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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.gov.ph>

DILG OPINION NO. 12 S. 2019
19 MAR 2019

DIR. VICTOR EMMANUEL C. CAINDEC
Regional Director
Land Transportation Office (LTO) Regional Office No. VII
Natalio Bacalso Avenue, Cebu City 6000

Dear Dir. Caindec:

This has reference to your letter dated 7 June 2018 requesting for clarification and guidance relative to the following issues:

1. Whether or not job order/contract of service personnel can still be retained in his/her employment with a government office considering that he/she has already been elected as SK Councilor, SK Chairperson, Brgy. Kagawad or Brgy. Captain?
2. Whether or not a job order/contract of service employee can still be retained in his/her employment if that latter is a member of the "Lupon nang Tagapamayapa" in the barangay?

The issue on the first query had already been settled by most recent opinions of this Department, DILG Opinion No. 62 s. 2018 and DILG Opinion No. 66 s. 2018.

In DILG Opinion No. 62 s. 2018, the Department opined as follows:

"We agree with the decision of the Ombudsman in the case entitled "Field Investigation Office vs. Josephine H. Abelecio", docketed as OMB-V-A-17-0123 that although services rendered under Job Order contracts are not considered government services as there is no employer-employee relationship created between the government and the job order employee, the compensation received out of the contract is sourced from government funds and the honorarium received by a Punong Barangay/Kagawad is sourced from government funds also, thus, technically, receiving double compensation from the government which is proscribed under Section 8, Article IX (B) of the Constitution and Section 95 of the Local Government Code, to wit:

SECTION 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

and

Section 95. Additional or Double Compensation. - No elective or appointive local official or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of Congress, any present, emoluments, office, or title of any kind from any foreign government. Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

In DILG Opinion No. 66 s. 2018, the Department further explained as follows:

"...xxx...it is our opinion that the law intended the public officials not to hold any position in the government in whatever capacity, unless specifically allowed by law.

On the other hand, even if it was established that JO and COS has no employer-employee (EE-ER) relationship with the government, being a JO or COS in the government is still an "employment in the government" or he is considered "holding a public office". Therefore, we find the herein principle applicable, viz: "What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory"."

In this respect, please be informed that the Department stands consistent with the foregoing opinion that workers under Job Order and Contract of Service status who were elected in the public service office cannot continue their JO or COS contracts with the government.

On the second query, it is noteworthy that the Lupong Tagapamayapa is composed of the punong barangay, as chairman, and ten (10) to twenty (20) members chosen from those residing or working within the barangay pursuant to Section 399 of R.A. No. 7160, otherwise known as the "Local Government Code of 1991". The requirement for a member thereof is residency or work within the barangay. Those members, except in the case of the Punong Barangay, may be employed or not. The fact that the requirement is "working within the barangay" shows that they can work other than being a member of the Lupong

Tagapamayapa. The law does not preclude them to be employed privately or in the government, as long as they possess integrity, independence of mind, sense of fairness, and reputation for probity, pursuant to Section 399 (b) of R.A. No. 7160. Hence, there is no reason for a job order/contract of service employee not to be retained in his/her employment merely by reason of being appointed as member of the Lupong Tagapamayapa.

We hope to have enlightened you on the matter.

Very truly yours,
BY AUTHORITY OF THE SECRETARY:

MARTIN B. DIÑO
Undersecretary