



LEGAL SERVICE

DILG Legal Opinion No. 28, S. 2013

13 AUG 2013

HON. CARLOS M. PADILLA

Congressman, Lone District, Nueva Vizcaya
Rm. 308, South Wing Annex Bldg.
Batasan Complex, Quezon City

Dear Congressman Padilla:

This has reference to your letter dated 05 August 2013 seeking the Department's opinion and/or guidance on the official status of Punong Barangay Job Gecobe Lapitan of Bangar, Solano, Nueva Vizcaya.

As represented therein, Punong Barangay Job Gecobe Lapitan of Bangar, Solano, Nueva Vizcaya is the subject of manhunt by virtue of two (2) warrants of arrest issued by the Regional Trial Court of Nueva Vizcaya, Branch 28, in the following cases:

1. Criminal Case No. NPS Doc. No. 11-07-Inq-12F-00626
For Violation of Sec. 2, R. A. No. 8294 as amended by R. A. 9516
Warrant of Arrest issued on 25 June 2012
No bail recommended
2. Criminal Case No. 7099
For Carnapping
Warrant of Arrest issued on 23 October 2012
Bail recommended- Php300,000.00

You further represented that Punong Barangay Lapitan has not been reporting for duty. On the other hand, available records in the Municipality of Solano, Nueva Vizcaya indicate that said Punong Barangay filed an application for leave of absence duly approved by Atty. Philip A. Dacayo, Municipal Mayor of Solano, Nueva Vizcaya.

In reply to your request, may it be respectfully informed that the Department has already addressed a similar issue in the past, specifically in DILG Opinion No. 32, series of 2008¹. Pertinent portion of the aforesaid DILG legal opinion is quoted hereunder for easy reference:

"xxx until such time that when PB Tugas is proven guilty beyond reasonable doubt via a conviction by final judgment for the crime of Robbery with Homicide in Band, he is presumed innocent for such crime. And until such time when he is permanently separated from office for any

¹ Certified true copy attached.

of the grounds set forth by law and after an administrative case was filed against him and hearings conducted in accordance with pertinent law, rules and regulations, he remains to be the Punong Barangay of Garrita. In this regard, Section 46 (a) of the Local Government Code of 1991 (RA 7160) provides and we quote:

“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.”

Thus, the continued physical absence of Punong Barangay Tugas while in hiding will just give rise to a temporary incapacity for his failure to perform his duties and functions as Punong Barangay due to physical reasons, which is precisely his absence. Applying the same section, this temporary incapacity of Punong Barangay Tugas will then give rise to the duty of the highest ranking sangguniang barangay member to assume in a temporary capacity the office of the Punong Barangay.

Corollarily, the unauthorized absence of Punong Barangay Tugas while in hiding will give rise to a disciplinary administrative case for excessive absences under Section 60 of the Local Government Code, as implemented by Article 124 of its Implementing Rules and Regulations.”

We hope to have addressed your concern accordingly.

Very truly yours,


JESUS B. DOQUE IV
Director IV

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Copy furnished:

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