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OFFICE OF THE SANGGUNANG PANLALAWIGAN SECRETARY

CERTIFICATION

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that at the regular session duly constituted of the Sangguniang Panlalawigan, Province of Pangasinan, held on September 25, 2023 at the Session Hall, Capitol Building, Lingayen, Pangasinan, the following provincial resolution was approved:

Authored by SP Member Haidee S. Pacheco

PROVINCIAL RESOLUTION NO. 832-2023

APPROVING AND ADOPTING AS ITS DECISION EN BANC, THE RESOLUTION OF THE COMMITTEE ON GOOD GOVERNMENT AND ACCOUNTABILITY OF PUBLIC OFFICERS, JUSTICE AND HUMAN RIGHTS IN SP ADMINISTRATIVE CASE NO. 05-2022

WHEREAS, the Sangguniang Panlalawigan is in receipt of an Administrative Complaint filed on November 29, 2022 by Brgy. Kgd. Josephine G. Nual, Brgy. Patar, Agno against Mayor Gualberto R. Sison of the Local Government Unit of Agno, Pangasinan;

WHEREAS, the said case was referred to the Committee on Good Government and Accountability of Public Officers, Justice and Human Rights and was docketed as SP Administrative Case No. 05-2022 by the 11th Sangguniang Panlalawigan;

WHEREAS, after several hearings, careful review and study on the said case, the Committee on Good Government and Accountability of Public Officers, Justice and Human Rights submitted its Decision which was adopted as **Committee Report No. 41-2023** by the Sangguniang Panlalawigan, to wit:

DECISION

Before this Committee is a Complaint for Grave Misconduct and Conduct Prejudicial to the Best Interest of Service dated 29 November 2022, filed by Josephine G. Nual against the incumbent Municipal Mayor of Agno, Pangasinan, Mayor Gualberto R. Sison.



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ANTECEDENTS

In January and August of 2022, there occurred two permanent vacancies in the Sangguniang Barangay of Barangay Patar, Agno, Pangasinan after the resignation of former Barangay Kagawad Felix Distor and former Punong Barangay Arturo M. Calixtro. As a result of these two vacancies, the Sangguniang Barangay of Patar approved Resolution No. 002, Series of 2022, recommending to the Municipal Mayor Honorable Gualberto Sison to appoint Josephine G. Nual and Marissa F. Nilo as members of the Sangguniang Barangay. This Resolution was submitted to the Office of the Mayor on November 7, 2022, a day after the same was approved by the Sangguniang Barangay on November 6, 2022. Thereafter, on November 14, 2022, Mayor Gualberto Sison appointed Marissa Nilo to the position of Barangay Kagawad of Barangay Patar. On the same day, Marissa Nilo took her Oath of Office.

On November 20, 2022, Marissa Nilo attended Barangay Patar's regular session. When she found out that her name was not on the attendance sheet and this she asked to Punong Barangay Rodrigo N. Calpo, the latter interposes that it was his instruction because the Sanggunian had not submitted her recommendation to the Municipal Mayor. Nevertheless, it was admitted during the Pre-Trial Conference that the Barangay Resolution No. 002, Series of 2022 was duly passed and adopted by the Sangguniang Barangay.

In his Answer, Mayor Gualberto Sison strongly opined that the existence of Resolution No. 002 made the appointment of Marissa F. Nilo within the bounds of law and rules as this resolution constitutes a proper recommendation to the Office of the Mayor. Furthermore, his claim was reinforced by the existence of Resolution No. 04, Series of 2022 which, in gist, is a recommendation of Marissa F. Nilo to fill up the vacancy of the Sangguniang Barangay.

In her counter-defense, Josephine G. Nual interposed that Resolution No. 002, while being duly created by the Sanggunian, was not actually submitted to the Office of the Mayor as the same contains two recommendations. Allegedly, the Punong Barangay was given instruction by the Mayor to have Marissa F. Nilo and Josephine G. Nual be recommended through separate resolutions. The Complainant also averred in her Reply-Affidavit that the Resolution No. 04 was misrepresented by the Mayor as a recommendation of Marissa F. Nilo to fill up the vacancy of the Sangguniang Barangay because in truth and in fact, as per the Complainant, Resolution No. 04 actually referred to the appointment of Michelle Rose J. Adriano as Barangay Secretary of Barangay Patar.



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THE ISSUE BEFORE THE COMMITTEE

The main issue for the Committee's resolution is whether Mayor Gualberto Sison is liable for Grave Misconduct and Conduct Prejudicial to the Best Interest of Service when she appointed Marissa F. Nilo as a member of Sangguniang Barangay of Barangay Patar, Agno, Pangasinan. Collaterally, the issue of whether there was proper recommendation to the Office of the Mayor warranting proper appointment of Marissa F. Nilo is to be resolved, as well.

RULING

THE BARANGAY RESOLUTION 002, SERIES OF 2022 CONSTITUTES PROPER RECOMMENDATION TO THE OFFICE OF THE CITY MAYOR

Section 45 (a) (3) of the Local Government Code is instructive as to the rule that in case of permanent vacancies in the Sangguniang Barangay, the City or Municipal Mayor shall make appointment upon recommendation of the Sangguniang Barangay concerned.

In compliance with the above-cited provision of the Local Government Code, the Sangguniang Barangay of Barangay Patar passed Barangay Resolution No. 002 recommending Josephine G. Nual and Marissa F. Nilo for the vacant positions in the Sangguniang Barangay after the resignation of former Barangay Kagawad Felix Distor and former Punong Barangay Arturo M. Calixtro. Likewise, the due passing and adoption of the said resolution was admitted by the Complainant during the Pre-Trial Conference.

While there exist no issue as to the due execution, passing, and adoption of Barangay Resolution No. 002, the issue however lies as to whether the same had served its purpose as a proper recommendation for the appointment of Josephine G. Nual and Marissa F. Nilo. The Committee resolves this by answering in the affirmative.

A careful scrutiny of Section 45(a)(3) would reveal that a proper recommendation to the City or Municipal Mayor for purposes of filling vacant positions in the Sangguniang Barangay entails two elements which are as follows: 1) the recommendation should come from the Sangguniang Barangay; and, 2) the act of conveying the recommendation to the City or Municipal Mayor. In the case at hand, there is no dispute that Barangay Resolution No. 002 is compliant as to the first element. In fact, the said



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resolution was seconded by five Sangguniang Barangay members, signed by the Punong Barangay, and certified by the Barangay Secretary. As to the act of conveying this recommendation to the Municipal Mayor, the same was complied when Barangay Resolution No. 002 was submitted to the Office of the Mayor on 7 November 2023.

The Complainant's allegation that there was withdrawal of the recommendation when Mayor Gualberto Sison instructed the Punong Barangay to have the recommendation of the two be reflected on separate documents is of no moment; assuming arguendo that the same be true, the same was a plain instruction not in any way related to the validity or invalidity of the act of conveying the recommendation to the Mayor. The recommendation of the Sangguniang Barangay through Barangay Resolution No. 002 had reached the Mayor's senses, thus, the recommendation was perfectly conveyed and communicated to the Mayor.

On the other side, there was still proper recommendation assuming arguendo that there was withdrawal of the submission of Barangay Resolution No. 002 after Mayor Gualberto Sison gave instruction to the Punong Barangay to have the two recommendations be reflected on a separate document. Article 107(g) of Administrative Order No. 270 (Prescribing the Implementing Rules and Regulations of the Local Government Code of 1991) which provides that no ordinance or resolution passed by the sanggunian in a regular or special session duly called for the purpose shall be valid unless approved by a majority of the members present, there being a quorum, may be applied in resolving this issue. In essence, a resolution, just like an ordinance, need be concurred by majority of the members present for as long as there is a quorum. Being such, just like an ordinance, a resolution cannot be motu proprio stricken off its legal implication without the concurrence of the Sanggunian. Otherwise, the act of the Sanggunian in adopting a resolution will be futile if the same can be withdrawn or stricken off its legal implication by a local chief executive alone.

In the present case, the Punong Barangay cannot motu proprio withdraw the Resolution without the concurrence of the majority of the Sangguniang Barangay members by adopting another resolution suppressing the effect of a previous resolution or by another resolution inconsistent or incompatible with the previous resolution. Notably, the Sangguniang Barangay did not perform any positive act to the effect that Barangay Resolution No. 002 be stricken off its effect. Thus, Barangay Resolution No. 002 still subsists and the same had served its purpose in recommending Josephine G. Nual and Marissa F. Nilo to fill up vacant positions in the Sangguniang Barangay.



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**MAYOR GUALBERTO SISON
ACTED WITHIN THE BOUNDS
OF LAW AND RULES IN
APPOINTING MARISSA F. NILO**

As discussed, a proper recommendation was made by the Sangguniang Barangay to Mayor Gualberto Sison through Barangay Resolution No. 002. This resolution had reached the Office of the Mayor, thus, the recommendation was properly conveyed and communicated to the Mayor. Complainant's claim that the wisdom of the Sangguniang Barangay through Barangay Resolution No. 002 was not effectively conveyed to the Mayor because the same was not submitted is not important, assuming arguendo, that it was true.

Notably, Section 45 (a) (3) of the Local Government Code and its Implementing Rules and Regulations are silent as to how the recommendation to the City or Municipal Mayor for purposes of appointing a member of Sangguniang Barangay in case of permanent vacancies occur, be conveyed or communicated to the Mayor. Indisputably, however, the contents of the resolution had reached the senses of Mayor Gualberto Sison, thus, the recommendation was effectively communicated to him. This finds application to the legal maxim "we must interpret not by the letter that killeth, but by the spirit that giveth life". With the foregoing, the latter indeed acted within the bounds of law and the rules in appointing Marissa F. Nilo.

Case law defines grave misconduct as the transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer coupled with the elements of corruption, willful intent to violate the law or to disregard established rules. The misconduct is grave if it involves any of the additional elements of corruption, clear willful intent to violate the law, or flagrant disregard of established rules, supported by substantial evidence.

In the case at hand, the acts constituting grave misconduct cannot be attributed to Mayor Gualberto Sison's act of appointing Marissa F. Nilo. Indeed, the Mayor made the appointment in compliance with Section 45(a)(3) of the Local Government Code. In fact, the Mayor made the right thing as a public servant. This is so because as the basic political unit, the Barangay serves as the primary planning and implementing unit of government policies, plans, programs, projects, and activities in the community, and as a forum wherein the collective views of the people may be expressed, crystallized and considered, and where disputes may be amicably settled. In order to attain this, the Mayor should be quick in addressing issues within his/her



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jurisdiction. Thus, he cannot be faulted when he appointed Marissa F. Nilo without delay because the same is needed to prevent hiatus and paralyzation of the barangay.

On the other hand, conduct prejudicial to the best interest deals with a demeanor of a public officer that tarnished the image and integrity of his/her public office. In the case at hand, since Mayor Gualberto Sison acted within the scope of authority vested upon him, it cannot be said that he tarnished the image and integrity of his office.

WHEREFORE, premises considered, the SANGGUNIANG PANLALAWIGAN OF PANGASINAN, through this Committee on Good Government and Accountability of Public Officers, hereby DISMISSES the above-entitled case against Municipal Mayor Gualberto R. Sison, Agno Pangasinan, for Grave Misconduct and Conduct Prejudicial to the Best Interest of Service for LACK OF MERIT.

SO ORDERED.

September 25, 2023. Lingayen, Pangasinan.

Respectfully Submitted:

(sgd.) SP MEMBER HAIDEE S. PACHECO
Chairman"

WHEREFORE, in view of the foregoing, on motion of SP Member Haidee S. Pacheco, duly seconded, it was...

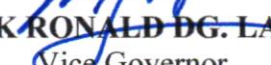
RESOLVED, by the Sangguniang Panlalawigan in session assembled to approve, as it is hereby approved and adopted as its decision en banc, the Decision of the Committee on Good Government and Accountability of Public Officers, Justice and Human Rights in SP Administrative Case No. 05-2022;

RESOLVED FURTHER, that copies of this resolution be furnished to Josephine G. Nual, Mayor Gualberto R. Sison, all of Agno, Pangasinan and their respective counsels, for their information and guidance.

CERTIFIED BY:

VERNA T. NAVA-PEREZ
Secretary to the Sanggunian

ATTESTED:


MARK RONALD DG. LAMBINO
Vice Governor
(Presiding Officer)