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OFFICE OF THE SANGGUNIANG 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 October 21, 2024 at the Session Hall, Capitol Building, Lingayen, Pangasinan, the following provincial resolution was approved:

Authored by SP Member Noel C. Bince

PROVINCIAL RESOLUTION NO. 999-2024

APPROVING AND ADOPTING AS ITS DECISION EN BANC, THE RECOMMENDATION OF THE COMMITTEE ON GOOD GOVERNMENT AND ACCOUNTABILITY OF PUBLIC OFFICERS, JUSTICE AND HUMAN RIGHTS IN SP ADMINISTRATIVE CASE NO. 05-2023

WHEREAS, the Sangguniang Panlalawigan was in receipt of a Complaint on July 11, 2022 filed by Vice Mayor Simplicio L. Rosario, SBM Ariel Z. Dela Concha, SBM Joel Jose A. Carrera, SBM Urbano C. Delos Angeles III, SBM Aurora Gene Z. Cagaoan, SBM Jonas B. Rosario, SBM Richard I. Bautista against Mayor Pedro Merrer III, all of Binmaley, Pangasinan;

WHEREAS, the said Complaint 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. 05-2023**;

WHEREAS, the Committee on Good Government and Accountability of Public Officers, Justice and Human Rights conducted a series of hearings on the above administrative case;

WHEREAS, after careful study and review of the merits of the case, the Committee on Good Government and Accountability of Public Officers, Justice and Human Rights has submitted its Recommendation which was adopted as Committee Report No. 48-2024 by the Sangguniang Panlalawigan on its October 21, 2024 Regular Session, to wit:

RECOMMENDATION

Before this Committee is an administrative case for violation of Section 60 of Republic Act 7160 otherwise known as the Local Government Code of 1991. Complainants Vice Mayor Simplicio L. Rosario, SB Member Ariel Z. Dela Concha, SB Member Joel Jose A. Carrera, SB Member Urbano C. Delos Angeles III, SB Member Aurora Gene Z. Cagaoan, SB Member Jonas B. Rosario, and SB Member Richard I.



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SP Member Haidee S. Pacheco, Chairman of the Committee on Good Government and Accountability of Public Officers, Justice and Human Rights inhibited from participating in the proceedings of the case and SP Member Noel C. Bince took over the proceedings of the investigation.

ANTECEDENT FACTS

On May 16, 2023, then SB Member Jonas B. Rosario sent a letter to Mayor Pedro A. Merrera III requesting for a detailed statement of the expenditures of various programs, projects and/or activities of the Municipality of Binmaley for the period January 1, 2023 up to the date of the letter. The said letter was written with Attention to Mr. Teggie DV. De Guzman, Municipal Accountant, Engr. Jeffrey R. Delos Angeles, Municipal Budget Officer, and Ms. Josephine F. Anchiboy, Municipal Treasurer. A follow up letter of the May 16, 2023 communication was sent on June 7, 2023 to Mayor Merrera with the Attention to the same three department heads.

On May 19, 2023, SB Member Jonas B. Rosario sent another letter to Mayor Pedro A. Merrera III with attention to Engr. Catherine Jane L. Valerio, OIC Municipal Engineer inquiring about the demolished structure/s along the main entrance of the Binmaley Presidencia.

On May 23, 2023, SB Member Jonas B. Rosario sent another letter to Mayor Pedro A. Merrera III inquiring about the plans of the municipality regarding the completed Multi-purpose Hall Building located at the former Post Office Building which is ready for occupancy.

A letter dated June 7, 2023 was sent by SB Member Jonas B. Rosario to Mayor Pedro A. Merrera III to follow up his previous letters dated May 19, 2023 and May 23, 2023.

Prior to all the above communications sent, a letter dated May 15, 2023 addressed to Mayor Pedro A. Merrera III and signed by all members of the Sangguniang Bayan of Binmaley including the Vice Mayor was sent requesting that disciplinary action be meted against Municipal Budget Officer Jeffrey Delos Angeles, Municipal Accountant Teggie DV. De Guzman, and Human Resource Management Officer Marlyn Zamora for dereliction of duty and conduct prejudicial to the best interest of the service for not taking appropriate action on the preparation and facilitation of employment papers of job order employees to be assigned at the Office of the Municipal Vice Mayor, Office of the Sangguniang Bayan, and the Office of the Secretary to the Sanggunian.

On the basis of the Mayor's alleged failure to respond to all the enumerated letters/communications, a Complaint-Affidavit dated July 11, 2023 was filed before the Sangguniang Panlalawigan by Vice Mayor Simplicio L. Rosario, SB Member Ariel Z. Dela Concha, SB Member Joel Jose C. Carrera, SB Member Urbano C. Delos Angeles III, SB Member Aurora Gene Z. Cagaoan, SB Member Jonas B. Rosario, and SB Member Richard I. Bautista against Mayor Pedro A. Merrera III for Gross Negligence and/or Dereliction of Duty under Section 5 (a) 60 of Republic Act 7160.



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Mayor Pedro A. Merrera filed on August 22, 2023 an Affidavit in answer to the Complaint Affidavit filed by Complainants and vehemently denied therein the accusations made by the Complainants, citing specific acts performed by him which, to his mind, negate the accusations of negligence on his part.

On November 10, 2023, Complainants Councilors Joel Jose A. Carrera and Urbano C. Delos Angeles III submitted a Joint Affidavit of Withdrawal as complainants in the case.

After issues were joined, a Pre-trial Conference was conducted on November 20, 2023 wherein the following facts were admitted by the parties:

- 1. That at the time of the filing of the case, Complainants are duly elected members of the Sangguniang Bayan of Binmaley led by Vice Mayor Simplicio Rosario;*
- 2. That Respondent in the incumbent municipal Mayor of Binmaley, Pangasinan;*
- 3. That Complainant Simplicio Rosario was a former Mayor of Binmaley;*
- 4. That Complainant SB Member Jonas Rosario ran against Respondent Mayor Merrera in the May 2022 election but lost to the latter.*

During the presentation of evidence, the Complainants presented as their witnesses SB Member Jonas B. Rosario, SB Member Aurora Gene Z. Cagaoan, SM Member Ariel Z. Dela Concha and Vice Mayor Simplicio L. Rosario who testified on the existence of the letters sent to Respondent, including letters and communications sent after the subject Complaint was filed with the Sangguniang Panlalawigan, which they allege to have all been unanswered. The letters and communications were all submitted as documentary evidence to prove their existence.

The Respondent on the other hand presented as his witnesses, Ms. Angelica Apilado, SB Member Joel Jose A. Carrera, and Mayor Pedro A. Merrera. The testimonies of Ms Angelica Ferrer and SB Member Urbano C. Delos Angeles III were dispensed with on grounds that their respective testimonies are merely corroborative to the testimonies of Ms. Angelica Apilado and SB Member Urbano C. Delos Angeles III, respectively. Respondents presented documentary evidence consisting of : 1) communications and endorsements signed by Respondent and sent to the different department heads whose attentions were called in Complainants' letters to Respondent; 2) letter replies of the department heads in compliance to the Respondent's endorsements to them, citing therein their actions taken thereon; 3) emailed statement of Municipal Administrator Atty. Jennylyn Calamiong-Siena explaining the actions taken by her office with regard to letters and communications received by the Office of the Mayor.



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ISSUE

The only issue identified and agreed upon by the parties which needs this Committee's resolution is whether or not Respondent is liable for gross negligence and/or dereliction of duty as defined under Section 60 of RA 7160.

DISCUSSION AND RULING

In a long line of cases, the Supreme Court has repeatedly defined gross negligence thus: "gross negligence is characterized by want of even the slightest care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, or by flagrant and palpable breach of duty. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty."

Gross negligence, thus, involves an element of intent, more than mere carelessness or indifference to do one's duty. To be held liable for gross negligence, a public official must have intentionally shirked his duty, fully aware that he is duty-bound to perform. Simply, gross negligence involves consciously avoiding to do one's work. [G.R. No. 227440, December 02, 2020] Ricardo O. Trinidad, Jr., Petitioner, vs. Office of the Ombudsman and Field Investigation Office, Office of the Ombudsman, Respondents.

Both parties rely on Section 444. The Chief Executive: Powers, Duties, Functions and Compensation.- of RA 7160 on which to anchor their stand with respect to the duties of the Mayor to

. . . x x x . . .

" present the program of government and propose policies and projects for the consideration of the Sangguniang bayan as the general welfare of the inhabitants and the needs of the municipal government may require; "

. . . x x x . . .

"provide such information and data needed or requested by said sanggunian in the performance of its legislative functions;

. . . x x x . . .

"ensure that all executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law and this Code.

. . . x x x . . ."



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Under the Local Government Code, the Mayor has the duty to provide information and data needed or requested by the Sanggunian in the performance of its legislative functions. For Mayor Merrera III to be guilty of gross negligence, there must be a breach of this duty and such breach should be flagrant and palpable.

In other words, for us to hold Mayor Merrera liable for gross negligence, it must be established that: 1) He has a duty to act; 2) He has not acted in fulfillment of the duty; 3) His inaction is intentional and deliberated; and 4) His inaction is with a conscious indifference to the consequences.

Complainants argue that Respondent Mayor Merrera's failure to respond to several letters with corresponding follow ups is a flagrant and palpable breach of duty. It is for them, without a doubt, a glaring, willful, and deliberate refusal or unwillingness to perform his duty. According to Complainants, Respondent failed to give proper attention to a required function to give information, which is expected of him as a Municipal Mayor, hence it is evident that Respondent committed violations under the Local Government Code.

The Committee does not wish to dwell much on the information being sought by the complainants from Respondent Mayor. It suffices that these are official and public documents which the legislative body believes would aid its members in legislating matters of importance to the people of Binmaley. It is thus an established fact that the Mayor has the duty to provide such information and data needed or requested by the Sanggunian in the performance of its legislative functions. It is likewise a fact that such duty may be exercised in various manners considering the different modes by which communication is available nowadays, i.e. handing over the needed information and data through written communication or electronic communication, or presentation of the information or data during meetings or sessions where the attendance of the mayor or his representative is required.

The Respondent introduced evidence proving affirmative action on his part upon receipt of the letters/queries from Complainants. His actions were to endorse the queries to department heads thereby effectively directing the concerned department heads to look into and reply to the same. The fact that the receipt of the letters from Complainants pass through the Municipal Administrator for her attention and appropriate action is a common procedure in local government units and not unheard of. The practice that municipal and/or city administrators screen letters and communications for routing and cause the drafting of replies for the Mayor's signature is an accepted routinary procedure considering the voluminous tasks that a Mayor has to perform and/or oversee, and the numerous letters and communications that the Office of the Mayor receives every day which need his attention. The fact that the Municipal Administrator was delayed in the drafting of replies to some of the letters is a matter which can not be imputed as fault on the part of Respondent.



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Respondent introduced evidence to show that he has constantly reminded the Municipal Administrator to pay attention to communications specially those emanating from the Sangguniang Bayan, and made frequent follow ups of his earlier directives. In fact, the department heads whose attentions were called in some of the letters were directly replied to by the concerned department heads in accordance with the Mayor's directives. The replies of the department heads were not refuted by the Complainants.

The circumstances of having someone else, in this case the Municipal Administrator, regularly checking correspondences for his (Respondent's) attention and frequent follow ups of earlier directives are not in any way tantamount to negligence in the performance of his duties as chief executive. It is in fact one way of performing tasks more expeditiously considering the volume and diversity of tasks needed to be performed by a chief executive like the Respondent.

Complainants did not present evidence to show refuting Respondents actions of endorsing the letters received by him to concerned department heads.

But even though Complainants never presented evidence to deny the replies of the Department Heads, they maintained that Respondent Merrera intentionally bypassed or disregarded the letters from the Complainants by not responding to the letters himself.

When it was clear on the part of the Complainants that the Respondent was not inclined to respond directly to their queries in their letters and communications, what they should have done was to invite him to appear before the body during regular session or as special session intended for that purpose.

The Committee invites the attention of the Complainants on the provisions of Section 444 of the Local Government Code of 1991 (RA 7160) from which their assertions on the duty of the Mayor stem from. It is in fact the duty of the Mayor to "provide such information and data needed or requested by said Sanggunian in the performance of its legislative functions." (Section 444 (b)(1)(iv) But, in a long line of legal opinions issued by the Department of the Interior and Local Government, it was repeatedly established that while it is settled jurisprudence that the Sanggunian cannot compel the attendance of any person before it in aid of legislation, it can however be safely stated that by invoking the duty of the Mayor to furnish the necessary information and data to the Sanggunian as may be requested or required by the latter, the Sangguniang Bayan may exact that duty from the Mayor by requiring the Mayor or his duly authorized representative to be present in any session to present the information of data requested by the Sanggunian. (DILG Opinion No. 25, S.2020, January 31, 2020).

It is imperative to reiterate that a Sanggunian, in the exercise of its powers, duties, and functions as enumerated in Section 447 of the Local Government Code of 1991 (RA 7160), it does so acting as a legislative body of the municipality. It shall then, as a body, enact ordinances, approve resolutions, and appropriate funds for the general welfare of the municipality and its inhabitants. Parenthetically, when it invokes the duty of the Mayor and calls on him to furnish necessary information and data in aid of legislation,



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the Sanggunian may do so through communications or resolutions duly passed upon or approved by its members, acting as a body.

This requirement has not been sufficiently established by Complainants. As a matter of fact, evidence presented show that the letters requesting for replies to queries are queries of individual members of the Sanggunian, albeit with a notation by the Vice Mayor as Presiding Officer. The only letter sent to Respondent which bore the signatures of all members of the Sanggunian was the letter dated May 15, 2023 requesting that disciplinary action be meted against some municipal department heads. This particular letter was sent not to request for information and data in aid of legislation, but to request that appropriate disciplinary action be commenced against the alleged erring department heads. On a side note, evidence was presented by the Respondent and unrefuted by the Complainants, that Mayor Merrera sent to the department heads concerned, a "Notice to Explain in Writing", attaching a copy of the signed letter of the members of Sangguniang Bayan dated May 15, 2023.

Accordingly, from the foregoing, in the exercise of its legislative functions, the members of the Sangguniang Bayan of Binmaley were left with another mode to exact the needed information and data from Mayor Merrera which was by requiring him to be present in any session to present the information or data requested. Failure on the part of the Sangguniang Bayan of Binmaley to avail of such remedy to achieve their purpose, they cannot out rightly ask the Sangguniang Panlalawigan to find Respondent Mayor guilty of gross negligence and/or dereliction of duty. They should first exhaust all available remedies they have within the Sangguniang Bayan before running to the Sangguniang Panlalawigan through this administrative case. It is a different matter if after the Respondent has been duly summoned by Complainants acting as a body during sessions and the Mayor refuses, without legal and justifiable cause to provide information to the Sangguniang Bayan, it is then that he is exposing himself to possible administrative sanctions which the Sangguniang Panlalawigan may take cognizance of. Verily, complainants failed to exhaust the remedy available to them before they filed the complaint against the Respondent.

The filing of this administrative case against respondent was premature as the complainants were not left with no other remedy to obtain their desired information and data from the respondent. Exhaustion of remedies is a doctrine applied extensively. Exhaustion of remedies as defined by Meriam Webster is a doctrine wherein a remedy cannot be sought in another forum until the remedies or claims have been exhausted in the forum having original jurisdiction. It is a legal doctrine that limits the plaintiff's ability to bring suit in court until the plaintiff has exhausted the remedies available to it through a separate judicial or non-judicial process. This doctrine requires that when a remedy is available, relief must be sought by exhausting this remedy before judicial intervention, as in this case, intervention of the Sangguniang Panlalawigan in the exercise of its quasi-judicial function.



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WHEREFORE, premises considered, finding no sufficient proof to find Respondent guilty of Gross Negligence and/or Dereliction of Duty, the Committee hereby DISMISSES this Complaint.

SO ORDERED.

October 18, 2024, Lingayen, Pangasinan.

Respectfully Submitted:

(Inhibited)
SP MEMBER HAIDEE S. PACHECO
Chairman

(sgd.)
SP MEMBER NOEL C BINCE
Asst. Floor Leader
Vice Chairman

WHEREAS, the Sangguniang Panlalawigan, in its plenary deliberations, finds the said Recommendation to be in order;

NOW THEREFORE, on motion of SP Member Napoleon C. Fontelera, Jr, duly seconded, it was –

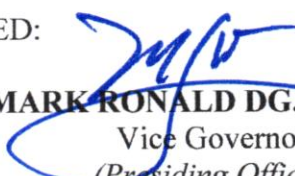
RESOLVED, by the Sangguniang Panlalawigan in session assembled, to adopt and approve, as it is hereby adopted and approved, as its decision en banc, the Recommendation of the Committee on Good Government and Accountability of Public Officers as its Recommendation which was adopted as Committee Report No. 48-2024;

RESOLVED FINALLY, that copies of this Resolution be furnished to Vice Mayor Simplicio L. Rosario, SBM Ariel Z. Dela Concha, SBM Joel Jose A. Carrera, SBM Urbano C. Delos Angeles III, SBM Aurora Gene Z. Cagaoan, SBM Jonas B. Rosario, SBM Richard I. Bautista, Mayor Pedro Merrer III and their 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)