



OFFICE OF THE SANGGUNIANG BAYAN Sta. Cruz, Laguna



EXCERPTS FROM THE MINUTES OF THE REGULAR SESSION OF THE SANGGUNIANG BAYAN OF SANTA CRUZ, LAGUNA HELD ON JANUARY 09, 2023, MONDAY, 10:02 IN THE MORNING AT THE BATASANG BAYAN, ESCOLAPIA BUILDING, SANTA CRUZ, LAGUNA.

PRESENT:

- | | | |
|--|-------|--------------------------------------|
| Honorable LAARNI A. MALIBIRAN | ..... | VICE MAYOR |
| Honorable Ambiel John C. Panganiban | ..... | Presiding Officer |
| Honorable Lea A. Almarvez | ..... | Councilor |
| Honorable Norman T. Tolentino | ..... | Councilor – via |
| Honorable Esmeraldo C. De Las Armas, Jr. | ..... | Councilor |
| Honorable Rizaldy N. Kalaw | ..... | Councilor |
| Honorable Mark Anthony P. Joven | ..... | Councilor |
| Honorable Alan T. Pamatmat | ..... | Councilor |
| Honorable Lucena R. Odejar | ..... | Councilor |
| Honorable Patrocinia S. Kalaw | ..... | Councilor - ABC Federation President |
| Honorable Regine S. Regalado | ..... | Councilor – SK Federation President |



HON. MARK ANTHONY P. JOVEN
Councilor

HON. LUCENA R. ODEJAR
Councilor

HON. ALAN T. PAMATMAT
Councilor

HON. PATROCINIA S. KALAW
ABC Federation President

HON. REGINE S. REGALADO
SK Federation President

APPROPRIATION ORDINANCE NO. 07-S2023

AN ORDINANCE AUTHORIZING THE ANNUAL BUDGET OF THE MUNICIPALITY OF SANTA CRUZ LAGUNA FOR THE FISCAL YEAR 2023 APPROPRIATING THE AMOUNT OF FIVE HUNDRED MILLION EIGHT HUNDRED NINETY SEVEN THOUSAND ONE HUNDRED SEVEN PESOS AND THIRTY NINE CENTAVOS (Php 500,897,107.39) FOR THE GENERAL FUND AND ECONOMIC ENTERPRISES RESPECTIVELY COVERING THE VARIOUS EXPENDITURES FOR THE OPERATION OF THE MUNICIPAL GOVERNMENT FOR FISCAL YEAR 2023 AND APPROPRIATING THE NECESSARY FUNDS FOR THE PURPOSE SUBJECT TO ALL LEGAL LAWS, RULES AND REGULATIONS.

WHEREAS, the Municipal Mayor Hon. Edgar S. San Luis submitted the proposed 2023 Annual Budget dated October 14, 2022 pursuant to Republic Act No. 7160 otherwise known as the 1991 Local Government Code which contained the priority programs, projects and activities of the Municipal Government for effective delivery of basic services to its constituents;

WHEREAS, there is a need to appropriate the amount of **FIVE HUNDRED MILLION EIGHT HUNDRED NINETY SEVEN THOUSAND ONE HUNDRED SEVEN PESOS AND THIRTY NINE CENTAVOS (Php 500,897,107.39)** of which **THREE HUNDRED SIXTY SIX MILLION SEVEN HUNDRED SEVENTY SEVEN THOUSAND FOUR HUNDRED PESOS AND NINETY SEVEN CENTAVOS (Php 366,777,400.97)** which covers the expenditures for the Personal Services (P175,108,604.93), Maintenance and Other Operating Expenses (P183,143,796.04); Capital Outlay (P8,500,000.00); Financial Expenses (P25,000.00) and Non- Office Expenses (P134,119,706.42) and the implementation of the Fourth Tranche Compensation Adjustment For Local Government Personnel under Local Budget Circular No.118 of the Department of Budget and Management of the Municipal Government of Santa Cruz Laguna for calendar year 2023;

WHEREAS, during the deliberation and Budget hearing of the Annual Budget FY2023 by the Committee on Finance Budget and Appropriation of the Sangguniang Bayan together with the Local Finance Committee, it was recommended that an amount of P5,000,000.00 be deducted from the gas allocation under General Services Office to be added and allocated to AICS under Municipal Social Welfare and Development Office (MSWDO) where majority of the six (6) Councilors voted for the transfer of fund allocation; Furthermore, and amount of P10,000,000.00 out of P20,000,000.00 from Grants and Donations under Office of the Mayor was recommended to allocate P3,000,000.00 for financial support for Barangay Tanod and P7,000,000.00 for Barangay Development Projects and agreed by the majority members of the Sangguniang Bayan;

NOW THEREFORE, on motion of Hon. Rizaldy N. Kalaw, (Chairman of the Committee on Finance Budget and Appropriation), duly seconded by Hon. Ambiel John C. Panganiban, Hon. Alan T. Pamatmat, Hon. Regine S. Regalado and Hon. Lucena R. Odejar and with the approval of the members of the Sangguniang Bayan, it was

ENACTED as it is hereby ENACTED by the Sangguniang Bayan of the Municipality of Santa Cruz, Laguna in its regular session assembled;

HON. RIZALDY N. KALAW
Councilor

HON. ESMERALDO C. DELAS ARMAS, JR.
Councilor

HON. NORMAN T. TOLENTINO
Councilor

HON. LEA A. ALMARVEZ
Councilor

HON. AMBIEL JOHN C. PANGANIBAN
Councilor



OFFICE OF THE SANGGUNIANG BAYAN Sta. Cruz, Laguna



Continuation of Appropriation Ordinance No. 07-S2023

-02-

SECTION 1. The Annual Budget of the Municipality of Santa Cruz Laguna for the Fiscal Year 2023 in the total amount of **FIVE HUNDRED MILLION EIGHT HUNDRED NINETY SEVEN THOUSAND ONE HUNDRED SEVEN PESOS AND THIRTY NINE CENTAVOS (Php 500,897,107.39)** is hereby appropriated as the Annual Budget to be made available as appropriations of the Municipal Government of Santa Cruz Laguna is hereby APPROVED.

The following budget documents are hereby incorporated and are made integral part of this Ordinance :

1. 2023 Budget Expenditures and Sources of Financing
2. 2023 Personnel Schedule by Department, Offices and Units
3. 2023 Annual Investment Program

SECTION 2. Sources of Funds. Funds shall be taken from 2023 Estimated Income as duly certified as reasonably collectible by the Local Finance Committee in the Year 2023, subject to applicable laws and auditing rules and procedures.

SECTION 3. Use of Funds/Appropriation. The sum of **FIVE HUNDRED MILLION EIGHT HUNDRED NINETY SEVEN THOUSAND ONE HUNDRED SEVEN PESOS AND THIRTY NINE CENTAVOS (Php 500,897,107.39)** is hereby appropriated from the estimated income to be collected from Revenue Collection from Taxation, Business Operations, Miscellaneous Revenues and others to be made available for the expenses of the Municipal Government of Santa Cruz, Laguna, as identified in the attached 2023 Budget Expenditure and sources of Financing, for the period covering January 1 to December 31, 2023;

SUMMARY OF PROPOSED BUDGET FOR 2023

OFFICE	PS	MOOE	C.O.	Financial Exp.	TOTAL
MAYOR	33,815,495.29	85,619,558.01	8,200,000.00		127,635,053.30
License	2,066,311.42	826,000.00			2,892,311.42
VICE MAYOR	2,970,778.77	3,424,900.00	100,000.00		6,495,678.77
SANGGUNIANG BAYAN	22,257,094.22	7,318,000.00	200,000.00		29,775,094.22
PERSONNEL	3,053,892.56	416,000.00			3,469,892.56
MPDC	4,901,948.96	466,000.00			5,367,948.96
LCR	3,755,239.71	416,000.00			4,171,239.71
GSO	12,710,400.41	36,830,000.00			49,540,400.41
BUDGET	2,710,033.37	352,061.23			3,062,094.60
ACCOUNTING	5,648,695.66	526,000.00			6,174,695.66
TREASURER	10,801,752.35	2,737,000.00		25,000.00	13,563,752.35
ASSESSOR	3,689,594.33	416,000.00			4,105,594.33
INFORMATION	1,738,003.84	2,976,000.00			4,714,003.84
POVERTY	424,153.00	746,000.00			1,170,153.00

HON. RIZAIDY N. KALAW
Councillor

HON. ESMERALDO C. DE LAS ARMAS, JR.
Councillor

HON. NORMAN T. TOLENTINO
Councillor

HON. LEA A. ALMARVEZ
Councillor

HON. AMBIEL JOHN C. PANGANIBAN
Councillor

HON. MARK ANTHONY P. JOVEN
Councillor

HON. LUCENA R. ODEJAR
Councillor

HON. ALAN T. PAMATMAT
Councillor

HON. PATROCINIO S. KALAW
ABC Federation President

HON. REGINE B. REGALADO
SK Federation President





OFFICE OF THE SANGGUNIANG BAYAN Sta. Cruz, Laguna



Continuation of Appropriation Ordinance No. 07-S2023

-03-

HON. RIZALDY N. KALAW
Councillor

YOUTH	704,052.63	166,000.00		870,052.63
INFORMATION	370,079.18	146,000.00		516,079.18
MENRO	1,952,162.70	300,000.00		2,252,162.70
HOUSING	924,892.25	200,000.00		1,124,892.25

HON. MARK ANTHONY P. JOVEN
Councillor

114,494,580.65 143,881,519.24 8,500,000.00 25,000.00 266,901,099.89

HON. ESMERALDO C. DELAS-ARMAS, JR.
Councillor

MHO	30,705,788.25	10,370,000.00		41,075,788.25
MSWD	6,464,876.68	10,723,276.80		17,188,153.48
	37,170,664.93	21,093,276.80		58,263,941.73

HON. LUCENA R. ODEJAR
Councillor

HON. NORMAN T. TOLENTINO
Councillor

AGRICULTURE	4,840,220.87	3,870,000.00		8,710,220.87
ENGINEERING	8,986,351.87	606,000.00		9,592,351.87
MARKET	6,053,638.00	11,996,000.00		18,049,638.00
SLAUGHTERHOUSE	348,315.90	1,011,000.00		1,359,315.90
CEMETERY	1,191,942.67	500,000.00		1,691,942.67
MDRRM	2,022,890.04	186,000.00		2,208,890.04
	23,443,359.35	18,169,000.00		41,612,359.35

HON. ALAN T. PAMATMAT
Councillor

SUB TOTAL 175,108,604.93 183,143,796.04 8,500,000.00 25,000.00 366,777,400.97

HON. LEA ALMORQUEZ
Councillor

5% Reserved DRRM Fund				25,044,855.37
20% Development Fund				64,661,928.20
Gender And Development				25,044,855.37
Barangay Development Fund				26,000.00

HON. PATROCINIA S. KALAW
ABC Federation President

HON. AMBIEL JOHN C. PANGANIBAN
Councillor

Senior Citizen and PWD				5,008,971.07
Child Protection				3,233,096.41
Katarungan Pambarangay/PLEB				400,000.00
Anti Drugs				2,500,000.00
Terminal Leave				8,200,000.00

HON. REGINE REGALADO
SK Federation President

Sub-Total **134,119,706.42**

TOTAL 500,897,107.39





OFFICE OF THE SANGGUNIANG BAYAN Sta. Cruz, Laguna



Continuation of Appropriation Ordinance No. 07-S2023

-04-

SECTION 4. Use of Savings and Augmentation. In accordance with Section 336 of Republic Act 7160, the Local Government Code of 1991 "The Mayor and the Presiding Officer of the Sanggunian may, by Ordinance may be authorized to augment any item in the approved Annual Budget for their respective offices from savings in other items within the same expenses class of their respective appropriation;

For this purpose, "savings" refer to portion or balances or any programmed appropriation free from any obligation or encumbrance, still available after the satisfactory completion or the unavoidable discontinuance, or abandonment of work, activity or purpose for which the appropriation is authorized or arising from unpaid compensation and related pertaining to vacant positions and leaves of absence without pay.

"Augmentation" implies the existence in the budget of an item, projects, activity or purpose with an appropriation which, upon implementation or subsequent evaluation of needed resources, is determined to be deficient;

SECTION 5. Priority in the Use of Personnel Services Savings. Priority shall be given to the Personnel benefits of local employees in the use of personal services savings;

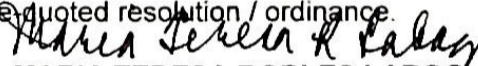
SECTION 6. Separability Clause. If, for any reason, any section or provision of this Appropriation Ordinance is disallowed in Budget review or declared invalid by proper authorities. Other Sections or Provisions hereof that are not affected thereby shall continue to be in force and effect.

SECTION 7. Effectivity. This provisions of this Appropriation Ordinance shall be effective retroactively January 1, 2023.

ORDERED: Let copies of this resolution/ ordinance be furnished the Sangguniang Panlalawigan, Honorable Mayor, the Municipal Treasurer, the Municipal Budget Officer, the Municipal Accountant, the Municipal Planning and Development Coordinator and all other concerned offices, for their information and appropriate action.

APPROVED. January 09, 2023.


I HEREBY CERTIFY to the correctness of the above quoted resolution / ordinance.


MARIA TERESA ROBLES LABOG
Secretary to the Sangguniang Bayan

HON. AMBIEL JOHN C. PANGANIBAN
Councilor


HON. LEA A. ALMARVEZ
Councilor


HON. NORMAN T. TOLENTINO
Councilor


HON. ESMERALDO C. DE LAS ARMAS, JR.
Councilor


HON. RIZALDY N. KALAW
Councilor


HON. MARK ANTHONY P. JOVEN
Councilor

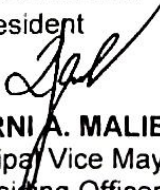
HON. LUCENA R. ODEJAR
Councilor

HON. ALAN T. PAMATMAT
Councilor


HON. PATROCINIA S. KALAW
ABC Federation President


HON. REGINE S. REGALADO
SK Federation President

ATTESTED :


HON. LAARNI A. MALIBIRAN
Municipal Vice Mayor
Presiding Officer

APPROVED: **HON. EDGAR S. SAN LUIS**
Municipal Mayor



Republic of the Philippines
Province of Laguna
MUNICIPALITY OF SANTA CRUZ
OFFICE OF THE MAYOR

14 February 2023

THE HONORABLE MEMBERS OF THE SANGGUNIAN
Municipality of Santa Cruz
Province of Laguna

Sangguniang Bayan Office
Santa Cruz, Laguna

RECEIVED

Received by : _____
Date : 16 FEB 2023
Time : 4:02 PM

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THRU: Vice Mayor Laarni A. Malibiran, Presiding Officer

Your Honors:

I am transmitting to you unsigned Municipal Ordinance No. 07-S2023 referring to the Annual Budget of the Municipality of Santa Cruz for the fiscal year 2023.

The ordinance has the following declaration in the whereas clause:

WHEREAS, during the deliberation and Budget hearing of the Annual Budget FY 2023 by Committee on Finance, Budget and Appropriation of the Sangguniang Bayan together with the Local Finance Committee, it was recommended that the amount of P5,000,000.00 be deducted from the gas allocation under General Services Office to be added and allocated to AICS under Municipal Social Welfare and Development Office (MSWDO) where majority of the six (6) councilors voted for the transfer of fund allocation. Furthermore, the amount of P10,000,000.00 out of P20,000,000.00 from Grants and Donations under the Office of the Mayor was recommended to allocate P3,000,000.00 for financial support for Barangay Tanod and P7,000,000.00 for Barangay Development Projects and agreed by the majority members of the Sangguniang Bayan.

Please note the following issues:

Allocation and Transfer of Funds an Encroachment on the Powers of the Local Chief Executive

May I remind your Honors, particularly, *the Hon. Rizaldy N. Kalaw, the Hon. Patrocinia S. Kalaw, the Hon. Lea A. Almarvez, the Hon. Mark Anthony P. Joven, the Hon. Regine S. Regalado, and the Hon. Esmeraldo C. delas Armas, Jr.*, the six Councilors who voted for the said fund transfer and re-allocation, that the act of slashing the annual budget and reallocating and transferring the slashed fund is an encroachment on the executive power of the Local Chief Executive. The term *where majority of the Six (6) Councilors voted for the said fund allocation* is **not a recommendation but an outright act of allocation and transfer of funds**. Being a former legislator, I am aware that the legislative branch may slash or disapprove certain items in the budget *but they cannot, unto themselves, arbitrarily allocate and transfer the disapproved funds to other items in the budget.*

Prohibition on the Increase in the Amount and Inclusion of New Items

This is particularly emphasized in the Department of Budget and Management Legal Opinion No. I-B-2001-05 which relied on Article 455 of the IRR of R.A. 7160. **(Annex A)** Article 455 of the IRR of R.A. No. 7160 (the Local Government Code) prohibits the local Sanggunian from increasing the proposed amount in the executive budget and the inclusion of new items, except to provide for statutory and contractual obligations.

The Principle of Separation of Powers is Constitutionally Protected.

The separation of the executive, legislative power and judicial power in our government is a principle enshrined in our Constitution. It is placed there for us to observe and follow. I am taking exception to the manner in which the executive prerogative was arrogated into the legislative power. The legislative power of the sanggunian by its nature is delegated. The sanggunian by itself cannot add to the power that was delegated. This encroachment has no legal basis and reeks of abuse.

I Have No Issue with the Increase in Benefits.

I am not against increasing benefits for those who deserve it. I am for it. This is in fact at the core of my projects. What I am against is the wanton arrogation and abuse of power especially where the law or the constitution prohibits it. As explained by our Municipal Accountant, there should only be *one source* of financial compensation. This is to prevent double compensation. This was explained in DILG Opinion No. 12 S. 2019 (*Annex B*) where it declared *that receiving double compensation from the government 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 Congress, any present emolument, office, or title of any kind from any foreign government.

-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.

Said Opinion further quoted DILG Legal Opinion No. 66 s. 2018 which further explained:

"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 done directly can be done indirectly, then all laws will be illusory."

Budget Process Observed by Department Heads

Prior to the submission of the proposed budget to the Sanggunian, the budget process underwent a thorough study and a series of hearings. The outcome of the process was ignored and the rationale for the budget was set aside. No explanation was given by the Chair of the Committee on Finance, Budget and Appropriation for the transfer. Consequently, this does not overcome the original rationale of the budget items that were slashed. The deduction from the gas allocation of the General Service Budget has the effect of crippling the mobility of the municipal services. The explanation provided by the General Services Head that the police, jail management, fire, rescue and medical departments were also regular fuel beneficiaries was also not given weight.

No Recommendation for the Reallocation was Endorsed by the Local Finance Committee

Contrary to what is declared in the ordinance, I was also informed by the non-legislative Members of the Finance Committee that the said transfer of funds and allocation was never recommended by them. Normally, and as a matter of protocol, if there are disapproved items, the items are referred back to the Local Finance Committee and to myself for consideration of the proposed changes. I have not been formally apprised of these proposed changes. The attendance of the Budget Officer, Accountant and Treasurer in the final hearing of the budget are not as members of the Local Finance Committee but as department heads who will defend the budget of their respective departments.

Approval of the Ordinance and Veto Power

I am aware that under Section 54 (b) of the Local Government Code I have ten (10) days to veto the ordinance:

SECTION 54. Approval of Ordinances. - (a) Every ordinance enacted by the Sangguniang Panlalawigan, Sangguniang Panlungsod, or Sangguniang bayan shall be presented to the provincial governor or city or municipal mayor, as the case may be. If the local chief executive concerned approves the same, he shall affix his signature on each and every page thereof; otherwise, he shall veto it and return the same with his objections to the Sanggunian, which may proceed to reconsider the same. The Sanggunian concerned may override the veto of the local chief executive by two-thirds (2/3) vote of all its members, thereby making the ordinance or resolution effective for all legal intents and purposes.

(b) The veto shall be communicated by the local chief executive concerned to the Sanggunian within fifteen (15) days in the case of a province, and ten (10) days in the case of a city or a municipality; otherwise, the ordinance shall be deemed approved as if he had signed it. (underscoring mine)

Veto Power Shall Not Be Exercised

Due to the urgency of the approval of the 2023 Budget, I am expressly and unequivocally declaring that I am **not** going to exercise the power of veto over the ordinance. This budget was already unnecessary delayed by not being passed within the statutory deadline of December 31, 2022. But for the blatant usurpation of the executive's prerogative to implement the law, without citing any valid reason for doing so, I am returning Municipal Ordinance No. 07-S2023 without any signature. I refuse to approve such ultra vires act. Such encroachment and abuse are best left to the wisdom of the *Sanggunian Panlalawigan* under its power of review.

For your information.

Very truly yours,



EDGAR S. SAN LUIS
Municipal Mayor

CC:

Office of the DILG Secretary
Office of the Vice Governor, Province of Laguna
Sangguniang Panlalawigan, Province of Laguna
DILG Provincial Director
Provincial Budget Officer
DILG-MLGDD, Santa Cruz, Laguna

SC SANTA CRUZ
KN KAYA NATIN

Cailles Street, Poblacion III, Santa Cruz, Laguna
Telephone No. (049) 800-2788



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management
Malacañang, Manila

ANNEX " A "

LEGAL OPINION NO. L-B-2001-05

SUBJECT : Local Government Budgeting – Annual Budget

ISSUES : Whether or not the appropriations for MOOE-Other Services and Capital Outlays (CO) under the Office of the Sangguniang Bayan (SB), are valid and legal considering that the amount approved for MOOE-Other Services was increased vis-à-vis the Executive Budget and that the amount appropriated for CO is a new item not found in the Executive Budget.

FACTS : In letter dated 13 August 2001, Mayor Alma A. Dayrit, Municipal Mayor of the Municipal Government of Cabatuan, Isabela, requested opinion on the legality of the appropriations in the FY 2001 Annual Budget of the said Municipality. Mayor Dayrit represented the following facts:

"In the Executive Budget submitted to the Sangguniang Bayan for Appropriation Item 1.2 MOOE particularly on Other Services is P200,000.00. The Sangguniang Bayan approved P400,000.00 and appropriated P100,000.00 in their Capital Outlay. The P300,000.00 additional appropriation did not affect the total estimate because the Sangguniang Bayan slashed from the other items in the Executive Budget without referring to the LCE or the LFC. The items were vetoed but overridden, the fact that said appropriations is under their office, the review of the Sangguniang Panlalawigan is likewise silent."

In her veto message, Mayor Dayrit invoked Article 415 of the Rules and Regulations Implementing (IRR) the Local Government Code of 1991 (R.A. No. 7160), to wit:

"ART. 415. Budget Authorization. (a) Legislative Authorization of the Budget-On or before the end of the fiscal year, the sanggunian concerned shall enact, through an ordinance, the annual budget of the LGU for the ensuing fiscal year on the basis of estimates of income and expenditures submitted by local chief executive.

x x x."

OPINION : The DBM is without jurisdiction to categorically declare local appropriations to be invalid or illegal. Be that as it may, an explanation of the rule on this budgetary issue may be presented for the guidance of the parties.

Article 415 of the IRR of R.A. No. 7160 prohibits the local sanggunian from increasing the proposed amount in the executive budget and the inclusion of new items, except to provide for statutory and contractual obligations.

As regards the prohibition on the increase in the executive budget, the prohibited increase pertains to the total overall amount of the executive budget and not the individual items of appropriation. By analogy, the doctrine enunciated in the case of *Andres Sarralento, et. al. vs. The Treasurer of the Philippines, et. al.*, (G.R. Nos. 125680 and 126313, September 04, 2001) supports this opinion, where the Supreme Court ruled that under Section 25(1), Article VI of the Constitution, Congress is enjoined from increasing the total budget for the operation of the Government as recommended by the President, not the individual items of appropriations.

Records of the 1986 Constitutional Commission reveals that the purpose of the provision is to avoid the possibility of a big budget deficit if Congress were given an unbridled hand in passing upon the appropriations recommended by the President as specified in the budget. The Constitutional prohibition against such increase is an assurance that the expected income of the government will be sufficient for the operational expenses of its different agencies and projects specified in the appropriations law.

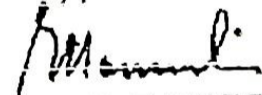
On the other hand, new items of appropriations not found in the Executive Budget, particularly the appropriations for CO under the Office of the SB amounting to P100,000.00 in this case, is prohibited under Article 415 of R.A. No. 7160.

REFERENCE: Memorandum of the Secretary dated 29 October 2001 to DBM RO-II

Recommended:


JANET B. ABUEL
Director, LLS

Approved:


EMILIA T. BONCODIN
Secretary



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
DILG-NAPOLI COM Center, EDSA corner Quezon Avenue, West Triangle, Quezon City
http://www.dilg.gov.ph

ANNEX " B "

DILG OPINION NO. 12 S. 2019
19 MAR 2019

DIR. VICTOR EMMANUEL M. CAINDEC
Regional Director
Land Transportation Office (LTO) Regional Office No. VII
Natalio Bucalso 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 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 R. DIÑO
Undersecretary

Legal/MS/PC
R/O