



OFFICE OF THE UNDERSECRETARY

Legal Opinion No. 2-B s. 2013
17 JAN 2013

ATTY. ANDREI J. ZAPANTA
Punong Barangay
Barangay San Luis
Antipolo City

Dear PB Zapanta:

This has reference to your letter dated 05 January 2013 inquiring on the validity of the Decision of the Sangguniang Panlungsod of Antipolo City in ADM. Case No. 2012-004 entitled "Joselito R. Garcia for and in behalf of Sumulong Tanimatco Amalgamated vs. Atty. Andrei J. Zapanta," imposing on you the penalty of suspension for six (6) months without pay, which, according to you, was arrived at without the required number of votes and without quorum.

In addition, this Department also received the following correspondences, to wit:

➤ Letter dated 06 January 2013 from Vice-Mayor Susana Garcia Say of Antipolo City, as forwarded to the Central Office by DILG-Region IV-A Director Josefina Castilla-Go thru an Indorsement dated 07 January 2013, informing the Secretary that you have no right of recourse to the Department insofar as your administrative suspension is concerned. In Vice Mayor Say's letter dated January 06, 2013, she protested against your alleged attempt to seek an opinion from this Department as a case of forum shopping since you already sought judicial relief in Special Civil Action No. 12-1232, entitled: "Atty. Andrei J. Zapanta vs. Honorable Vice Mayor Susan G. Say, et al."; that the challenged decision of the Sangguniang Panlungsod is valid and can be enforced despite the 15 day effectivity period provided under an existing ordinance because the latter cannot allegedly prevail over Section 68 of the Local Government Code. In her letter dated January 09, 2013, she furnished the Department with copies of the Notice of Appeal (with Urgent Manifestation) you filed before the Office of the President and the Ex Parte Motion to Withdraw Petition, which you also filed before the Regional Trial Court (Branch 95), Antipolo City.

➤ Letter dated 07 January 2012 from Hon. Danilo O. Leyble, City Mayor, Antipolo City requesting advice and enlightenment on the following queries:

a. Whether a quorum exist (sic) in the presence of only nine (9) members out of eighteen (18) members of the Sanggunian to transact business?

b. Whether the Decision dated January 2, 2013 of the Sangguniang Panlungsod of Antipolo in Adm. Case No. 2012-004 is invalid and have no force and effect for failure to submit the same for approval of the Sanggunian in its plenary session?

c. Without necessarily admitting its validity, whether the said Decision may be implemented even before the lapse of fifteen (15) days period provided for under the Internal Rules of Procedures of the sanggunian?"

The issues raised in the above communications may be simplified into two (2), to wit:

1. Validity of the Decision dated 02 January 2013 of the Sangguniang Panlungsod imposing upon you the penalty of suspension for six (6) months; and
2. Whether the aforesaid Decision may be implemented even before the lapse of the fifteen (15)-day period provided under Antipolo City Ordinance No. 94-2001.

With regard to the first issue enumerated above, please be informed that the Department is well aware of the appeal procedure involving administrative cases against elective barangay officials so that the Department will not unduly intervene on an issue which is within the jurisdiction of another body.

With regard to the second issue, please be informed that in cases where the validity of an Ordinance duly passed by the local sanggunian is being assailed, the Department has consistently upheld the presumption of validity in favor of the ordinance, in consonance with jurisprudence that: *"It is a settled rule that an ordinance enjoys the presumption of validity"* (*Social Justice Society (SJS), Vladimir Alarique T. Cabigao and Bonifacio S. Tumbokon versus Hon. Jose L. Atienza, G.R. No. 156052, February 13, 2008, citing Vera vs. Hon. Judge Arca, 138 Phil. 369, 384 [1969]*).

In the case of *"Ermita-Malate Hotel and Motel Operators Association, Inc. vs. City Mayor of Manila"*, (20 SCRA 849), the Supreme Court was rather emphatic, thus:

"Primarily what calls for a reversal of such a decision is the absence of any evidence to offset the presumption of validity that attaches to a challenged statute or ordinance. As was expressed categorically by Justice Malcolm: "The presumption is all in favor of validity. x x x The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well-being of the people. x x x."

And in *San Miguel Brewery, Inc. vs. Magno*, (21 SCRA 293), it was held that: *"A municipal ordinance is not subject to collateral attack. Public policy forbids collateral impeachment of legislative acts."*

Finally, in *"Mayor Norberto M. Mendoza vs. Abstenencia de Guzman, et al."*, G.R. Nos. 156697-98, 09 October 2007, the newly-elected mayor of Naujan, Oriental Mindoro, questioned the validity of an Ordinance enacted by the previous set of Sangguniang Bayan on the ground that it was not deliberated on by the aforesaid legislative body in violation of

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