



REPUBLIC OF THE PHILIPPINES

**Department of Budget and Management**  
 Malacañang, Manila

**LEGAL OPINION NO. L-B/C-2001-01**

**SUBJECT : Local Government Budgeting and Compensation**

- ISSUES :**
- (1) Whether or not the newly-elected Mayor was correct in having the budget withdrawn from the reviewing authorities for purposes of revision and in issuing an Executive Order re-enacting the 1997 Annual Budget of the Municipality.
  - (2) Whether or not a 5<sup>th</sup> class LGU is allowed by law to operate on a 2<sup>nd</sup> class or 3<sup>rd</sup> class salary schedule and its legal basis.
  - (3) Liability of an officer or official endorsing a budget, which expressly violates the provisions of the PS limitation.
  - (4) Whether or not the Local Chief Executive (LCE) can defer the implementation of an approved budget if in his opinion there are some defects or discrepancies.
  - (5) Whether or not the proposed budget, which does not provide or include expenditures for MOOE, can be considered valid.

**FACTS :** In letter dated 12 November 1998 addressed to the Office of the President, Marcelo dela Cruz, Jr., Municipal Mayor of Rizal, Kalinga, alleged, among others, that the FY 1998 Annual Budget of the Municipality of Rizal, Kalinga, was prepared and reviewed in violation of existing provisions of law.

The FY 1998 Annual Budget of the Municipality of Rizal was prepared during the term of former Mayor Efraim B. Orodio. Said budget was subsequently passed by the Sangguniang Bayan (SB) on 22 June 1998 under Ordinance No. 98-001 and approved by then Acting Mayor Virgilio R. Agustin. The same budget was submitted to the Sangguniang Panlalawigan of Kalinga, thru the Office of the Provincial Budget Officer, for review.

After a perusal of the contents of said Budget, Mayor dela Cruz, Jr. wrote a

After a perusal of the contents of said Budget, Mayor dela Cruz, Jr. wrote a letter to the SP of Kalinga withdrawing the same for revision due to some provisions alleged as irregular and in violation of existing provisions of law, to wit:

*"The Municipality, which is classified as a 5<sup>th</sup> Class Municipality, proposed to implement a salary schedule for a 2<sup>nd</sup> Class Municipality even if it is not financially capable to implement the same;*

*As a result thereof, the effective and efficient operation and management of the LGU will be impaired considering that the bulk of the funds will be channeled to Personal Services (PS); and*

*The mandatory, cap on PS pursuant to Section 325 of R.A. No. 7160 has been exceeded, and that the 10% budgetary reserve deducted from the IRA was not considered in the preparation of the budget".*

Pending the proposed revision of said budget, Mayor dela Cruz issued Executive Order No. 98-01 dated 24 July 1998 re-enacting the 1997 Annual Budget of the Municipality. However, the said Municipality has been implementing the 1998 budget since 01 January to 30 June 1998. This prompted the officials and employees of Rizal to file an administrative complaint against Mayor dela Cruz for his refusal to implement the 1998 budget.

Despite his request to withdraw the subject budget, the SP of Kalinga declared partly operative the FY 1998 Annual Budget thru Resolution No. 98-106 dated 18 August 1998. On 12 October 1998, the SP of Kalinga approved Resolution No. 98-133 "upholding SP Resolution No. 98-094 that renders the 1998 Annual Budget of the Municipality of Rizal, approved, operative and effective for all legal intents and purposes." Thus, said Resolution in effect, overruled the request of the Governor to hold in abeyance the approval of said budget.

**OPINION :** The above-mentioned issues are hypothetical in nature and the DBM is constrained from categorically ruling on the propriety of the review made by the SP of Kalinga in this case. The SP has the jurisdiction to review the Ordinance authorizing the annual or supplemental appropriations of component cities and municipalities. This notwithstanding, hereunder are discussion/advisory opinion for guidance of all concerned:

**Issue No. 1.** A Budget, which has already passed the budget process, can no longer be withdrawn.

The Annual Budget in question was prepared and submitted by the LCE where a Resolution and an Ordinance were already enacted by the

where a Resolution and an Ordinance were already enacted by the Sanggunian and approved by the LCE. Said budget was then submitted to the SP for review, which declared the same as operative in its entirety. Therefore, any changes in the said Annual Budget may be done through a Supplemental Budget. On this matter, Section 321 of Republic Act (R.A.) No. 7160, the Local Government Code of 1991, provides:

**"Sec. 321. Changes In the Annual Budget.** – All budgetary proposals shall be included and considered in the budget preparation process. After the local chief executive concerned shall have submitted the executive budget to the sanggunian, no ordinance providing for a supplemental budget shall be enacted, except when supported by funds actually available as certified by the local treasurer or by new revenue sources.

*A supplemental budget may also be enacted in times of public calamity by way of budgetary realignment to set aside*

*appropriations for the purchase of supplies and materials or the payment of services which are exceptionally urgent or absolutely indispensable to prevent imminent danger to, or loss of, life or property, in the jurisdiction of the local government unit or in other areas declared by the President in a state of calamity. Such ordinance shall clearly indicate the sources of funds available for appropriations as certified under oath by the local treasurer and local accountant and attested by the local chief executive, and the various items of appropriations affected and the reasons for the change."*

Whatever "irregularity" alleged by Mayor dela Cruz (if there is any) may be alleged and the Budget challenged before a competent Court.

**Issue No. 2.** Item 8.1 of Local Budget Circular No. 64 dated 22 January 1997 [Guidelines for the Full Implementation of the Revised Position Classification and Compensation System (PCCS) in the Local Government] provides that "LGUs lower than special cities and first class provides and cities, may adopt the higher salary schedule for higher class LGUs subject, however, to the conditions/limitations enumerated under LBC No. 56 dated January 25, 1995."

LBC No. 65 provides, among others, to wit:

### **"11. Adoption of Higher Salary Schedule**

*To line with the second paragraph of Item (E) of Joint*

*In line with the second paragraph of Item (5) of Joint Resolution No. 1, s. 1994, of the Senate and the House of Representatives, LGUs lower than special cities and first class provinces and cities, may adopt the salary schedule for higher class LGUs subject to the following conditions/limitations:*

- 11.1 That the LGU is financially capable;*
- 11.2 That the salary schedule to be adopted shall be uniformly applied to all positions in the LGU concerned;*
- 11.3 The salary schedule for the Special and Highly Urbanized Cities and first class provinces and Cities shall not be higher than that being adopted by the national government;*
- 11.4 In implementing a new and higher salary schedule, the salary grade allocation of positions and the salary steps of personnel shall be retained;*
- 11.5 That the adoption of the higher salary schedule shall be subject to the budgetary and general limitations on Personal Services Expenditures mandated under Sections 324 and 325 of RA No. 7160;*
- 11.6 That in the case of component cities and municipalities, the salary schedule to be adopted shall not be higher than that of the Province or City in the case of some municipalities, where they belong; and*
- 11.7 That the adoption of a higher salary schedule shall not in any manner alter the existing classification of the LGU concerned."*

**Issue No. 3.** Basically, an Annual Budget which is not in accordance with existing rules and regulations, especially Sections 324 and 325 of R.A. No. 7160 should have been disallowed and/or declared inoperative in its entirety after its review.

In this particular case, if it is proven that the allegations of Mayor dela Cruz are correct, the Annual Budget of Rizal suffers from legal infirmity. Thus, the officials concerned may be held liable for negligence or malfeasance/misfeasance in office, as the case may be. However, until proof to the contrary, the legal presumption favors regularity in the performance of one's duty.

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**Issue No. 4.** Under R.A. No. 7160, the LCE, among others, has the power to execute the laws and shall see to it that the laws are faithfully executed. The LCE exercises general supervision and control over all programs, projects, services, and activities of the municipal government. He enforces all laws and ordinances relative to the governance of the municipality and the exercise of its corporate powers provided under Section 22 of the Code, implement all approved policies, programs, projects, services and activities of the Municipality (Section 444, R.A. 7160). In this case, it appears that the LCE can defer the implementation of some programs, projects, services and activities of the Municipal Government but not the entire budget to the effect that he refuses to recognize the same.

**Issue No. 5.** There is no express legal mandate on the inclusion of MOOE in the local budget. However, it is obviously indispensably necessary for the effective and efficient local government operation and administration. Without MOOE, the operation and maintenance of all offices will be hampered. More importantly, it should be noted that one of the basic considerations in the preparation, authorization and review of the budget is the determination of whether or not the same adequately provides funds for the delivery of basic services and maintenance of facilities enumerated under Section 17(b) of R.A. No. 7160 (Item 3.4.1.b7 Budget Operations Manual for LGUs). From the foregoing, it can be clearly inferred that a local budget without an appropriation for MOOE may be legally questioned.

**REFERENCE:** Memorandum of the Secretary dated 07 February 2001 to DBM RO-CAR

*Recommended:*

  
**JANET B. ABUEL**  
Director, LLS

*Approved:*

  
**EMILIA T. BONCODIN**  
Secretary