



Republic of the Philippines  
**DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT**  
DILG-NAPOLCOM Center, EDSA corner Quezon Avenue, West Triangle, Quezon City  
<http://www.dilg.com.ph>

19 MAR 2019

**ATTY. EMILIA CONCEPCION D. SEVERINO**

Counsel for Mayor Jaime Ortega  
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Palawan 5300

**DILG OPINION NO. 10 S. 2019**

Dear Atty. Severino:

This has reference to your letter dated 14 January 2019 requesting the Department's clarification on the following issues:

- (a) As regards the phrase "immediately executory" in the decision of the Sangguniang Panlalawigan, does this mean that an order to execute the same may be issued immediately or should it be issued after the expiration of the fifteen (15) day within which Mayor Ortega may file a notice of appeal to the Office of President pursuant to Section 1 of Administrative Order (AO) No. 22, series of 2011 dated October 11, 2011;
- (b) Whether or not Section 9 of AO 22 should prevail over Section 68 of RA 7160. This is in regard to stay of execution of the decision of the Sangguniang Panlalawigan;
- (c) Whether or not the Order dated January 9, 2019 issued by the Office of the Governor of Palawan executing the decision of the Sangguniang Panlalawigan of Palawan is "stayed" by the timely filing of Notice of Appeal to the Office of the President by Mayor Ortega;
- (d) Whether or not the assumption of Vice Mayor Lito Tito as Acting Mayor of the Municipality of Aborlan, Palawan is rendered ineffective by the filing of notice of appeal; and
- (e) Whether or not the Order of Suspension issued by the Provincial Governor is defective as it cited Section 63 of RA 7160 which provides for preventive suspension only.

It appears that your request for clarification is premised on the following factual antecedents:

- An administrative case for dereliction of duty, among others, was filed before the Sangguniang Panlalawigan of Palawan against Mayor Jaime M. Ortega of the Municipality of Aborlan;
- Thereafter, Mayor Ortega was preventively suspended for sixty (60) days effective on 15 October 2018;
- On 08 January 2019, the Sangguniang Panlalawigan of Palawan rendered a Decision finding Mayor Ortega administratively liable for dereliction of duty and imposing upon him the penalty of six (6) months or until the end of his term. The dispositive portion of the aforesaid Decision of the Sangguniang Panlalawigan reads:

WHEREFORE, in view of the foregoing, Decision is hereby rendered finding the respondent administratively liable for dereliction of duty and imposing the penalty of

suspension for six (6) months or until the end of his term, whichever comes sooner. This decision is immediately executory.

- On 08 January 2019, you, as the legal counsel of Mayor Ortega, received the aforesaid Decision;
- On 10 January 2019 or within the fifteen (15)-day period to file a notice of appeal, Mayor Ortega filed a Notice of Appeal to the Office of the President via postal service, paid the required docket fees and served copies of the notice to the Sangguniang Panlalawigan and to the counsel;
- However, despite the filing of Notice of Appeal, Palawan Governor Jose Alvarez issued an Order dated 09 January 2019 executing the aforesaid 09 January 2019 Decision of the Sangguniang Panlalawigan. Pertinent portion of the aforesaid Order of Governor Alvarez reads:

Acting on the Resolution and pursuant to Section 63 of R.A. 7160, otherwise known as the Local Government Code of 1991 and its implementing Rules and Regulations (IRR), this Office hereby suspends Respondent Mayor Jaime M. Ortega for six (6) months or until the end of his term, whichever comes sooner effective immediately.

Let copies of this Order be furnished the parties, as well as the Sangguniang Panlalawigan (SP) and the Department of Interior and Local Government (DILG).

The Provincial Police Office and the Provincial Legal Office are hereby ordered to enforce and implement this Order in coordination with the Department of Interior and Local Government.

**SO ORDERED.**

- As represented, this Order from Governor Alvarez was not personally received by Mayor Ortega. Instead, it was served by posting the same on the bulletin board in the lobby of the Municipal Hall of Aborlan, Palawan;
- On 11 January 2019, Mayor Ortega filed an Appeal Memorandum to the Office of the President through registered mail and personally on 14 January 2019;
- Despite this appeal to the Office of the President, Vice-Mayor Lito Tito assumed on 11 January 2019 as Acting Mayor of Aborlan;
- Hence, your request for clarification.

We deem it proper to answer first your last query, that is, whether or not the Order of Suspension issued by Governor Alvarez is defective as it cited Section 63 of RA 7160 which provides for preventive suspension only.

Please be informed that the Sangguniang Panlalawigan of Palawan, pursuant to the exercise of its quasi-judicial powers conferred by Section 61 of Republic Act No. 7160 or the Local Government Code of 1991, has the sole discretion in determining how and who should implement its orders. Let it be noted that the Department was not furnished with a copy of the Decision rendered by the Sangguniang Panlalawigan of Palawan against Mayor Ortega. For this, we cannot verify whether it was really the Governor who was directed to implement the Sangguniang Panlalawigan decision.

Assuming *arguendo* that the Governor was the one directed by the Sangguniang Panlalawigan of Palawan in its decision to implement the penalty of suspension against Mayor Ortega, then the Governor has the ministerial duty to serve the same and has no discretion to determine the propriety of its implementation.



We support your observation that Section 63 of the Local Government Code of 1991 was erroneously cited by the Governor as basis of the issuance of his order considering that it pertains to preventive suspension when the subject of his order was already suspension as a penalty. However, we are of the view that such wrongful citation of the Governor would not render his whole order invalid if he was nonetheless the one directed by the Sangguniang Panlalawigan to implement the penalty of suspension against Mayor Ortega.

Going now to your first query regarding the phrase "*immediately executory*" mentioned in the Decision of the Sangguniang Panlalawigan, we are of the view that upon receipt of the Governor of the directive to implement the Decision, he has the ministerial duty to serve the same. The service has to be made without unnecessary delay so that after being duly informed of the order, respondent can immediately take steps to protect his interests by filing an appeal or apply for other appropriate reliefs. It follows therefore that he need not wait for the expiration of the fifteen (15)-day period within which Mayor Ortega may file the Notice of Appeal.

As to your second up to fourth queries, we deem it proper to answer them in one discussion as they pertain to one issue.

In this regard, may we invite your attention to the following issuances of the Department:

1. Memorandum dated 16 January 2019 directing all DILG Regional Directors to "*xxx require the party claiming a timely appeal to obtain a certification with an order from OP stating that such appeal was filed within the period and that the remedy has the effect of staying the implementation of the decisions/resolutions/order issued against him/her*";
2. Memorandum dated 23 January 2019 re AMENDMENT TO THE MEMORANDUM RE APPEAL TO THE OFFICE OF THE PRESIDENT FROM DECISION/RESOLUTION/ORDER OF SANGGUNIANG PANLALAWIGAN AND/OR SANGGUNIANG PANLUNGSOD, pertinent portion of which reads:


xxx after seeking guidance from the Office of the President (OP), the Department was advised to require the party claiming a timely appeal to obtain a certification **from the OP to be signed by the Deputy Executive Secretary for Legal Affairs (DESLA) or under his authority stating that such appeal was filed within the prescribed period. Said certification should be submitted to the Department. This is without prejudice to OP's issuance of a contrary order.**

Copies of the aforesaid Memoranda are hereto attached for your ready references.

We hope to have addressed your concern accordingly.

Very truly yours,

BY AUTHORITY OF THE SECRETARY:

  
**MARIVEL C. SACENDONCILLO, CESO III**  
Undersecretary for Local Government

Ls/17  
Copy furnished:

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