



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management

Malacañang, Manila

LEGAL OPINION NO. E-B/M-2001-01

SUBJECT : Local Government Budgeting – Veto Power and Personnel Appointment

- ISSUES :**
- (1) Whether or not the veto power exercised by the Municipal Mayor over SB Resolution No. 25 was legal when it does not involve development programs or projects.
 - (2) Whether or not the appointment made by the Municipal Mayor on Mrs. Reago legal for all intents and purposes when the Sanggunian has already abolished the said position.
 - (3) Whether or not it is proper/legal for an appointing authority to make an appointment without subjecting the applicant to the screening of the PSB.
 - (4) Legal implication of the SB Resolution No. 25, s. 2000 in such case.

FACTS : Mr. George N. Erroba, Sanggunian Member of San Julian, Eastern Samar, in his letter dated 19 January 2001 sought legal opinion on some issues arising from the veto by the Municipal Mayor of SB Resolution No. 25 passed by the Sangguniang Bayan (SB) of the Municipality of San Julian, Eastern Samar, abolishing/dissolving the vacant position of Sr. Bookkeeper, and merging its functions to the Assistant Municipal Treasurer, who possesses the qualification and ability to perform dual functions.

OPINION : First Issue. The Department of Budget and Management (DBM) is constrained from categorically ruling on the issues raised as it has no authority under its charter to rule on the validity of the exercise of the veto power by the local chief executive which is the main issue in the case at bar.

Nevertheless, hereunder are pertinent comments on the matter:

Section 55, R.A. No. 7160, the Local Government Code of 1991, which insofar as pertinent, provides:

"SEC. 55. Veto Power of the Local Chief Executive. –

(a) The local chief executive may veto any ordinance of the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan on the ground that it is ultra vires or prejudicial to the public welfare, stating his reasons therefor in writing.

(b) The local chief executive, except the punong barangay, shall have the power to veto any particular item or items of an appropriations ordinance, an ordinance or resolution adopting a local development plan and public investment program, or an ordinance directing the payment of money or creating liability. In such a case, the veto shall not affect the item or items which are not objected to. The vetoed item or items shall not take effect unless the sanggunian overrides the veto in the manner herein provided for; otherwise, the item or items in the appropriations ordinance of the previous year corresponding to those vetoed, if any shall be deemed reenacted.

(c) The local chief executive may veto an ordinance or resolution only once. The sanggunian may override the veto of the local chief executive concerned by two-thirds (2/3) vote of all its members, thereby making the ordinance effective even without the approval of the local chief executive concerned.
(underscoring supplied)

Based on the foregoing provision, the veto by the local chief executive on SB Resolution No. 25 is apparently in order.

Second Issue. The matter of appointment by the Municipal Mayor may best be addressed to the Civil Service Commission (CSC) considering that its Field Office had already attested the appointment of Mrs. Reago.

Third Issue. Likewise, this issue may be properly raised before the CSC which has competent jurisdiction thereon.

Nevertheless, the following issuances may be worth noting:

DILG Opinion No. 96-50

"As the provision of law is worded, it clearly appears that the personnel selection board is established in the municipality to assist the mayor in the selection of personnel for employment. Seemingly, the very purpose of its establishment is for the Board to help the local chief executive in arriving at a judicious selection of personnel. Moreover, it could have been the purpose and intent of the law to establish a Personnel Selection Board to prevent the capricious practices of some local chief executives in hiring personnel for employment without the necessary qualifications for the positions. Hence, the function of the said Board could not just be bypassed." (Underscoring supplied)

CSC Resolution No. 96-0919

"Granting that the appointee did fail to pass the selection process this will not render the appointment void. In the CSC Resolution No. 94-2842 (Victor C. Bianco, Re: Appointment) dated 26 May 1994, the Commission said:

"Non-compliance with PSB screening is not fatal defect as long as the appointee, as in the instant case, meets the minimum qualifications for the position".

Further, Section 1(h), Rule III of the CSC Omnibus Rules on Appointments and other Personnel Actions may be worthy to quote, thus:

"h. Personnel Selection Board (PSB) Evaluation/Screening. All appointees should be screened and evaluated by the PSB, if applicable. X X X

X X X.

Candidates for the following appointments shall no longer be subject to the screening of the PSB:

- i. Substitute appointment due to their short duration and emergency nature. However, should the position be filled by regular appointment, candidates for the position should be screened and passed upon by the PSB.*
- ii. Appointment of faculty members and academic staff of state universities and colleges who belong to the closed career service.*
- iii. Appointment to entry laborer positions.*
- iv. Change of status of appointment from temporary to permanent."*

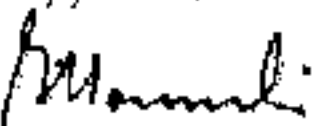
Fourth Issue. Section 55 of R.A. No. 7160, as quoted above, is likewise applicable to the issue.

REFERENCE: Letter dated 22 August 2001 to Mr. George N. Erroba

Recommended:


JANET B. ABUEL
Director, LLS

Approved:


EMILIA T. BONCODIN
Secretary