

EXCERPTS FROM THE MINUTES OF THE 29<sup>th</sup> REGULAR SESSION OF THE SANGGUNIAN BAYAN OF GUBAT, SORSOGON HELD ON TUESDAY, AUGUST 22, 2017 AT THE SANGGUNIAN BAYAN SESSION HALL.

PRESENT:

HON. SIXTO F. ESTAREJA	- Municipal Vice Mayor/P.O.
HON. JOHN PAUL E. ERLANO	- Member, Sanggunian Bayan
HON. CESAR D. ESPERIDA, JR.	- Member, Sanggunian Bayan
HON. DANILO E. ENAJE	- Member, Sanggunian Bayan
HON. KENNETH D. ESCANDOR	- Member, Sanggunian Bayan
HON. ANTHONY C. CALLOS	- Member, Sanggunian Bayan
HON. VALENTIN A. PURA IV	- Member, Sanggunian Bayan
HON. AIZA E. ENCINARES	- Member, Sanggunian Bayan
HON. RAMON E. ENTICO	- Member, Sanggunian Bayan

ON LEAVE:

HON. NELSON E. QUINONES	- Liga ng mga Barangay President
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GUEST:

BRGY. CAPT. ARNEL E. BILLONES	- Liga ng mga Barangay Vice President
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RESOLUTION NO. 131 S-2017

A RESOLUTION TO CONCUR THE DECISION PRESENTED BY THE COMMITTEE OF THE WHOLE ON ADMINISTRATIVE CASE NO. 2017-02, LUIS H. ROCHA, JR. VS. BRGY. CAPT. ELEONOR P. ERMINO BOTH OF PANGANIBAN, GUBAT, SORSOGON FOR MISCONDUCT IN OFFICE.

WHEREAS, the Republic Act 7160 otherwise known as the Local Government Code of 1991 provides that, “ A complaint against any elective barangay official shall be filed before the Sangguniang Panglungsod or Sanggunian Bayan concerned whose decision is final and executory”;

WHEREAS, as a general rule, the Sangguniang Bayan as a whole shall conduct the hearing, unless the same sanggunian delegated its power to hold hearing to somebody or committee as a matter of practical administrative procedure;

WHEREAS, after a series of hearing, the Committee of the Whole came up with a report which was favorably adopted by the body, thence, this resolution;

NOW THEREFORE, on motion of Hon. Ramon E. Entico and unanimously seconded, it was;

RESOLVED, to concur the hereunder decision as follows, to wit:

## **THE CASE**

Before this office is an Administrative Case No. 2017-02 filed on March 03, 2017 by one Luis H. Rocha, Jr. against Brgy. Capt. Eleonor P. Ermino of Barangay Panganiban, Gubat, Sorsogon for Misconduct in Office.

Misconduct is a “transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct maybe serious, important, weighty, momentous and not trifling. It must also have a great relation to, and be connected with, the performance of official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office”. (Almario vs. Resus, A.M. No. P-94-107, Nov. 02, 1999).

The Sangguniang Bayan in the exercise of their quasi-judicial function as mandated by the law is empowered to hear and decide administrative cases defined and enumerated by the Local Government Code of 1991 and other pertinent laws involving disciplinary action on elective officials.

## **THE FACTS OF THE CASE**

The complainant is a private individual and a resident of Brgy. Panganiban, Gubat, Sorsogon while the respondent is the incumbent Barangay Chairman of the same barangay.

The antecedent facts are as follows:

On January 26, 2017, about 10:30 in the morning, complainant upon suggestion to him by Mayor Sharon Rose G. Escoto and Mrs. Sandra D. Pura, MSWDO, proceeded to the barangay hall of Panganiban, Gubat, Sorsogon to get medical assistance through AICS fund of the barangay. Shortly, when complainant arrived at the barangay hall he discovered that Brgy. Capt. Eleonor P. Ermino was not around and the Barangay Secretary told him that Brgy. Captain Ermino was attending seminar at Rizal Beach and he will return back on January 30, 2017. So, the complainant decided to go to the house of the respondent. Upon reaching the house, respondent was about to proceed to the barangay hall and timely advised complainant to proceed also to the barangay hall.

Complainant upon reaching the barangay hall noticed that the respondent was very mad at him maybe because Brgy. Secretary Lea told him anything that happened earlier. Respondent at once torn in front of the complainant the check issued to him amounting to Five Hundred (P500.00) Pesos and told complainant not to implicate him. Suddenly, respondent pushed complainant out of the barangay hall and shouted against him to leave the barangay hall as no assistance at all will be given to him.

The incident according to the complainant constituted misconduct in office committed by the respondent and appropriate disciplinary action should be meted against him.

No documentary evidences were presented by the complainant except on his complaint marked as Exhibit "A", "A-1" and "A-2" and his personal testimony during hearing/investigation of the case.

Acting on the complaint, the Sangguniang Bayan constituting as the Committee of the Whole sets its preliminary hearing on April 03, 2017 to determine compliance as to proper form and substance of the complaint, and to find probable cause if the offense being charged to the respondent has its basis under the circumstances. Finding that there is probable cause in the instant complaint, the committee hereby ordered to summon the respondent.

On the same day of April 03, 2017, respondent was issued summon informing him that an administrative complaint was filed against him with an attached copy of the complaint and ordering him to file answer within fifteen (15) days from receipt thereof.

On April 24, 2017, respondent filed his Motion for Extension to File Answer on the ground that he was facing heavy workload and he has to convince his witness to give her testimony during hearing/investigation. Finding that the reasons for the motion was proper and meritorious, and that it is not made to cause delay in the proceedings, the investigating committee granted the motion to extend the time of filing respondent's answer.

On May 08, 2017, respondent filed his answer, copy attached and marked as Exhibit "1", "1-1", "1-2", "1-3" and "1-4".

On his answer, respondent vehemently and categorically denied the allegations against him by the complainant for being based merely on surmises and conjectures, the truth of the matter being as follows:

On January 30, 2017 at around 8:00 o'clock in the morning, complainant went to the house of Barangay Treasurer's Leah B. Felonia bringing with him the Municipal Social Welfare Development recommendation for medical assistance in the amount of Five Hundred Pesos (P500.00).

Complainant impatiently demanded from the treasurer to exchange his DSWD Recommendation for cash and even asked the treasurer to exchange the recommendation for her own money and when the treasurer refused to do the same he told her the following "KA TURO TREASURER MO WARA KA SENTI PARA 500 LANG" (You're a Treasurer you don't have money it is just 500).

The treasurer then explained to the complainant that there are procedure to follow in issuing and releasing check such as the making of a voucher wherein complainant will be required to sign at the voucher to prove that he had receive the same and the preparation of the Punong Barangay Certification (PBC) to be filed at the LandBank, and the check will undergo clearing process at the bank.

Complainant after hearing above explanation of the treasurer impatiently uttered "AKO NA YUN NA RECOMMENDATION SAN DSWD KAY ITUNGAL KO NA

LANG KUNG DIIN PARA MAGING KWARTA" (Give me the recommendation of the DSWD because I will exchange it to somewhere to have money).

On January 31, 2017 at 7:30 in the morning, complainant went back to the house of the barangay treasurer. The latter instructed the complainant to proceed at the barangay hall and wait for her and the barangay chairman as their signature were both needed in the check. The treasurer also told complainant that if he only left the recommendation on January 30, 2017, he would have already the P500 on January 31, 2017.

When complainant arrived at the barangay hall, he was already irritated, but nonetheless, the treasurer showed the complainant the check and explained that she still has to make a voucher, a PBC and that the signature of the barangay captain is required in the check. Upon hearing said explanation, complainant uttered in irritation' "DEPUTA PARA FIVE HUNDRED GRABE NA PROSESO DEPUTA, AWATON, DAOG PA NIYO ANG MGA GOVERNADOR PASARAYO-SAYO MAGSULOD".

Suddenly, while the treasurer is making PBC, complainant took the check without the knowledge of the treasurer and proceeded to the house of the respondent after which handed to the latter the check and asked him to sign. Respondent told the complainant that he will sign the check at the barangay hall as he was surprised why the check was released by the treasurer without his signature and that there was a need for him to make some clarification and follow up on the status of the check with the treasurer before signing it.

The treasurer explained to the respondent that the complainant took the check without her permission while she was on the process of making PBC. She further told respondent that complainant was cursing and badmouthing to them earlier and even the previous 2 days of their encounter.

Respondent denied the allegation that he pushed the complainant out of the barangay hall neither did the allegation of the complainant that former Vice Mayor Danilo Pura was present when the incident of pushing happened.

Respondent further averred that he never torn the check. In fact, they waited for the return of the complainant to claim the check but he did not return back. Until the end of February 2017, when the treasurer need to file her monthly report of disbursement before the Commission on Audit (COA), the Office of the Punong Barangay decided to cancel the check. To prove that the check is whole and intact and it was not torn contrary to the allegation of the complainant, copy of the check dated January 31, 2017 with the word "CANCELLED" on its face is hereto attached and marked as Exhibit "2".

To prove the allegations of the respondent on his answer, copy of the Sinumpaang Salaysay of Barangay Treasurer Leah B. Felonia, and Barangay Tanod Eduardo A. Engay are hereto attached and marked as Exhibit "4", "4-1" and "4-2; and Exhibit "5" and "5-1", respectively.

Respondent firmly stood that he did not commit misconduct when he withheld the check and it would be illegal for him if he acceded to the whims of the complainant to immediately release the check without following the required procedures in issuing check for government transactions.

Respondent further asserted that complainant's complaint lacks the quantum of proof to establish substantial evidence adequate to justify conclusion. The complaint is

self-serving and uncorroborated by any other evidence since it is to be noted that despite the fact that allegedly former Vice Mayor Danilo Pura was there during the incident, yet he failed to present his testimonies or any other witnesses. Thus, respondent prayed for the dismissal of the instant complaint for being malicious and baseless.

On May 22, 2017, the investigating committee issued Subpoena Duces Tecum to Leah B. Felonia, Barangay Treasurer of Panganiban, directing her to produce for inspection the voucher for medical assistance of the complainant, Luis H. Rocha, Jr. and the check booklet where the check issued to the complainant is included in the series. The Barangay Treasurer submitted photo copy of the voucher and portion of check booklet where the check issued in the name of Luis H. Rocha, Jr. was written, copies are hereto attached and marked as Exhibit "6" and "7", respectively.

On May 30, 2017, a hearing was conducted by the Committee of the Whole with the appearances of complainant Luis H. Rocha, Jr., respondent Brgy. Capt. Eleonor P. Ermino and Brgy. Treasurer Leah B. Felonia for respondent's witness.

On the hearing, complainant failed to adduce evidence/witness to corroborate his allegations on his complainant particularly on the incident where the respondent torn the check and pushed him out of the barangay hall. He admitted that at the time said incident happened no other persons witness the same except for himself.

## RULING

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behaviour or gross negligence by a public officer. The misconduct is grave if it involves any of additional elements of corruption, wilful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. Otherwise, the misconduct is only simple". Conversely, one cannot be found guilty of misconduct in the absence of substantial evidence.

In the instant case, complainant in accusing respondent of committing misconduct in office failed short of establishing the fact that respondent had the wilful intent to violate the law or has disregarded established rules. In fact, respondent before signing or issuing the check has made some clarifications with the barangay treasurer as to the status of the check why the same was released to the payee without the necessary signatures.

The delayed of the transactions as claimed by the complainant cannot be contributed as gross negligence or unlawful behaviour on the part of the respondent, the latter being only cautious in assuring that usual procedures in issuing and/or releasing check for similar government transaction was duly observed.

Documentary evidences submitted by the respondent proved that the check in question is still whole and intact contrary to the claim of the complainant that said check was ripped by the respondent in front of him. Neither did complainant establish the fact that he was pushed out of the barangay hall by the respondent as he admitted during investigation that there are no other persons who witness the incident.

All things considered, the investigating committee hold that the herein complaint thrown against the respondent has no leg to stand. Complainant failed to adduce evidence sufficient enough to support his claims.

WHEREFORE, the administrative case for Misconduct in Office against Barangay Captain Eleonor P. Ermino is hereby DISMISSED.

SO ORDERED.

RESOLVED FINALLY, that copies of this resolution be furnished Brgy. Capt. Eleonor P. Ermino, respondent, Panganiban, Gubat, Sorsogon; Mr. Luis H. Rocha, Jr., complainant, Panganiban, Gubat, Sorsogon; Hon. Sharon Rose G. Escoto, Municipal Mayor, n Gubat, Sorsogon; Ms. Shirley Del Valle, DILG-MLGOO, Gubat, Sorsogon and Office of the Liga ng mga Barangay, ABC Hall, Gubat, Sorsogon; and other offices concerned for their information and guidance.

UNANIMOUSLY APPROVED.

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I HEREBY CERTIFY TO THE  
CORRECTNESS OF THE FOREGOING:

(Sgd) JOEY P. ENAJE  
*Secretary to the Sangguniang Bayan*

*Attested by:*

(Sgd) HON. SIXTO F. ESTAREJA  
*Municipal Vice Mayor, Presiding Officer*