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Official Position Paper of the League of Cities of the Philippines on the Postponement of the Barangay Elections and Appointment of Barangay Officials by the President (House Bill No. 5359)

The League of Cities of the Philippines (League) supports House Bill No. 5359 deferring the Barangay Elections to May 2020. The postponement of the barangay and Sangguniang Kabataan elections does not only have legal precedence, but this will spare the government from huge electoral spending. However, the League opposes the appointment of barangay officials by the President. Barangay officials are elected and not appointed. To empower the President to appoint officials in the local level violates the principles of local autonomy and decentralization.

With the recent development in the House of Representatives, the League is in the position to support the decision reached during the caucus that a bill be passed postponing the barangay elections to May 2018, and that the said bill allows the incumbent barangay officials to stay in office in a hold-over capacity.

The proposal on the holdover of the officials is in keeping with the principle that *sovereignty resides in the people and all government authority emanates from them*. The League believes that barangay officials are elected and the mandate of these officials was given by the sovereign people during the 2013 elections. Hence, as chosen leaders, they must stay in position until an election is held on May 2018.

Moreover, the League stands firm in signifying that the justification for the postponement must still be met and achieved. The barangay officials allegedly involved in drug trade must be made to answer administrative and criminal liabilities. Further, it is proposed that the mayor, as the local chief executive, has the power to designate officers-in-charge to fill in the barangay positions vacated by reason of preventive suspension and or removal of these erring officials.

BACKGROUND

Pursuant to Republic Act No. 10923, the synchronized barangay and sangguniang kabataan elections on October 31, 2016 were postponed to the fourth Monday of October 2017. It was further provided under the law that the *subsequent synchronized barangay and sangguniang kabataan elections shall be held on the second Monday of May 2020 and every three (3) years thereafter*.

House Bill No. 5359 seeks to defer the October 2017 barangay elections to May 2020, thereby terminating all the incumbent barangay officials, and officers-in-charge shall be appointed by the President.



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The proposed measure hinges on the administration's war on drugs. The intent of the measure is to strengthen the fight against illegal drugs from the grassroots level since the barangays are the first line of defense in the locality. It will also prevent the barangay officials who are financed by drug money from winning and continue the widespread drug trade.

On 7 August 2017, an all-members caucus was held in the House of Representatives wherein the majority decided that the postponement of the barangay elections shall be pushed through and that the incumbent officials shall stay in office in a hold-over capacity.

DISCUSSION

The discussion of this paper will focus on these areas: *postponement, appointment by the President, holdover and designation of officers-in-charge.*

I. Postponement

The estimated cost for barangay elections is at Five Billion Pesos (P5,000,000,000.00). To postpone the barangay elections this year will spare the government of huge amount of election expenses. While it is true that our people will once again be deprived to choose the leaders in charge to run day care centers, health centers, carry out basic services and mediate neighborhood disputes in more than 42,000 barangays all over the country, it is more beneficial for the community to save much money that might be used for other programs and projects to carry out these services.

Republic Act No. 9164, as amended by RA No. 10923, may be further amended to postpone the October 2017 elections. There is valid legal precedence to the postponement of the barangay elections.

II. Holdover and Designation of Officers-in-Charge

Pursuant to Republic Act No. 10923, an amendatory law to the Local Government Code, the incumbent barangay officials stay in office in a hold-over capacity *until October 2017 or until successors shall be elected and qualified.* In the event that this year's election is moved to May 2018, it is legally permissible based on precedent that the officials stay in office for another seven (7) months in a holdover capacity, provided a law shall be passed and enacted.

While the barangay officials remain in position until May 2018, the purpose of the measure which is to weed out drug personalities among them must still be achieved. At the outset, seven (7) months will serve as the period for cleansing barangays from drug problems. This is an



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opportune time for these erring barangay officials to be brought before the courts of justice to answer criminal and/or administrative charges against them.

The designation of OICs is necessary in order that the barangay will continue its mandate to carry out services to its constituents. The issue now to be resolved is on who will appoint the designated OIC.

The League believes that the mayor, being the chief executive of the city or municipality in which the barangay is a part of, has the power to designate OICs in cases where the barangay officials are suspended pending administrative or criminal case, or terminated from office by reason of administrative or criminal offense.

A. Mayor to Designate Officers-in-Charge for Barangay Positions

Barangay is the smallest administrative division of the city or the municipality. Absent its officials, the mayor has the direct supervision over the performance of its administrative and political affairs. Moreover, the mayor is directly accountable to his or her constituents in the locality.

Being the local chief executive, the mayor has the power to designate the officers-in-charge for barangay positions. This is not to appoint the barangay officials *per se*. As held in the case of *Aytona vs. Castillo* (G.R. No. L-19313), officers-in-charge is considered merely as a **caretaker** of the office.

Under the Local Government Code of 1991, the Mayor's power to appoint elective barangay officials arises in case of permanent vacancy in the sangguniang barangay. Section 44 (b) also provides that *if a permanent vacancy occurs in the office of the punong barangay, the highest ranking sangguniang member or in case of his inability, the second highest ranking sanggunian member shall become the punong barangay*.

As a mandate, the mayor is accountable to the people of the component barangays belonging to his city or municipality. Hence, it is appropriate that the mayor be given the power to designate people who will run the operations of the smallest units within his or her territorial jurisdiction.

III. Appointment by the President

A. The President has no Power to Appoint Barangay Officials; Violative of the Principles of Local Autonomy and Decentralization



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While the intent of the measure is to free the Philippines from drug problem and start the cleansing at the grassroots level, it may have effect on the basic principles which local governance is founded upon- local autonomy and decentralization. Further, the war against drugs is not enough to justify the legal complications on empowering the President to appoint elective barangay officials.

Local Autonomy and Decentralization

No less than the Constitution expresses the principle of local autonomy empowering the local government units to be self-reliant, responsible and accountable local government structure. This is achieved by allowing the local government units to maximize their strengths and address their weaknesses.

Indispensable to the exercise of local autonomy is the giving the people the right to directly choose their leaders. The appointing by the President of the barangay leaders deprives the people of their constitutionally endowed power.

Under the Administrative Code, the national government is defined as the "entire machinery of the central government" as opposed to the local governments which are classified on territorial and political subdivisions. Further, the President only exercises general supervision over the local government units as provided for by the Constitution. The provision sets a limit not only to supervise but also to the extent of the central government, acting through the President, to intervene and meddle with local government affairs. Jurisprudence defines general supervision as the power to see to it that lower officials perform their duties in accordance with law. Hence, to empower the President to choose local leaders is a direct intervention of local affairs violative of the principle of decentralization.

Authority of the President to Appoint

The appointing power of the President does not include the power to appoint elective officials. The measure giving the President the power to appoint barangay officials as officers-in-charge has no legal leg to stand on. Contrary to the contention of the proponents of the measure, the appointing power of the President in the Administrative Code refers appointment of officials provided for in the Constitution and laws. Under Section 16, Article 7 of the 1987 Constitution, there are four groups of officers whom the President may appoint. These are:

First, (a) the heads of the executive departments; (b) ambassadors, other public ministers and consuls; (c) officers of the Armed Forces from the rank of colonel or naval captain; and (d) other officers whose appointments are vested in him in the Constitution, such as the chairman



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and members of the Commission on Elections, Civil Service Commission, the Commission on Audit. These appointments require the consent of the Commission on Appointments (COA).

Second, all other officers of the government whose appointments are not otherwise provided by law;

Third, those whom the President may be authorized by law to appoint; and

Fourth, officers lower in rank whose appointments Congress may by law vest in the President alone.

It can be conveniently argued that barangay officials may fall under the aforementioned second, third and fourth categories as these are catch all provisions subject to interpretation. However, it is apparent under the Constitution that barangay positions must be filled by election. Several provisions refer barangay positions as elective officials, to wit:

Article X. Section 8. "The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected." (emphasis supplied)

Article IX (C) Section 2. "Exercise exclusive original jurisdiction...and appellate jurisdiction over all contests...involving elective barangay officials decided by trial courts of limited jurisdiction." (emphasis supplied)

Conclusion

While the League of Cities of the Philippines acknowledges the spirit and intent of the measure which is to stop the proliferation of drug trade in the Philippines and prevent the officials financed by drug money from winning, we cannot afford to sacrifice the inherent rights and powers of the local government units to be accountable to its own constituency instead of the national governments.

As can be gleaned from the facts and the law, postponement of barangay elections and the holdover of officials are legally permissible provided Congress enacts the appropriate legislation. However, the designation of the Officers-in-Charge for barangay positions in case of vacancy prior to the May 2018 barangay elections must be done by the mayors. No less than the mayors- the local chief executive and the



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