HON. JOSELITO P. FANGON  
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RE: CPL-C-10-1390

Dear Asst. Ombudsman Fangon:

This has reference to His Honor's earlier letter requesting a legal opinion on the following issues:

"1. Whether a PUNONG BARANGAY or BARANGAY CAPTAIN, during his or her incumbency, is prohibited from directly participating in the operation of his personal business/company, gaining outside employment, and/or engaging in private practice of profession; and

2. If prohibited, what laws were violated including the sanctions/penalties to be imposed thereon."

In reply to His Honor's first query, may we invite his attention to Section 90 of Republic Act No. 7160¹, which provides and we quote:

"SECTION 90. Practice of Profession.—(a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

(b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during session hours: Provided, That sanggunian members who are also members of the Bar shall not:

(1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;

(2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office;

¹ Otherwise known as "The Local Government Code of 1991".
(3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and

(4) Use property and personnel of the Government except when the sanggunian member concerned is defending the interest of the Government.

(c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: Provided, That the officials concerned do not derive monetary compensation therefrom." (Emphasis Supplied)

It is clear from the afore-quoted provision of Republic Act No. 7160 that the prohibition on the practice of profession or engagement in other occupation other than the exercise of their functions as local chief executives pertain only to governors, city and municipal mayors. Since they are not mentioned in the enumeration, the Department is consistent in its opinion² that Punong Barangays and the members of the Sangguniang Barangay are excluded from such prohibition and thus allowed to practice their profession and/or engage in other occupation other than the exercise of their functions as local chief executives and members of the sangguniang barangay.

In the case however of a punong barangay and/or member of the sanggunian barangay who intends to practice his/her profession, he/she must first obtain prior written permission from the head of the Department concerned as required under Section 12, Rule XVIII of the Revised Civil Service Rules which provides and we quote: “Section 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial credit agriculture or industrial undertaking without a written permission from the head of the Department”. (Emphasis Supplied)

In the case of Wilfredo M. Catu vs. Atty. Vicente G. Rellos³, the Supreme Court ruled that a Punong Barangay should obtain prior written permission from the Secretary of the Department of the Interior and Local Government.

As to His Honor’s second query, as already discussed above, Punong Barangays and the members of the Sangguniang Barangay are allowed to practice their profession and/or engage in other occupation, provided however that such Punong Barangay and/or member of the sangguniang barangay who intends to practice his/her profession must obtain a prior written permission from the Secretary of the Department of the Interior and Local Government. In the event that a Punong Barangay or member of the sangguniang barangay practices his profession without obtaining prior written permission from the Secretary of the Interior and Local Government, he/she may be subjected to an administrative case pursuant to Section 60 of Republic Act No. 7160 or Section 19 of

² Photocopy of DILG Opinion No. 29, series of 2011 is hereto attached.
Republic Act No. 6770. In case the erring Punong Barangay or member of the sangguniang barangay is a lawyer, in addition to an administrative case pursuant to Section 60 of Republic Act No. 7160 or Section 19 of Republic Act No. 6770, he may also be subjected to disciplinary proceedings by the Supreme Court motu proprio, or by the Integrated Bar of the Philippines upon verified complaint. 

We hope to have addressed His Honor's concerns accordingly.

Very truly yours,

AUSTERE A. PANADERO
Undersecretary

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4 Otherwise known as the "Ombudsman Act of 1989".
6 Section 1, Rules 139-B, Revised Rules of Court.