



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management
Malacañang, Manila

LEGAL OPINION NO. L-B-2001-02

SUBJECT : Local Government Budgeting – Annual Budget

- ISSUES :**
- (1) Whether or not Appropriations Ordinance No. 256-2001 approving the Annual Budget of the Province of Misamis Oriental for FY 2001 valid.
 - (2) Whether or not it is appropriate for DBM Regional Office-XI to proceed with the review of the resubmitted FY 2001 Annual Budget of the Province.

FACTS : DBM RO XI requested opinion on the above-cited issues in connection with the review of the FY 2001 Appropriations Ordinance of the Province of Misamis Oriental.

The FY 2001 Annual Budget authorized under Appropriations Ordinance No. 256-2001 of the Province of Misamis Oriental was submitted by Hon. Antonio P. Calingin, Provincial Governor of Misamis Oriental, through letter dated 12 March 2001.

Sangguniang Panlalawigan (SP) Minority Floor Leader Porferio R. Roa in his letter dated March 15, 2001 to DBM RO-XI requested the latter to declare inoperative the Appropriations Ordinance of the Province for FY 2001 before it becomes wholly executory to prevent any illegal disbursement by the incumbent chief executive of the Province. SP Member ROA contended that the Annual Budget is illegal in form and substance based on the following arguments.

As represented, the subject Appropriations Ordinance was not approved/authorized by the majority members of the SP when the same was enacted. Only seven (7) members approved Ordinance No. 256-2001.

In DILG Opinion No. 118 (06) s. of 2000 dated November 13, 2000, it was held that where a session is conducted where all fourteen (14) member of the sanggunian were present, including the Vice-Governor as Presiding officer, a resolution can be validly passed only if approved by a

majority of fourteen (14) members present, there being a quorum. Hence, the majority of fourteen (14) members is obviously eight (8) members.

The Ordinance was transmitted/signed and attested by a designated Secretary Mylene D. Madera, Stenographer II, assigned at the Office of the Provincial Attorney and not by Mr. Martin C. Zamalya, the duly and incumbent Provincial Board Secretary of the SP which is allegedly in violation of par. 1.3, Chapter IV, Budget Operations Manual for LGUs, which requires the Secretary of the SP to transmit the Appropriations Ordinance to the reviewing office.

Due to the apparent legal infirmities of the ordinance, DBM RO-X returned the Annual Budget of the Province to the SP through the Provincial Governor on March 20, 2001, for appropriate action.

On March 26, 2001, the Annual Budget of the Province was resubmitted by the Provincial Governor to DBM RO-X for review, with the following averments:

- 1) The Issue is now before the Regional Trial Court (RTC) – Branch 38, entitled, Musni, et al. vs. Antonio Calingin, et al., Civil Case No. 2001-79 and the prayer for Temporary Restraining Order was denied by the Honorable Court.
- 2) The issue on legality of the passage of the above-mentioned Ordinance is within the exclusive jurisdiction of the courts and that pending final determination of the same, its passage is presumed to be regular and in accordance with the law.

OPINION : At the outset, the DBM cannot categorically rule on the legality of the Appropriations Ordinance since the matter at hand is sub judice. Since a case has already been filed in the RTC, it is well settled in jurisprudence that the justiceable controversy shall be resolved by the said court to the exclusion of other administrative bodies. In this regard, the Supreme Court held that:

"x x x where the inquiring to be made involves question of law as well as facts, where it affects a legal right, and where the decision may result in the termination or destruction of a right, the powers to be discharged are essentially judicial; (and) being judicial, such powers are vested (only) in a court or judicial tribunal." (Nitafan. David, Primer on Judicial Power, 1991 ed. Citing Pastoral v. Workmen's Compensation Commission, 2 SCRA 850; La Mallorca – Pambusco v. Yslip, 3 SCRA 241; "Y" Shipping Corporation v. Borceles, 3 SCRA 298.)

As a general rule, absent any restraining order/injunction from the Courts, we may be constrained to undertake review of the subject Annual Budget. Hence, on the presumption that the same was validly passed, the review action can proceed citing the observations and findings thereon without touching the issues on the validity (internal procedural

aspect) thereof. Further, it may be noted that in the Order dated March 22, 2001 of the RTC of Misamis Oriental, the Petition for the issuance of Temporary Restraining Order (TRO) to restrain the implementation of the FY 2001 Annual Budget of the Province was denied citing the presumptions of regularity of performance of official duty and compliance with the law and that acts of public officers are presumably for public good.

Accordingly, the review should focus on compliance with existing budgetary rules and regulations. However, as alleged and further noted, the subject Ordinance was not duly attested to by the Provincial Board Secretary as required under paragraph 2.2.1 of the General Guidelines, Chapter IV of DBM-COA Joint Circular No. 93-2 dated 08 June 1993, otherwise known as the *Budget Operations Manual for LGUs* which provides, to wit:

"2.2.1 All Appropriations Ordinances authorizing the Annual or Supplemental Budgets submitted for review under this Circular must be duly signed by the Presiding Officer, attested to by the Secretary to the Sanggunian, and must bear the official seal of the Local Government Unit. Such ordinances shall be supported with the following documents:

x x x

x x x."

Consequently, in case of absence of the Provincial Board Secretary, a proper formal designation of a substitute, in an acting capacity, must be made by the Sanggunian pursuant to their internal rules. While the attestation of Appropriations Ordinances by the Secretary of the Sanggunian is not specifically required in the Code and its IRR, it should be noted further that the Budget Operations Manual for LGUs was issued in compliance with the mandate of Section 354 of the Code, thus, forming part of the law, which reads:

"SEC. 354. *Administrative Issuances; Budget Operations Manual.* — The Secretary of Budget and Management jointly with the Chairman of the Commission on Audit shall, within one (1) year from the effectivity of the Code, promulgate a Budget Operations Manual for local government units to improve and systematize methods, techniques, and procedures employed in budget preparation, authorization, execution and accountability."

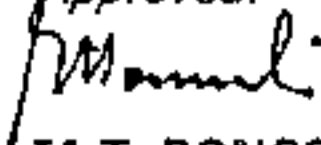
Accordingly, compliance with this requirement may be sought before further review of the subject Annual Budget can be undertaken.

REFERENCE: Memorandum dated 28 May 2001 to DBM RO-XI

Recommended:


JANET B. ABUEL
Director, LLS

Approved:


EMILIA T. BONCODIN
Secretary