authorize any local official to assume the powers, duties, and functions of the office, other than the vice-governor, the city or municipal vice-mayor, or the highest ranking sangguniang barangay member, as the case may be.

Also, the Municipal Administrator cannot impose order of the Mayor-elect who is on-leave due to travel abroad because power to implement belongs to the Acting Mayor who assume office during said travel. However, said order must be valid and should not violate any provision of law in order for the proper implementation thereof. Otherwise, the Acting Mayor can disregard said order outright.

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 