

REPUBLIC OF THE PHILIPPINES
BATANGAS CITY

OFFICE OF THE SANGGUNIANG PANLUNGSOD

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION HELD BY THE
MEMBERS OF THE SANGGUNIANG PANLUNGSOD OF BATANGAS CITY
ON JULY 8, 2013 AT THE SANGGUNIANG SESSION HALL

PRESENT:

Hon. Emilio Francisco A. Berberabe Jr.,	Presiding Officer
Hon. Glenn M. Aldover,	Councilor
Hon. Ma. Claudette U. Ambida,	"
Hon. Hamilton G. Blanco,	"
Hon. Aileen Grace A. Montalbo,	"
Hon. Sergie Rex M. Atienza,	"
Hon. Armando C. Lazarte,	"
Hon. Aiyssa Renee A. Cruz,	"
Hon. Gerardo A. dela Roca,	"
Hon. Ma. Kristine Josefina G. Balmes,	"
Hon. Julian B. Villena,	"
Hon. Prudencio A. Cepillo,	(ABC-Rep.)
Hon. Richard I. Cabatay,	(SK-Rep.)

ABSENT:

None

"On motion of Councilor Cepillo seconded by Councilor Lazarte, the following Resolution was Adopted:

RESOLUTION NO. 91 S. 2013

RESOLUTION DENYING THE MOTIONS FOR RECONSIDERATION FOR
ADMINISTRATIVE CASE NO. 01-2012 AND ADMINISTRATIVE CASE NO. 02-2012
AGAINST THE PUNONG BARANGAY OF STA. CLARA, BATANGAS CITY

WHEREAS, submitted to the Sangguniang Panlungsod are two (2) motions for reconsideration, both dated 11 June 2013, filed by the counsel for the complainants in Administrative Case No. 01-2012 and Administrative Case No. 02-2012 against the Punong Barangay of Sta. Clara.

WHEREAS, the Sangguniang Panlungsod finds no reversible error in the appreciation of facts and evidence on which the decisions were based.

NOW THEREFORE, be it resolved by the Sangguniang Panlungsod, as it hereby resolves, to deny the motions for reconsideration in both cases filed by the counsel for the complainants for lack of merit.

APPROVED."

I hereby certify to the correctness of the copy of the foregoing Resolution

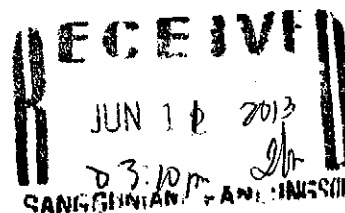
ATTY. OLIVA D. TELEGATOS
Secretary
Sangguniang Panlungsod

ATTESTED:

EMILIO FRANCISCO A. BERBERABE JR.
Presiding Officer

ODT/yollie...

REPUBLIC OF THE PHILIPPINES
BATANGAS CITY



SANGGUNIANG PANGLUNGSOD

KGD. PERPETUO P. FAYTAREN
KGD. ALFREDO M. MARANAN
KGD. VIRGILIO J. CUNAG,
Complainants,

ADMIN. CASE NO: 02-2012

for

-versus-

ABUSE OF AUTHORITY, DISHONESTY,
DERELICTION OF DUTY, QUALIFIED
THEFT AND FALSIFICATION

PUNONG BRGY. FLORENCIO V. ABDON
STA. CLARA, BATANGAS CITY
Respondent.

X-----X

"No decision shall be rendered by
ANY COURT without expressing
therein clearly and distinctly the
facts and the law on which it is
based".¹

MOTION FOR RECONSIDERATION

COMES NOW, the complainants, through the undersigned counsel and
unto this Honorable Body, by way of this Motion, most respectfully state that:

1. The undersigned received the decision dated 20 May 2013 of the
Honorable Body in the above-captioned Administrative Cases on 29 May 2013.
Subsequently, Resolution No. 73, Series of 2013 dated 27 May 2013 was passed
by the Sangguniang Panglungsod of Batangas City and received by the
undersigned on 30 May 2013. It adopted in toto the same decision as the final
resolution of the mentioned Administrative Cases;

¹ Article VIII, Section 14 of the 1987 Philippine Constitution.

2. As discussed and resolved in the referred decision, this Honorable Body acquitted the respondent from all the administrative charges reasoning out that the complainants were not able to adduced substantial evidence to prove their claim primarily focusing on the charge of dishonesty. The conclusion of the said decision reads as follows:

"Considering that the complainants have not presented substantial evidence, that is, that evidence a reasonable mind might accept as adequate to support a conclusion that the respondent Punong Barangay has committed abuse of authority, dishonesty, misconduct in office, dereliction of duty, qualified theft and falsification. The acts committed by the respondent are devoid of malice. An act becomes malicious when it is intended to deceive and desire benefits which are not due and performed surreptitiously to hide the same from the knowledge of other people". (Underscoring supplied)

Copies of the referred Resolution and Decision are hereto attached, made integral part hereof and marked as **ANNEXES "A"** and **"B"** respectively;

3. Elementary it is that the Sangguniang Panglungsod under the Local Government Code is a Local Legislative Body that exercises quasi-judicial powers in disciplining local elective officials which is delineated under Sections 60 to 68 of the same law. Quasi-judicial function on the other hand is a term which applies to the actions, discretions, etc., of public administrative officers or bodies required to investigate facts or ascertain the existence of facts, hold hearings and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.² In the exercise of such power, a local legislative body acts as a court and therefore is bound by the time-honored constitutional rule that, **"No decision shall be rendered by ANY COURT without expressing therein clearly and distinctly the facts and the law on which it is based"**.³ No deviation is allowed under the referred supreme law for doing so will entail denial of due process to one of the litigants. As held in *Velarde vs.*

²Ligangmga Barangay vs. The City Mayor of Manila, 21 January 2004.

³Supra.

Social Justice Society, "Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding ipse dixit. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision."⁴
(underscoring supplied)

4. In the instant case, the Decision dated 20 May 2013 which was adopted in all aspect under Resolution No. 7, Series of 2013, the Honorable Investigating Body cited and merely recited the evidence presented by the respondent alone without any reference whatsoever with the evidence adduced by the complainants during the proceedings. **The six charges against the respondent were summed up and concluded as if only dishonesty was the indictment. However, that is not the case for there are six charges which should have been well-discussed so that complainants will not be left guessing as to what happened with the five others;**

5. Established was that the elements of due process in administrative proceedings as held by the Supreme Court in *Ang Tibay v. CIR* are as follows:

a. XXXXXXXXXXXX;

⁴ Bro. Mariano "Mike" Z. Velarde, 28 April 2004.

- b. Tribunal must consider the evidence presented;
- c. XXXXXXXXXXXX;
- d. XXXXXXXXXXXX;
- e. Decision must be based on evidence adduced at the hearing or at least contained in the records and disclosed to the parties;
- f. XXXXXXXXXXXX;
- g. Decision must be rendered in such a manner that the parties to the controversy can know various issues involved and the reason for the decision rendered.⁵

Much to the complainants' surprise, the above-mentioned decision is bereft of any showing that it did comply with the cited jurisprudential requirements of administrative due process. In essence, the complainants believe that the referred decision is not based on evidence introduced and proven during the trial and has no basis in established facts and law, hence reconsideration is a necessity. In support thereof, complainants through the undersigned wishes to expound on their claims once again;

6. Complainants most respectfully invite the wisdom of the Honorable Body on the fact that Sta. Clara, Barangay Secretary Larry M. Noche who categorically admitted in open court the anomaly and unlawful doings of the respondent under his chairmanship never testified for the respondent unlike what appeared in the decision. In fact, he testified for the complainants who through this representation have asked for his presence through subpoena duces tecum ad testificandum. **Complainants' memorandum is crystal clear on this matter for in the said pleading, they were able to show that respondent indeed has blatantly violated the provisions of the Local Government Code and Article 171 (2) of the Revised Penal Code.** A copy of the said memorandum dated 18 February 2013 is hereto attached, made integral part hereof and marked as **ANNEX "C"** for easy reference;

7. In administrative cases, only substantial evidence is needed. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.⁶ A reading of the decision which is the subject of this motion conceivably shows that it was not supported by any

⁵ Ang Tibay v. CIR, 27 February 1940.

⁶ ROSARIO L. DADULO vs. CA, April 13, 2007

evidence on record and adduced during the trial. The decision discussed and resolved only the issue of dishonesty as charge. Not a single word was ever laid down with regard to the other charges. What happened to abuse of authority, dereliction of duty, falsification and qualified theft which were duly proven through the documentary and testimonial evidence presented by the complainant and further bolstered by the respondent and his witness' admissions during the trial? Were they set for naught?

8. Given the antecedents, the complainants through the undersigned, firmly believe that based on the evidence presented during the proceedings in this case including the admissions of the respondent himself and his witnesses in open court corroborated by the complainants' proof, SUBSTANTIAL EVIDENCE AGAINST THE LATTER HAS BEEN SUFFICIENTLY SHOWN. Considering that one of the fundamental principles of due process in administrative proceeding was that, decision must be rendered in such a manner that parties to the controversy can know various issues involved and the reason for the decision rendered⁷ which the decision dated 20 May 2013 failed to elucidate with clarity and definiteness, humble reconsideration of the same by the Honorable Investigating Body is but a necessity so that true justice may be served to the people from whose hands the power of public servants emanated;

9. This motion is being filed solely for the foregoing reason and not for purposes of delay.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed for of this Honorable Body that the decision dated 20 May 2013 be reconsidered and a new one entered finding the respondent guilty of the following charges;

- a. **Abuse of authority and misconduct in office**, by forcefully commanding Larry M. Noche to surreptitiously forge Resolution No. 5, Series of 2012; procuring the container van without authority to do so and in expending the proceeds thereof without the required appropriation ordinance;

⁷Ang Tibay Vs. CIR, 27 February 1940.

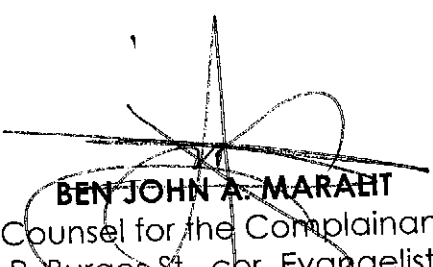
- b. **Dishonesty**, in failing to inform the concerned sanggunian members of the circumstances surrounding the donation and subsequent disposition of the subject container van and in making it appear that the Barangay Sta. Clara, Batangas City Sanggunian Members have participated therein;
- c. **Dereliction of duty** in failing to report to the sanggunian the matters concerning the procurement and subsequent selling of the container van and in not posting notice thereof within the premises of the barangay or vicinity within, or so near thereof for information of his constituents;
- d. **Qualified theft**, in abusing the confidence reposed in him by his constituents through misappropriation of the proceeds from the selling of the container van; and
- e. **Falsification**, by commanding Larry M. Noche to forge Resolusyon No. 5, Series of 2012 and in causing it to appear that the members of the sanggunian concerned have participated in such act of proceeding when they did not in fact so participated.

and recommending for the removal of the respondent from office with perpetual disqualification to hold public office.

Other reliefs just and equitable under the premises are likewise prayed for.

Respectfully submitted.

Batangas City, 11 June 2013.


BEN JOHN A. MARAÑON
Counsel for the Complainant
#23 P. Burgos St., cor. Evangelista St.,
Batangas City
PTR No. 1835396/1-04-13/Bats. City
IBP Lifetime No. 011119
Roll No. 60977
MCLE Compliance No. IV-0010907/1/2/13

Copy furnished:


Atty. Pepito Mendoza
Rizal Avenue,
Batangas City

By personal Service

REPUBLIC OF THE PHILIPPINES
BATANGAS CITY

ANNEX

A

OFFICE OF THE SANGGUNIANG PANLUNGSOD

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION HELD BY THE
MEMBERS OF THE SANGGUNIANG PANLUNGSOD OF BATANGAS CITY
ON MAY 27, 2013 AT THE SANGGUNIANG SESSION HALL

PRESENT:

Hon. Jose Y. Tolentino,	Presiding Officer
Hon. Dexter R. Buted,	Councilor
Hon. Claudette U. Ambida,	"
Hon. Mario Vittorio A. Mariño,	"
Hon. Sergie Rex M. Atienza,	"
Hon. Elizalde M. Ferriols Jr.,	"
Hon. Armando C. Lazarte,	"
Hon. Narciso B. Macarandang,	"
Hon. Prudencio A. Cepillo,	(ABC-Rep.)
Hon. Richard I. Cabatay,	(SK-Rep.)

ABSENT:

Hon. Hamilton G. Blanco,	Councilor
Hon. Eloisa Angela D. Portugal,	"
Hon. Luisa F. Macaraig,	"

"On motion of Councilor Cepillo seconded by Councilors Macarandang and Ferriols, the following Resolution was Adopted:

RESOLUTION NO. 73 S. 2013

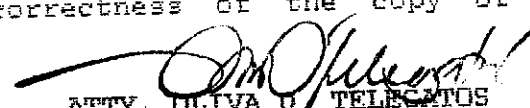
ADOPTING AND APPROVING THE DECISION OF THE INVESTIGATING
COMMITTEE ON ADMINISTRATIVE CASE NO. 02-2012, KAGAWADS PERPETUO
P. FAYTAREN, ALFREDO M. MARANAN, VIRGILIO J. CUNAG, ARLENE A.
LACSAMANA AND KITTROS COLE V. DRIZ (SK) VS. PUNONG BARANGAY
FLORENCIO V. ABDON

RESOLVED, to adopt the Decision of the Investigating
Committee on Administrative Case No. 02-2012, Kagawads Perpetuo
P. Faytaren, Alfredo M. Maranan, Virgilio J. Cunag, Arlene A.
Lacsamana and Kittros Cole V. Driz (SK) vs. Punong Barangay
Florencio V. Abdon, as the Decision of the Sangguniang
Panlungsod.


RESOLVED FURTHER, to approve the aforesaid Decision.

UNANIMOUSLY APPROVED."

I hereby certify to the correctness of the copy of the
foregoing Resolution.


ATTY. OLIVA D. TELECATOS
Legal Secretary
Sangguniang Panlungsod

ATTESTED:


JOSE Y. TOLENTINO
Presiding Officer

SPONSORS

COUN. PRUDENCIO A. CEPILLO
COUN. CLAUDETTE U. AMBIDA
COUN. ELOISA D. LOYOLA PORTUGAL
COUN. ELIZALDE M. FERRIOLS JR.

COUN. NARCISO B. MACARANDANG
COUN. ARMANDO C. LAZARTE
COUN. RICHARD I. CABATAY

ODT/yollie...

REPUBLIC OF THE PHILIPPINES
BATANGAS CITY

SANGGUNIANG PANLUNGSOD

Read by
Jm

5-21-13
2:42 pm

ANNEX B

Kgd. Perpetuo P. Faytaren
Kgd. Alfredo M. Maranan
Kgd. Virgilio J. Cunag
Kgd. Arlene A. Lacsamana
Kgd. Kittros Cole V. Driz (SK)

Administrative Case No. 02-2012

for: Abuse of Authority, Dishonesty
Misconduct in Office
Dereliction of Duty, Qualified
Theft and Falsification

-versus-

Punong Barangay Florencio V. Abdon
Sta. Clara, Batangas City

X-----X

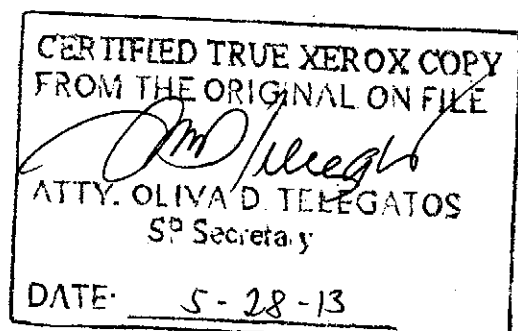
DECISION

PRELIMINARY:

The complainants and the Respondent presented before the Investigating Authority their respective witnesses and exhibits in evidence. They also submitted their respective Formal Offer of Evidence.

The witnesses for the complainants are the complainants themselves. On the other hands, the respondent presented as his witnesses the following namely: Kagawad Arlene Lacsamana, Kagawad Leoncio Tolentino, Kagawad Jaime Mandigma, SK Chairman Kittross Cole V. Driz and Mr. Larry Noche, the Barangay Secretary, all of Barangay Sta. Clara, Batangas City.

The Investigating Authority, created by virtue of SP Resolution No. 99 S. 2000, made a conscientious study and evaluation of the testimonies and exhibits marked by both parties.



From the parties' oral and documentary evidence, the following facts are un rebutted and are supported by evidence, to wit:

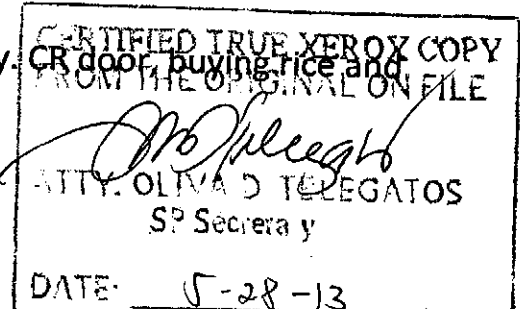
1st - Un rebutted is the testimony of the respondent that at the middle of March 2, 2012 and March 11, 2012, they received a call from Ms. Rosanna Caraan of Siemen's that Siemen's is giving a container van.

2nd - On March 12, 2012 a meeting/session was called by the respondent Punong Barangay and the meeting was adjourned for lack of quorum. However, he caused the preparation of a draft resolution numbering it Resolution No. 5 Series 2012.

3rd - Resolution No. 5, Series 2012 is a draft resolution because in all formal resolutions enacted by the Sanggunian Barangay of Sta. Clara, as testified by complainant Perpetuo Faytaren, and admitted by the Respondent the signatures of the approving Kagawad must appear.

4th - Respondent Abdon with the use of the draft resolution was able to receive the container van but he discovered the container van to be unusable, only as "scrap", because the van has no flooring and the sidings were full of holes. The respondent told this to Ms. Rosanna Caraan who agreed that the container van be sold and the proceeds be used for the benefit of the Barangay. The container van was sold at Dimatatac Junkshop at San Pascual, Batangas for P 20,000.00.

5th - Un rebutted is the fact of the sale of the container van and the proceeds thereof to be used for the repair of the Brgy. CR door, buying rice and



meat and uniform for the Brgy. Tanod was taken up during the meeting/session of April 17, 2012 attended by all Kagawad of Brgy. Sta. Clara, including the respondent Punong Barangay and the Barangay Secretary. The meeting/session ended at 5:40 P.M. with no one opposing the approval of the propositions as contained in the minutes of April 17, 2012.

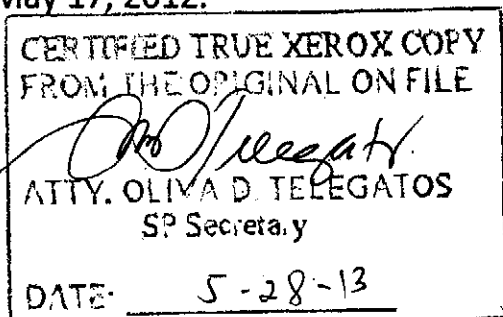
6th - Likewise the testimonies of Kagawads Arlene Lacsamana, Leoncio Tolentino, Janine Mandigma, the SK Chairman, and Brgy. Secretary Larry Notice is direct and straightforward evidencing honesty and truthfulness.

CONCLUSION:

Considering that the complainants has not presented substantial evidence, that is that evidence a reasonable mind might accept as adequate to support a conclusion that the Respondent Punong Barangay has committed abuse of authority, dishonesty, misconduct in office, dereliction of duty, qualified theft and falsification. The acts committed by respondent are devoid of malice. An Act becomes malicious when it is intended to deceive and desire benefits which are not due and performed surreptitiously to hide the same from the knowledge of other people.

WHEREFORE, the Investigating Authority hereby acquits the respondent Punong Barangay Florencio V. Abdon for the Offenses charge, and further request the members of the Sangguniang Panlungsod for the approval of this decision.

May 17, 2012.



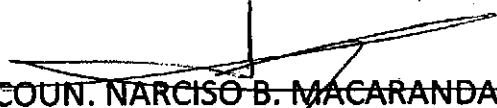

COUN. PRUDENCIO A. CEPILLO
CHAIRMAN

CONFORME:


COUN. CLAUDETTE U. AMBIDA


COUN. ARMANDO C. LAZARTE


COUN. ELOISA DE LOYOLA PORTUGAL

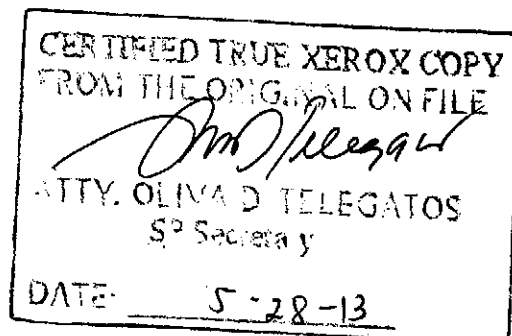

COUN. NARCISO B. MACARANDANG


COUN. ELIZALDE M. FERRIOLS JR.


COUN. RICHARD I. CABATAY

Copy furnished:

1. Atty. Ben John A. Maralit
Batangas City
2. Atty. Pepito D. Mendoza
Batangas City



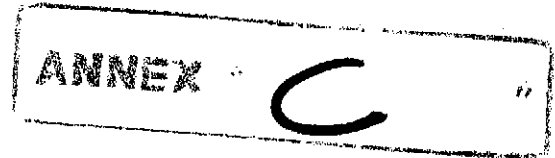
REPUBLIC OF THE PHILIPPINES

BATANGAS CITY

SANGGUNIANG PANGLUNGSOD

Kgd. Perpetuo P. Faytaren
Kgd. Alfredo M. Maranan
Kgd. Virgilio J. Cunag

Complainants,



ADMIN. CASE NO: 02-2012

-versus-

for

ABUSE OF AUTHORITY, DISHONESTY,
MISCONDUCT IN OFFICE,
DERELICTION OF DUTY, QUALIFIED
THEFT AND FALSIFICATION

PUNONG BRGY. FLORENCIO V. ABDON
STA. CLARA, BATANGAS CITY

Respondent.

x-----x

MEMORANDUM FOR THE COMPLAINANT

Complainants, through the undersigned counsel and unto this Honorable Body, submit their Memorandum as follows.

THE PARTIES

Complainants Kgd. Perpetuo P. Faytaren, Kgd. Alfredo M. Maranan, and Kgd. Virgilio J. Cunag are the incumbent councillors of Barangay Sta. Clara, Batangas City while respondent Florencio V. Abdon is the current Barangay Chairman of the same.

THE CASE

This case precipitated out of administrative cases filed by the complainants against the respondent for Abuse of Authority, Dishonesty, Misconduct in Office, Dereliction of Duty, Qualified Theft and Falsification which stemmed from the anomalies surrounding the donation, acceptance and

subsequent selling of a twenty footer container van given by Siemens Power Operations Inc. to Barangay Sta. Clara, Batangas City at the instance of the respondent.

STATEMENT OF FACTS

Based on the complaint, answer by the respondent, evidence presented during the proceeding, both documentary and testimonies of the witnesses, the following facts were culled:

1. Respondent is the Punong Barangay of Barangay Sta. Clara, Batangas City. Sometime between the month of March up to May 2012, respondent, in behalf of Barangay Sta. Clara, Batangas City, procured from Siemens Power Operations Inc. a twenty footer container van to be used as office of the Barangay Tanods of the said barangay;
2. To acquire the referred container van from Siemens, respondent unduly commanded and directed the Barangay Secretary Larry M. Noche to draft and prepare Resolution No. 5, Series of 2012 dated 12 March 2012 in exchange for the container van. By the force of the said resolution, respondent received and orchestrated the release and selling of the same;
3. The said container van was released and received by the respondent himself together with Kgd. Mandigma on 2 May 2012 who on the same day sold it to Dimatatac Junkshop at San Pascual, Batangas for twenty thousand pesos (Php20,000);
4. The proceeds thereof were allegedly allotted and expended by the respondent for the following: fifteen thousand pesos (Php15,000) for the repairs done in the Barangay Hall of Sta. Clara, Batangas City, uniforms and food of the barangay tanods and the remaining five thousand pesos (Php5,000) was used to hire a truck where the container van was loaded;
5. No report or posting was made by the respondent in relation to the procurement and subsequent selling of the container van to inform the sanggunian concerned and his constituents of what occurred. Neither

was there a resolution or barangay ordinance enacted authorizing the respondent to obtain the same from Siemens Power Operations Inc. Furthermore, in spending the proceeds from the selling of the said container van, no appropriation ordinance/resolution was enacted for the purpose. For these reasons, complainants filed the above-captioned case before the Sangguniang Panglungsod of Batangas City;

6. In his answer and the subsequent comment to the reply of the complainants, respondent claimed that there was no donation. He also set up by way of affirmative defense the general welfare clause provision of the Local Government Code in justifying all his actuations. Thus, this case.

ISSUE

WHETHER RESPONDENT IS GUILTY OF ABUSE OF AUTHORITY, DISHONESTY, MISCONDUCT IN OFFICE, DERELICTION OF DUTY, QUALIFIED THEFT AND FALSIFICATION.

ARGUMENTS AND DISCUSSIONS

The issue being interrelated shall be discussed jointly.

The respondent is guilty of abuse of authority, dishonesty, misconduct in office, dereliction of duty, qualified theft and falsification.

As the Barangay Chairman of Sta. Clara, Batangas City, respondent is the chief executive of his constituents and as such exercises vast powers within the four corners of the barangay. Its clout extended to supervision and control over other barangay officials especially those which he himself appointed. In fact, his immediate subordinates such as a barangay secretary are at his disposal, being answerable to him. Considering his position, he is of course expected to perform his function within the bounds of what is granted in him by the enabling authority, the law. This, respondent failed to do and in fact exceeded, abused,

manipulated and underhandedly betrayed the trust and confidence bestowed on him by his official position.

When Kgd. Perpetuo Faytaren was presented as the first witness for the complainant, he without a doubt has proven the allegations in the complaint. His consistent and straightforward narration of facts based on unquestionable pieces of documentary evidence was never rebutted by the respondent. The same testimony was corroborated on all material points by Larry M. Noche, Secretary of Sta. Clara, Batangas City, when the latter was presented to testify. On the contrary, the allegations in the complaint that respondent procure a container van from Siemens Power Operations Inc. without authority, that it was sold without a resolution for the purpose, that the proceeds were expended by him without an appropriation ordinance and that no posting for purposes of notice was made by him, were strengthened by the respondent himself as appearing in his Sinumpaang Salaysay dated 3 December 2012 and during his cross-examination in which the following facts were culled to wit:

Atty. Maralit: At sabi nyo ho ay ipinagbili itong container van na ito.

Pang. Abdon: Opo dahil iyan po ay scrap na at noong Makita kong walang sahig at butas butas na ang tagiliran ay tumawag ako kina Mam Ana na ung maaari ay ipagbili na ang container van at hindi na pakikinabangan.xxxxxxxx

Atty. Maralit: Salamat ho pangulo. Doon pos a inyong pagkakabenta nitong container van na ito, kayo ga ho ay may ipinagawa man lamang na resolusyon para ho maipagbili ang container van na ito?

Pang. Abdon: opo

Atty. Maralit: Ano po ang resolusyon na iyon?

Pang. Abdon: sinabi naming sa sesyon na itong container van na ito ay hindi na mapapakinabangan at kailangan dyan ay ipagbili na at ang pinagbilhan ng van ay maipagpagawa ng barangay.

Atty. Maralit: Iyan po ay nasa minutes ninyo?

Pang. Abdon: Opo.

Atty. Maralit: wala pos a resolusyon?

Pang. Abdon: May minutes lamang po.

Atty. Maralit: Salamat po. At iyong sinasabi ninyo at iyong pinagbilhan dito sa container van ay ginamit ninyo sa pagsasaayos sa mga sira ng barangay tulad ng pagbili ng uniporme ng mga tanod at pambili ng kanilang pangulam, tama ho ako dun?

Pang. Abdon: Opo.

Atty. Maralit: Pangulo magkano ho ang pinagbilhan sa container van?

Pang. Abdon: Ang totoo po niyan ang pinagbilhan sa container van ay halagang P20,000, ngayon po ay sumita kami ng truck na limang libong piso po may natirang labinlimang libong piso na ipinagpagawa po ang pinto na sliding door ng barangay na nasira at saka iyong kubeta o cr ng mga babae ay lumalabas po na ako ay abunado pa at ako ay nagdagdag pa ng sarili kong bulsa, iyon po ang masasabi ko...

Atty. Maralit: Salamat po, sa makatuwid pangulo iyong pinagbilhan sa container van ay inyong ginastos sa pambayad sa truck, pagsasaayos ng sira ng barangay, pambili ng uniporme ng mga tanod at pambili din ng ulam ng mga tanod... tama ho iyon?

Pang Abdon: Opo.

Atty. Maralit: Doon pos a pagkakagastos sa pinagbilhan ng container van kayo ga ho man lang ay may resolusyon na ipinagawa para ho mabigyan kayo ng kapangyarihan na gastusin itong prang ito?

Pang. Abdon: Iyon po ay nagsesyon at ang sabi ko nga po ang pinagbilhan ng container van ay ipagpapagawa ng kasiraan ng barangay gaya ng pinto ng cr ng mga babae, sliding door na napakalaki at saka uniporme at pagkain ng mga tanod.

Atty. Maralit: Iyan po ay nasa minutes?

Pang. Abdon: opo.

Atty. Maralit: Wala po sa resolusyon?

Pang. Abdon: Iyan po ang napagusapan naming eh.¹

A cerebral analysis of respondent's testimony would reveal that no ordinance or resolution whatsoever was enacted by the Sangguniang Barangay of Sta. Clara, Batangas City for the respondent to procure the container van; there was no ordinance or resolution allowing him to sell the same much less an appropriation ordinance for him to spend the proceeds thereof in violation of the Local Government code of 1991. The evidence presented by the respondent regarding the surrounding circumstances of the case are but minutes of the meeting which are far and distinct from an ordinance or resolution as mandated by the law. Suffice it to say that respondent is anchoring the legality of his actions by the expedient presentation of the minutes of the meeting. In this regard, respondent's claim is misplaced.

¹ TSN dated 14 January 2013.

It is very elementary that minutes of the meeting are not resolutions and vice versa. While minutes are records of what transpired during the meeting, resolutions are declaration of the sentiment or opinion of a law-making body on specific matter. Minutes of the meeting are records entered by the secretary in the exercise of his function as such while resolutions are the very act of the sanggunian as a collegial body so much so that the latter serves as a source of right or power it being a law while the former is not.

As admitted by the respondent and his witnesses such as Kittros cole Driz, Arlene Lacsama and Jaime Mandigma in their respective Sinumpaang Salaysay and open court testimonies and proven during the proceedings of this case, Sta. Clara, Batangas City has procured and received a twenty footer container van from Siemens Power Operations Inc. through the respondent himself; that it was sold on the same day it was released for twenty thousand pesos and the proceeds was expended to finance the repairs of the barangay hall, the uniform and food of the barangay tanod and in hiring the truck where the container van was loaded. However, no resolution/ordinance was ever enacted empowering the respondent to procure the said container van. No appropriation ordinance was promulgated for the spending of the proceeds therein and no posting of the said transaction was done to inform the sanggunian concerned much less the barangay. These antecedents are palpable and blatant violation of the following provisions of R.A. 7160 to wit:

Section 48 stating that, ²**Local Legislative Powers shall be exercised by the xxxxxxxxxxxx and the Sangguniang Barangay in case of Barangay".**

Section 389 (b) ³**which provides that the Punong Barangay has the power to "negotiate, enter into, and sign contacts for and in behalf of the barangay, upon authorization of the Sangguniang Barangay".**

Section 305 (a) ⁴**No money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law".**

² Section 48, R.A. 7160, Local Government Code of 1991.

³ Section 389 (b), R.A. 7160, Local Government Code of 1991.

⁴ Section 305 (a), R.A. 7160, Local Government Code of 1991.

Section 22 (c) ⁵**Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall**". (Emphasis and Underscoring supplied)

Moreover, not only that respondent violated the above-cited provisions of the Local Government Code. It was also established that respondent being the barangay chairman of Sta. Clara, Batangas City, unduly commanded the Barangay Secretary Larry M. Noche to draft the Resolution No. 5, dated 12 March 2012, Series of 2012 without undergoing the necessary deliberation or discussion in a sanggunian session called for the purpose. Respondent made it appear in the minutes of the barangay session dated 17 April 2012 that the matter contained in the said resolution was discussed by the Sanggunian. In commanding Barangay Secretary Larry M. Noche to forged Resolution No. 5, Series of 2012 dated 12 March 2012 by making it appear through certification thereof that it undergone a regular session held when in fact there is none, is an act falsification punishable under Article 171 (2) of the Revised Penal Code because respondent through Larry M. Noche **‘cause it to appear that persons have participated in any act or proceeding when they did not in fact so participate**. This was bolstered by the testimony of Larry M. Noche in open court to wit:

Coun. Macarandang: Okey, sabi mo ay may nagsabi sa iyo...

Mr. Noche: Yes your Honor.

Coun. Macarandang: Na gawin ang resolution na ito, sapagkat ikaw naman ay msunuring secretary, di ginawa mo ito ano?

Mr. Noche: Yes your Honor.

Coun. Macarandang: Tanong ko, sinong nagpagawa?

Mr. Noche: Tumawag po si....

Coun. Macarandang: Ang tanong ay sinong nagpagawa, yon lamang.

Mr. Noche: Si pangulo po.

Coun. Macarandang: Si Pangulong Casapao?

⁵ Section 22 ©, R.A. 7160, Local Government Code of 1991.

⁶ Article 171 (2) of the Revised Penal Code of the Philippines.

Mr. Noche: Abdon po.

Coun. Macarandang: A, si Pangulong Abdon. At dahil ikaw ay masunurin ay di ginawa mo naman.

Mr. Noche: Yes your Honor.

Coun. Macarandang: Oo na ang ibig sabihin nauna lamang ang resolusyon na ito kesa sa pagpupulong noo april 17?

Mr. Noche: Yes your Honor.

Coun. Macarandang: Bago mag April 17, napagpulangan na бага ang tungkol sa van o hindi pa?

Mr. Noche: ng mga konsehal po?

Coun. Macarandang: Hindi, ng barangay yong pulong ng sesyon. O ito lamang pagpupulong na April 17 na may tala ka?

Mr. Noche: Istoryahanlang po ng ibang konsehal, yon lang po ganon.⁷

In trying to deny the allegations in the complaint, the respondent claimed that there was no donation; that Resolusyon No. 5 dated 12 March 2012, Series of 2012 is not a resolution so to speak but a draft resolution (balangkas); and that his actions was done in accordance with the general welfare clause enshrined under the Local Government Code. In this regard, respondent's assertions are mislaid. These are mere say so of him which were belied by his very claim and by the proven facts of the case.

Respondent seemed to be unmindful that in his Answer with Motion to Dismiss dated 6 September 2012 he admitted in Paragraphs 4 and 7 thereof the existence of the donation. Furthermore, in Paragraph 2.b. of the same Answer with Motion to Dismiss respondent admitted and reiterated that Resolusyon No. 5 is actually a resolution. In the said paragraph, respondent stated that **⁸“Furthermore the resolution was dated March 12, 2012 and not May 12, 2012 as evidence by the Resolusyon Blg. 5, series of 2012 hereto attached as ANNEX C.”**

These are admissions which need not be proven by any documentary evidence such as the contract itself and by a belated claim that Resolusyon No. 5 is just a “balangkas”. Section 4, Rule 129 of the Rules of Court is decisive on this matter.

⁷ TSN dated 26 September 2012, page 71.

⁸ Respondents' Answer with Motion to Dismiss dated 6 September 2012, Page 1.

⁹Section 4: Judicial Admission.-An admission, verbal of written, made by a party in the course of the proceedings in the same case, does not require proof.XXXXXX

Evidently, such belated claims of the respondent are but make faces set up merely to stir confusion and thereby cover up his wrongdoings.

There is no question that the **general welfare clause** under the Local Government Code was enacted to insure efficiency among local government units. However, **it was surely designed not to perpetrate acts in defiance of clear provisions of law.** Otherwise, the said provision would have been struck down by the proper authority long before the respondent was elected to public office. The general welfare clause is intended for local government units to be self-reliant but in doing so, the same provision did not say that one can dispense with the elementary and fundamental processes set up to avoid arbitrariness and abuses which may be committed. Therefore, respondent could not raise the referred doctrine to make it appear that his actions are within the bounds of the law when in truth and in fact they are not from the very beginning.

Besides, if respondent really has the intention to comply with the proper procedure laid down under the Local Government Code concerning procurement, why did he not call for the presence of all his sanggunian members so they could prepare the needed ordinance instead of interposing the minutes of the meeting dated 17 April 2012 as the ordinance made by them. It should be noted that the questioned resolution was dated 12 March 2012. However, the matters thereof were discussed only on 17 April 2012. **It is against human experience and natural course of things that the resolution was prepared ahead of the date the things contained thereon were discussed.** If respondent really not intended Resolusyon No. 5 to be the resolution which will be used to obtain the container van and that when he and Jaime Mandigma went to Siemens Power Operations Inc. on March 28, 2012, the purpose was only to show what they claim as "balangkas" to Siemens, why did they not thereafter draft an ordinance or resolution anew to replace the alleged "balangkas" considering that the container van was released to respondent on May 2, 2012. Obviously, Resolusyon No. 5 Series of 2012 was given by the respondent to

⁹ Section 4, Rule 129 of the Revised Rules of Court.

Siemens not as a "balangkas" but as a falsified resolution/ordinance manipulated by him in grave defiance of the law to be able to take possession of the container van with the end in view of selling the same and misappropriate the proceeds for his own benefit.

It was never denied by the respondent that he accepted the subject container van for and in behalf of Barangay Sta. Clara, Batangas City. Thus, when he received the same from Siemens Power Operations Inc., the barangay has acquired legal personality to own the container including the proceeds of its subsequent selling in the amount of Php20,000. He therefore held it in trust in favour of his constituents. Nevertheless, respondent could not account for the said proceeds. He may have presented questionable receipts of its disbursements but it was done by him without authority. Besides, respondent merely alleged that the Php5,000 of it was used to pay the truck where the container van was loaded but he obviously failed to present any receipt for it aside from spending the money without any appropriation ordinance enacted by the sanggunian concerned for the purpose. By abusing the confidence reposed in him by the inhabitants of Sta. Clara, Batangas City and by misappropriating the proceeds from the selling of the container van, respondent made himself liable for a criminal act tantamount to qualified theft punishable under article 310 of the Revised Penal Code.

All told, it is the humble submission of the complainants through this representation that respondent is guilty of the following charges:

1. **Abuse of authority and misconduct in office, by commanding Larry M. Noche to forge Resolusyon No. 5, Series of 2012; in procuring the container van without authority to do so and in expending the proceeds thereof without the necessary appropriation ordinance.** As held by the Supreme Court in *Lacson v. Roque*, ¹⁰Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as private individual. In such cases, it has been said at all times, it is

¹⁰ LACSON V. ROQUE, 92 Phil. 456.

necessary to separate the character of a man from the character of the officer.

2. Dishonesty, in failing to inform the concerned sanggunian members of the circumstances surrounding the donation and subsequent disposition of the container van and in making it to appear that the sanggunian members have participated in the passage of the above-mentioned resolution when in fact they did not. As held by the Supreme Court in *Arca v. Lepanto Consolidated Mining Co.*,¹¹ dishonesty is the concealment or distortion of truth in a matter of fact. It signifies the absence of integrity, a disposition to betray, cheat, deceive or defraud and bad faith;
3. Dereliction of duty in failing to report to the sanggunian concerned the matters concerning the procurement and subsequent selling of the donated container van and in not posting notice thereof within the vicinity or at or so near the barangay hall for information of his constituents;
4. Qualified theft, in abusing the confidence reposed in him by his constituents through misappropriation of the proceeds from the selling of the container van; and
5. Falsification, by commanding Larry M. Noche to forge Resolusyon No. 5 and in causing it to appear that the members of the sanggunian concerned have participated in such act or proceeding when they did not in fact participate.

Under Section 60 of R.A. 7160, otherwise known as the Local Government Code of 1991, the following are the grounds for disciplinary action of local elective official.

¹¹ *Arca v. Lepanto Consolidated Mining Co.*, CA-G.R. No. 17679-R, 24 November 1958.

¹²Section 60. **Grounds for Disciplinary Action-** An elective local official may be disciplined, suspended, or **REMOVED** from office on any of the following grounds:

- a. xxxxxxxxxxxx;
- b. xxxxxxxxxxxx;
- c. **Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;**
- d. **Commission of any offense involving moral turpitude or an offense punishable by at least prison mayor;**
- e. **Abuse of authority;**
- f. xxxxxxxxxxxx;
- g. xxxxxxxxxxxx;
- h. xxxxxxxxxxxx; (Emphasis and Underscoring supplied)

The gravity of the offenses committed by the respondent in the case at bar merit only a definite and unmistakable penalty of removal from office and perpetual disqualification to hold public office. Besides, under Section 23, Rule XIV of the Administrative Code of 1987, dishonesty (par. a) and falsification (par. f) are considered grave offenses warranting the penalty of dismissal from service upon commission of the first offense.

Time and again, ¹³public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice and lead modest lives. ¹⁴When a public officer takes an oath of office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of duties, a public officer is to use that prudence, caution, and attention which careful persons use in the management of their affairs.

¹⁵Public service requires integrity and discipline. For this reason, public servants must exhibit at all times the highest sense of honesty and dedication to duty. By the very nature of their duties and responsibilities, public officers and employees must faithfully adhere to hold sacred and render inviolate the

¹² Section 60, R.A. 7160, Local Government Code of 1991.

¹³ Section 1, Article XI, 1987 Philippine Constitution.

¹⁴ Galero v. Court of Appeals, G.R. No. 151121, July 21, 2008, 559 SCRA 11

¹⁵ Vide Farolan v. Solmac Marketing Corporation, G.R. No. 83589, March 13, 1991, 195 SCRA 168, 177-178

constitutional principle that a public office is a public trust and must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.

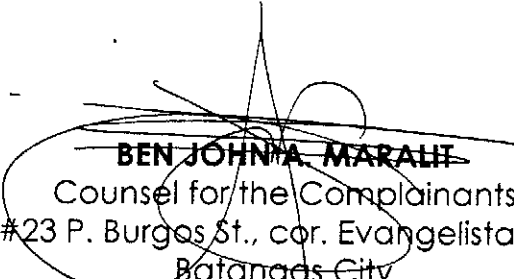
A public officer who failed to live by this rule is unworthy of being one. Not only that he breaches the trust reposed in him but he also fails to be abided by the authority given to him by those to whom his authority emanated, the people. Such a person has demonstrated to be not deserving of the privilege of serving the people and considering that the reason for his being in the public office had ceased, there is no more reason for him to remain in his position, so thus respondent.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Body that the respondent be declared guilty of the charges and an order be issued recommending the removal of the respondent from office with perpetual disqualification to hold public office.

Other reliefs just and equitable under the premises are likewise prayed for.

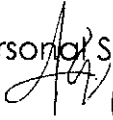
RESPECTFULLY SUBMITTED
BATANGAS CITY, 18 February 2013.


BEN JOHN A. MARALIT
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Roll No. 60977
Date of admission/3-26-12/

Copy furnished:

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Counsel for the Respondent
Rizal Avenue, Batangas City

By Person of Service

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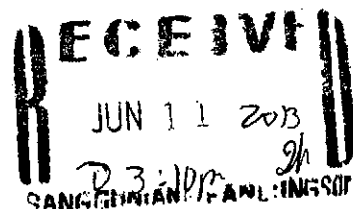
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REPUBLIC OF THE PHILIPPINES

BATANGAS CITY

SANGGUNIANG PANGLUNGSOD

STA. CLARA BATANGAS CITY COMMUNITY
ASSOCIATION INC., represented by its
Chairman PEDRO P. CASAPAO,
Complainant,



ADMIN. CASE NO: 01-2012

for

MISCONDUCT IN OFFICE
GROSS NEGLIGENCE AND
DERELICTION OF DUTY

-versus-

PUNONG BRGY. FLORENCIO V. ABDON
STA. CLARA, BATANGAS CITY

Respondent.

X-----X

"No decision shall be rendered by
ANY COURT without expressing
therein clearly and distinctly the
facts and the law on which it is
based".¹

MOTION FOR RECONSIDERATION

COMES NOW, the complainant, through the undersigned counsel and
unto this Honorable Body, by way of this Motion, most respectfully states that:

1. The undersigned received the decision dated 20 May 2013 of the
Honorable Body in the above-captioned Administrative Cases on 29 May 2013.
Subsequently, Resolution No. 74, Series of 2013 dated 27 May 2013 was passed
by the SangguniangPanglungsod of Batangas City and received by the

¹ Article VIII, Section 14 of the 1987 Philippine Constitution.

undersigned on 30 May 2013 which adopted in toto the same decision as the final resolution of the aforementioned Administrative Cases;

2. As discussed and resolved in the referred decision, this Honorable Body acquitted the respondent from all the administrative charges reasoning out that the complainant was not able to adduce substantial evidence to support its claim. Resolution of the issues in the alluded decision reads as follows:

On the first issue as to whether there was a proper turn-over of the property of barangay Sta. Clara to the respondent, this Honorable Body ratiocinated that:"Under the COA Rules, a turn over to be proper and official, an inventory/report must be made and the property to be turned-over must be listed by the out-going official. The acknowledgement of having received the property must be signed by the outgoing and incoming officials. Was there any inventory/report? Was there an acknowledgement? The answer is NEGATIVE. Was there an ARE (Acknowledgement Receipt of Equipment)? The answer is also NEGATIVE. Hence the Investigating authority cannot admit that there was a proper and official turn over of the property. The complainant should have presented documentary evidence required by law".

On the second issue as to whether the appointment of Brgy.Kagawad Alfredo Maranan as property custodian legal, it decided in the following manner. "As provided in Section 395, par e (1) of R.A. 7160, the barangay treasurer shall keep custody of the barangay funds and properties. Hence, the barangay custodian is the official custodian f barangay properties. The appointment of Kgd. Alfredo Maranan on the meeting of 17 October 2011 presided by Kgd. Perpetuo P. Faytaren is without legal basis and in violation of law".

On the third issue as to whether the respondent was guilty of the crime as charged, this Honorable Body held that, "The respondent punong barangay is not guilty of the offenses charge of misconduct in office, gross negligence and dereliction of duty. The evidence presented by the complainant has not proven by substantial evidence the offense charged. No substantial evidence, oral or documentary, was presented by the complainant to prove that the respondent committed misconduct in office, gross negligence and dereliction of duty". (underscoring supplied)

Copies of the referred Resolution and Decision are hereto attached, made integral part hereof and marked as **ANNEXES "A"** and **"B"** respectively;

3. Elementary it is that the Sangguniang Panglungsod under the Local Government Code is a Local Legislative Body that exercises quasi-judicial powers in disciplining local elective officials which is delineated under Sections 60 to 68 of the same law. Quasi-judicial function on the other hand is a term which applies to the actions, discretions, etc, of public administrative officers or bodies required to investigate facts or ascertain the existence of facts, hold hearings and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.² In the exercise of such power, a local legislative body acts as a court and therefore is bound by the time-honored constitutional rule that, **"No decision shall be rendered by ANY COURT without expressing therein clearly and distinctly the facts and the law on which it is based"**.³ No deviation is allowed under the referred supreme law for doing so will entail denial of due process to one of the litigants. As held in Velarde vs. Social Justice Society, "Faithful adherence to the requirements of Section 14, Article VIII of the Constitution is indisputably a paramount component of due process and fair play. It is likewise demanded by the due process clause of the Constitution. The parties to litigation should be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. The court cannot simply say that judgment is rendered in favor of X and against Y and just leave it at that without any justification whatsoever for its action. The losing party is entitled to know why he lost, so he may appeal to the higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. It is, thus, a safeguard against the impetuosity of the judge, preventing him from deciding ipse dixit. Vouchsafed neither the sword nor the purse by the Constitution but nonetheless vested with the sovereign prerogative of passing judgment on the life, liberty or

²Ligangmga Barangay vs. The City Mayor of Manila, 21 January 2004.

³Supra.

property of his fellowmen, the judge must ultimately depend on the power of reason for sustained public confidence in the justness of his decision."⁴
(underscoring supplied)

4. In the instant case, the Decision dated 20 May 2013 which was adopted in all aspect under Resolution No. 74, Series of 2013, the Honorable Investigating Body cited and recited the evidence presented by the respondent alone without any reference whatsoever with the evidence adduced by the complainant during the proceedings. In this regard, worthy it is to discuss the issues presented in the said Decision to wit:

a. **FIRST ISSUE:** Was there a proper turn over from the property of barangay Sta. Clara to the respondent barangay chairman?

While the complainant does not deny that no written evidence was presented regarding the list of the properties that were turned over by the previous barangay chairman Pedro P. Casapao to herein respondent, the latter's admission before the body during his testimony that Barangay Sta. Clara under his chairmanship took responsibility in the custody of the boxes of PDX Wires which were the subject of this case suffice to answer the query. In fact, respondent categorically stated that he is well aware of the presence of the said boxes of PDX Wires within the premises of their barangay hall. During his cross examination the following factual admissions were elicited from his very mouth.

Atty. Maralit: Nong kayo ho ay naging pangulo ay itong pinaguusapan nating mga circuit breakers ay nasa loob nang bararigay hall?

Brgy. Capt. Abdon: Yan po ay nasa loob ng barangay hall at nadatnan ko na yan.

Xxxxxxxx

Atty. Maralit: Pero alam nyo ho na nasa barangay yoon nung kayo ay umupo?

⁴ Bro. Mariano "Mike" Z. Velarde, 28 April 2004.

Brgy. Capt. Abdon: Ay yon nga laang ang nakikita ko
yung kuryenteng nakabunton don sa ilalim ng hagdan
xxxxxxxxxx⁵

While administrative proceedings are not bound by technical rules of procedures, it does not mean that those established methods of ascertaining the truth shall be disregarded and set at naught. It should be noted that respondent unequivocally admitted that he has knowledge of the boxes of PDX Wires' presence inside the barangay hall. A cerebral reading of his answers during the cross examination pointed to a single and ultimate conclusion. It is against human nature and natural course of things that private persons' properties will be kept inside a public infrastructure, much less a barangay hall. Respondent is therefore aware that the said boxes of PDX Wires belong to Barangay Sta. Clara. Such an admission is a judicial one that requires no written evidence. **AN ADMISSION, VERBAL OR WRITTEN, MADE BY A PARTY IN THE COURSE OF THE PROCEEDINGS IN THE SAME CASE, DOES NOT REQUIRE PROOF.**⁶ (Emphasis and underscoring supplied)

b. **SECOND ISSUE:** Was the appointment of Kgd. Alfredo Maranan legal?

The complainant did not, at any point in time try or attempt to prove or claim the legality of the former's appointment as discussed in the decision.

ASSUMING THAT THE APPOINTMENT OF KGD. MARANAN IS ILLEGAL AND CONSIDERING THAT NO PROPERTY CUSTODIAN WAS EVER APPOINTED BY THE RESPONDENT UNDER HIS ENTIRE CHAIRMANSHIP, THEN BEING THE CHIEF EXECUTIVE OF HIS BARANGAY, HE IS THE KEEPER AND CUSTODIAN OF THE ALL BARANGAY'S PROPERTIES. AS SUCH, HE CAN BE HELD RESPONSIBLE FOR THEIR LOST THROUGH HIS FAULT, BE IT INTENTIONAL OR THROUGH NEGLIGENCE. IN THIS REGARD, THE UNDERSIGNED WISHES TO INVITE THE ATTENTION OF THE HONORABLE INVESTIGATING BODY THAT RESPONDENT'S NEGLIGENCE IN RELATION TO THE LOST OF THE SUBJECT BOXES OF PDX WIRES IS THE VERY TRUST IN ONE OF THE COMPLAINANT'S CHARGES AGAINST HIM THAT IS, GROSS NEGLIGENCE.

⁵ TSN dated 9 January 2013, pp. 8 to 9.

⁶ Rule 129, Section 4 of the Rules of Court.

In like manner, the complainant charged the respondent with gross misconduct and dereliction of duty. **NO DISCUSSION RELATIVE TO THE SAID CHARGES CAN BE GLEANED FROM THE DECISION.**

It was proven during the proceedings of the above-captioned cases that respondent did not observe the proper way of distributing the said boxes of PDX Wires which were supposedly destined for the named beneficiaries. Respondent's answer during his cross examination was clear on this issue to wit:

Atty. Maralit: Thank you your honor. Pagulo sabi nyo ho kanina, pagka may nahingi sa inyo ng kuryente ay hindi nyo beneberipika and pangalan, tama ho yon?

Coun.Macarandang: opo. Opo sagot. Sige.

Atty. Maralit: Ibig sabihin ho, basta may humingi sa inyo kayoy naawa inyong binibigyan ng kuryente. At ito hong ibinibigay nyong kuryente galling sa mga kahon ng kuryente?

Coun.Macarandang: Tay muna, tay muna. Pakigamit ho, ay hindi ho maiirecord.

Brgy. Capt. Abdon: opo, opo.

Coun.Macarandang: o sige. Ang sagot ay opo.Okey, ang tango ay hindi napaparecord eh.

Atty. Maralit: Itong mga binibigay ninyong kahon ng kuryente ay nanggagaling don sa mga kuryente na nasa barangay hall na inyong dinatnan, tama ho yon?

Brgy. Capt. Abdon: Tama ho yon, your honor ngayon.

xxxxxxxxxxxxx⁷

The foregoing open court admissions of the respondent regarding his **unguided, unbridled and negligent act of giving away the boxes of PDX Wires** despite knowledge of the real beneficiaries thereof unmistakably constitutes the offense as charged. One need not be a rocket scientist to know this glaring truth less of an honorable barangay chairman.

⁷ TSN dated 9 January 2013, pp. 12.

In addition to his admissions, respondent ultimately revealed that he merely admonished and warned his barangay tanods who told him that they were the ones that unlawfully took and burned the PDX Wires inside the Sta. Clara elementary School, just behind the barangay hall.

Atty. Maralit: Thank you your honor. Nong malaman nyo ho na itong mga barangay tanod ang may kagagawan nong pagkakabalat non, kayo ho ay nagimbestiga diba ho? At ang sabi nyo ho sa inyong salaysay ay ng umamin, pinagsabihan nyo?

Brgy. Capt. Abdon: Tama ho yon your honor.

Atty. Maralit: At sabinyo ho pagkainulit pa nila ay tatanggalin nyo na sa pagiging barangay tanod, tama ho yon?

Brgy. Capt. Abdon: opo.

Atty. Maralit: Yon laang ho ang ginawa ninyo walangiba?

Brgy. Capt. Abdon: ahh.....

Atty. Maralit: Inyo hong pinagsabihan sila?

Brgy. Capt. Abdon: Pinagsabihan ko laang sila at humingi naman ng tawad sa akin na kung sakaling maulit pa ay tatanggalin ko.

xxxxxxxxxxxx⁸

The subject boxes of PDX Wires have predetermined beneficiaries that are in need of electrification. Now that the PDX Wires cannot be recovered, how can they enjoy what should have been granted to them unconditionally? Had the respondent did something aside from mere reprimanding the concerned barangay tanods such as filing a criminal case he being the barangay chairman, the PDX Wires could have been replaced. Miserably, he did not and unjustifiably continues in failing to do that which expected of him. Is this not a

⁸ TSN dated 9 January 2012, pp. 15.

grave dereliction of his duty to the people who put him the seemingly untouchable armor of being a barangay chairman?

5. To sum it all up, the **THIRD ISSUE** concerning the evidence needed to convict the respondent of the charges can be answered even without running around the bush. In administrative cases, only substantial evidence is needed. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.⁹

6. A reading of the decision which is the subject of this motion conceivably shows that it was not supported by any evidence on record and adduced during the trial. Given the antecedents, the complainant through the undersigned, firmly believe that based on the evidence presented during the proceedings in this case including the admissions of the respondent himself in open court, SUBSTANTIAL EVIDENCE AGAINST THE LATTER HAS BEEN SUFFICIENTLY PROVED AND ESTABLISHED. Considering that one of the fundamental principles of due process in administrative proceeding was that, decision must be rendered in such a manner that parties to the controversy can know various issues involved and the reason for the decision rendered¹⁰ which the decision dated 20 May 2013 failed to elucidate with clarity and definiteness, humble reconsideration of the same by the Honorable Investigating Body is but a necessity so that true justice may be served;

7. This motion is being filed solely for the foregoing reason and not for purposes of delay.

PRAYER

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Body that the decision dated 20 May 2013 be reconsidered and a new one entered finding the respondent guilty of the charges thereby recommending his removal from office with perpetual disqualification to hold public office.

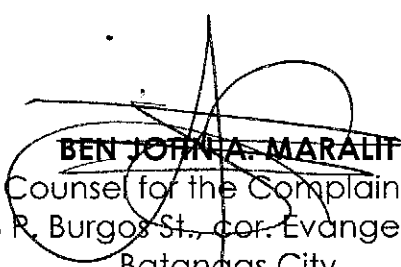
⁹ROSARIO L. DADULO vs. CA, April 13, 2007

¹⁰AngTibayVs. CIR, 27 February 1940.

Other reliefs just and equitable under the premises are likewise prayed for.

Respectfully submitted.

Batangas City, 11 June 2013.


BEN JOHN A. MARALIT
Counsel for the Complainant
#23 R. Burgos St., cor. Evangelista St.,
Batangas City
PTR No. 1835396/1-04-13/Bats. City
IBP Lifetime No. 011119
Roll No. 60977
MCLE Compliance No. IV-0010907/1/2/13

Copy furnished:


Atty. Pepito Mendoza
Rizal Avenue,
Batangas City

By personal Service

REPUBLIC OF THE PHILIPPINES
BATANGAS CITY

A

OFFICE OF THE SANGGUNIANG PANLUNGSOD

EXCERPT FROM THE MINUTES OF THE REGULAR SESSION HELD BY THE
MEMBERS OF THE SANGGUNIANG PANLUNGSOD OF BATANGAS CITY
ON MAY 27, 2013 AT THE SANGGUNIANG SESSION HALL

PRESENT:

Hon. Jose Y. Tolentino,	Presiding Officer
Hon. Dexter R. Buted,	Councilor
Hon. Claudette U. Ambida,	"
Hon. Mario Vittorio A. Mariño,	"
Hon. Sergie Rex M. Atienza,	"
Hon. Elizalde M. Ferriols Jr.,	"
Hon. Armando C. Lazarte,	"
Hon. Narciso B. Macarandang,	"
Hon. Prudencio A. Cepillo,	(ABC-Rep.)
Hon. Richard I. Cabatay,	(SK-Rep.)

ABSENT:

Hon. Hamilton G. Blanco,	Councilor
Hon. Eloisa Angela D. Portugal,	"
Hon. Luisa F. Macaraig,	"

"On motion of Councilor Cepillo seconded by Councilor Mariño, the following Resolution was Adopted:

RESOLUTION NO. 74 S. 2013

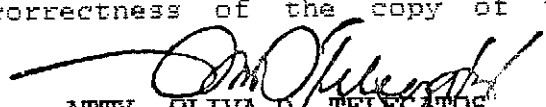
ADOPTING AND APPROVING THE DECISION OF THE INVESTIGATING
COMMITTEE ON ADMINISTRATIVE CASE NO. 01-2012, STA. CLARA BATANGAS
COMMUNITY ASSOCIATION, INC. REPRESENTED BY MR. PEDRO P. CASAPAO,
CHAIRMAN VS. PUNONG BARANGAY FLORENCIO V. ABDON, STA. CLARA,
BATANGAS CITY

RESOLVED, to adopt the Decision of the Investigating
Committee on Administrative Case No. 01-2012, Sta. Clara Batangas
Community Association, Inc., represented by Mr. Pedro P. Casapao,
Chairman vs. Punong Barangay Florencio V. Abdon, as the Decision
of the Sangguniang Panlungsod.


RESOLVED FURTHER, to approve the aforesaid Decision.

UNANIMOUSLY APPROVED."

I hereby certify to the correctness of the copy of the
foregoing Resolution.


ATTY. OLIVA D. TELECATOS
Secretary
Sangguniang Panlungsod

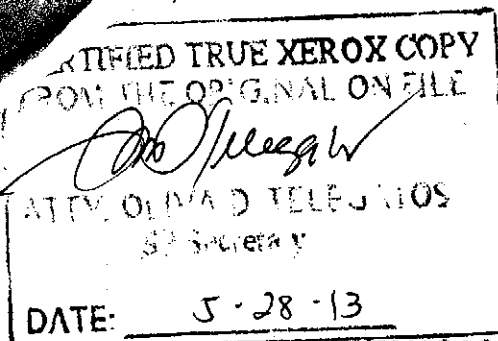
ATTESTED:


JOSE Y. TOLENTINO
Presiding Officer

SPONSORS

COUN. PRUDENCIO A. CEPILLO	COUN. NARCISO B. MACARANDANG
COUN. CLAUDETTE U. AMEIDA	COUN. ARMANDO C. LAZARTE
COUN. ELOISA D. LOYOLA PORTUGAL	COUN. RICHARD I. CABATAY
COUN. ELIZALDE M. FERRIOLS JR.	

ODT/yollia...



REPUBLIC OF THE PHILIPPINES
BATANGAS CITY

SANGGUNIANG PANLUNGSOD

real by
Jm
5-21-13
24:20 pm

STA. CLARA BATANGAS COMMUNITY
ASSOCIATION, INC.
Represented by G. Pedro P. Casapao, Chairman

ANNEX

B

Administrative Case No. 01-2012

-versus

for: MISCONDUCT IN OFFICE,
GROSS NEGLIGENCE/
DERELICTION OF DUTY

Punong Barangay Florencio V. Abdon
Sta. Clara, Batangas City

X-----X

DECISION

PRELIMINARY:

Bereft of any unnecessary allegations by the parties, the case arose out of the missing boxes of PDX Wire and Circuit Breakers. Culled from the testimonies, oral and documentary evidence, the following points remain unrebutted:

1st – On **November 30, 2010** a public ceremony was held in front of the Barangay Hall wherein the Mr. Pedro P. Casapao, former Brgy. Captain of Sta. Clara turn-over of position to Mr. Florencio V. Abdon as the newly elected Barangay Captain of Brgy. Sta. Clara. The turn-over of position was witnessed by the public.

2nd – The PDX Wire and Circuit Breakers were given by Mayor Eduardo B. Dimacuha upon request of Mr. Pedro P. Casapao, the then Barangay Captain.

3rd – The PDX Wire requested by Mr. Pedro P. Casapao for the residents of Puyo Property, however, the Punong Barangay, and Kagawad Alfredo Maranan gave also the PDX Wire to other Brgy. residents.

4th – That Kagawad Alfredo Maranan was the property custodian of the PDX Wire and Circuit Breaker during the incumbency of Mr. Pedro P. Casapao and continued to be such during the incumbency of the newly elected Barangay Captain Florencio V. Abdon

5th – On **September 9, 2011**, Kgd. Alfredo Maranan was relieved by Brgy. Captain Florencio V. Abdon as property custodian.

6th – On **October 17, 2011**, a meeting was held between Kagawad Perpetuo P. Faytaren, Kagawad Virgilio Cunag, Kagawad Alfredo Maranan and Mr. Pedro Casapao and officials of the Sta. Clara, Batangas City Community Association. During that meeting of **October 17, 2011**, wherein Kgd. Perpetuo P. Faytaren was the presiding Officer, they re-appointed Kgd. Alfredo Maranan as property custodian of the PDX Wire and Circuit Breakers even without the consent and authority of the Barangay Captain.

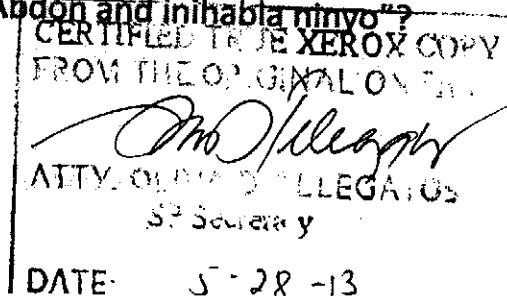
7th – On **May 8, 2012** of Barangay Officials learned of the lost of the PDX Wire and Circuit Breakers which was place under the stairs of the first floor of the Barangay Hall upon instruction of Mr. Pedro Casapao to the Barangay Tanod.

8th – The safety of the PDX Wire and Circuit Breakers were place under the custody of Kgd. Alfredo Maranan, being the property Custodian appointed by the Barangay Kagawad on **October 17, 2011** meeting.

9th – Immediately the Brgy. Captain Florencio V. Abdon conducted an investigation and found out that the PDX Wire was taken by Barangay Tanod Gerry Noche, Cesar Evangelio, Danny Noche, Elmar Pagcaliwagan and Bernard Ferrol. Only Bernard Ferrol was dismissed from the service as Barangay Tanod, but the others responsible were chastised and were warned by Brgy. Captain Florencio V. Abdon that they will be dismissed from the service if they will again repeat the same offense.

10th – When ask by Chairman Prudencio Cepillo why the Barangay Captain Florencio V. Abdon was charge of the alleged offenses when the property custodian was Kgd. Alfredo Maranan. The questions and answered reads:

Q – CHAIR – “Ang tanong ko ay bakit si Pangulong Abdon and inihabla ninyo?”



A – MR. CASAPAO – “Una po gusto ko pong iparating bilang isang barangay captain na may karapatan at obligasyon pang tungkulin na pamunuan ang mga mamamayan ng Sta. Clara, sundin ang sangguniang barangay pati po ang kanyang pinaglilinkurang mamamayan ay siya po ang may karapatan at natural lamang ipatungkol ko ang kasong ito sa aming punong barangay Florencio Abdon”.

ISSUES TO BE RESOLVED BY THE INVESTIGATING AUTHORITY:

FIRST – Was there a proper turn-over of the property of barangay Sta. Clara to the respondent Brgy. Captain?

SECOND – Was the appointment of Brgy. Kagawad Alfredo Maranan as property custodian legal?

THIRD - Is the Respondent Punong Barangay guilty as charged for the offenses stated in the Complaint.

DISCUSSION ON THE ISSUES:

ON FIRST ISSUE – Under the COA rules, a turn over to be proper and official, an inventory/report must be made and the property to be turn-over must be listed by the outgoing official. The acknowledgement of having received the property must be signed by the outgoing and incoming officials. Was there any inventory/report? Was there an acknowledgment? The Answer is **NEGATIVE**. Was there an ARE (Acknowledgment Receipt for Equipment)? The answer is also **NEGATIVE**. Hence, the Investigating Authority cannot admit that there was a proper and official turn-over of the property. The complainant should have presented documentary evidence required by law.

ON THE SECOND ISSUE – As provided by Section 395, par. e (1) of RA 7160, the Barangay Treasurer shall keep custody of barangay funds and properties. Hence, the barangay treasurer is the official custodian of barangay properties. The appointment of Kgd. Alfredo Maranan on the meeting of OCTOBER 17, 2011, presided by Kgd. Faytaren is without legal basis and in violation of law.

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FROM THE ORIGINAL
ATTY. OLIVIA D. [Signature]
SP Secretary

ON THE THIRD ISSUE: The respondent Punong Barangay is not guilty of the offenses charge of Misconduct in Office, Gross Negligence and Dereliction of duty. The evidence presented by the complainant has not proven by substantial evidence the offense charge. No substantial evidence, oral or documentary, was presented by the complainant to prove that the respondent committed misconduct in office, gross negligence and dereliction of duty.

CONCLUSION

WHEREFORE, the Investigating Authority hereby acquits Punong Barangay **Florencio V. Abdon** of the offenses charged and prays that the Sangguniang Panlungsod approves and adopts this Decision as the Decision of the Sangguniang Panlungsod in Administrative Case No. 01-2012.

SO ORDERED.

May 20, 2013.

CONFORME:

COUN. CLAUDETTE U. AMBIDA

COUN. ELOISA DE LOYOLA PORTUGAL

COUN. ERIZALDE M. FERRIOLS JR.

COUN. PRUDENCIO A. CEPILLO
CHAIRMAN

COUN. NARCISO B. MACARANDANG

COUN. ARMANDO C. LAZARTE

COUN. RICHARD I. CABATAY

Copy furnished:

1. Atty. Ben John A. Maralit
Batangas City
2. Atty. Pepito D. Mendoza
Batangas City

