



Department of Budget and Management  
**GOVERNMENT PROCUREMENT POLICY BOARD**  
**TECHNICAL SUPPORT OFFICE**

**NPM No. 138-2014**

5 December 2014

**HON. VOLTAIRE ANTHONY C. VILLAROSA**

*Mayor*

**MUNICIPALITY OF MAMBURAO, OCCIDENTAL MINDORO**

LGU Government Center, 2F Municipal Building,  
National Road, Mamburao, Occidental Mindoro

**Re: Engagement of External Legal Counsel by a Municipality**

Dear Mayor Villarosa:

This is in response to the Honorable Mayor's letter dated 16 June 2014, seeking clearance on whether the municipality can contract the services of an external counsel.

It is represented that the Office of the Mayor received Summons for a civil suit against the municipality. Considering that it has no legal officer, the municipality is requesting for a clearance from the Government Procurement Policy Board (GPPB) as to its engagement of a private counsel and the necessary requirements for said procurement.

At the outset, we wish to clarify that the GPPB has no authority to grant clearances relative to the engagement of a private counsel by a local government unit. At best, the GPPB and its Technical Support Office may only render contemporaneous interpretation and construction of the provisions of Republic Act (RA) No. 9184 and its revised Implementing Rules and Regulations (IRR) pursuant to its quasi-legislative fiat, and issue rules and regulations pursuant to its rule-making power<sup>1</sup>.

For guidance, we refer to the provisions of RA 7160, otherwise known as the Local Government Code of 1991, relative to the legal representation of local government units in civil actions and special proceedings. Section 443(b) of RA 7160, provides that, in addition to the officials enumerated in the first paragraph thereof, the mayor *may* appoint, among other officials enumerated therein, a municipal legal officer. Section 481 of the same Code states that "[t]he appointment of legal officer shall be mandatory for the provincial and city governments and optional for the municipal government." The same section specifies the functions of the legal officer, and one of them being that he shall:

- (i) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: Provided, that in actions or proceedings where a component city or municipality is a party adverse to the provincial

<sup>1</sup> NPM No. 25-2011, dated 27 December 2011.

government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;

From the foregoing, a private counsel or lawyer cannot be engaged to represent a local government unit alone or in collaboration with the authorized local government lawyer. This is anchored on the principle that only accountable public officers may act for and in behalf of public entities and that public funds should not be expended to hire private lawyers.<sup>2</sup>

In *Alinsug v. Regional Trial Court Branch 58, San Carlos City, Negros Occidental*<sup>3</sup>, the Supreme Court held:

Indeed, it appears that the law allows a private counsel to be hired by a municipality only when the municipality is an adverse party in a case involving the provincial government or another municipality or city within the province. This provision has its apparent origin in the ruling in *De Guia v. The Auditor General* where the Court held that the municipality's authority to employ a private attorney is expressly limited only to situations where the provincial fiscal would be disqualified to serve and represent it. With Sec. 1683 of the old Administrative Code as legal basis, the Court therein cited *Enriquez, Sr. v. Gimenez* which enumerated instances when the provincial fiscal is disqualified to represent in court a particular municipality; if and when original jurisdiction of case involving the municipality is vested in the Supreme Court, when the municipality is a party adverse to the provincial government or to some other municipality in the same province, and when, in a case involving the municipality, he, or his wife, or child, is pecuniarily involved, as heir legatee, creditor or otherwise.

We likewise refer to Commission on Audit (COA) Circular No. 98-002 dated 9 June 1998 on the prohibition against employment by local government units of private lawyers to handle their legal cases, thus:

[P]ublic funds shall not be utilized for payment of services of a private legal counsel or law firm to represent government agencies and instrumentalities, including government-owned or controlled corporations and local government units in court or to render legal services for them.

By way of exception, COA Circular No. 98-002 allows local government units to utilize public funds as payment for the services of a private legal counsel or law firm, only in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality in accordance with paragraph 3(i), Section 481 of RA 7160.

In sum, for a municipality, it is the Legal Officer who must handle its legal affairs, including representation in court; and in the absence of a Municipal Legal Officer, the Provincial Legal Officer shall serve as the legal officer of the municipality. Moreover, engagement of private legal counsel or law firm may only be done in actions or proceedings

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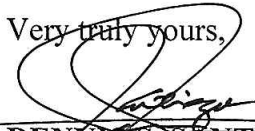
<sup>2</sup> Joseph Emmanuel L. Angeles, *Restatement of the Law on Local Governments*, p. 526 (2005).

<sup>3</sup> G.R. No. 108232 dated 23 August 1993.

where a component city or municipality is a party adverse to the provincial government or to another component city or municipality.

We hope that this opinion issued by the GPPB-TSO provided sufficient guidance on the matter. Note that this is issued on the basis of particular facts and situations presented, and may not be applicable given a different set of facts and circumstances. Should there be other concerns, please do not hesitate to contact us.

Very truly yours,



**DENNIS S. SANTIAGO**  
*Executive Director*

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