To: Hon. ALEXANDER L. PAJARILLO  
Municipal Mayor  
Mercedes, Camarines Norte  

Thru: PD ROBIN M. MERCADO  
DILG – Camarines Norte  
Daet, Camarines Norte  

Facts:  
The Office of the Mayor requested for the inclusion of the proposed supplemental budget no. 9 in the regular session of the Sangguniang Bayan scheduled on the 7th day of October 2010. Said request was certified as “urgent” but was denied inclusion on the ground that the list of agenda has already been prepared, citing the provisions of their Internal Rules of Procedure which provides that the cut-off date of the submission of agenda will be every Tuesday 8:00 am to 3:00 pm only.  

Due to the non-inclusion of said urgent agenda in the regular session, the Office of the Mayor called for a special session to be held on the next day following the scheduled regular session. However only six (6) of the Sanggunian Members were present, and though constituting a quorum, they did not proceed with the session and instead postponed the same due to the absence of the SB Secretariat.  

Issue:  
1. Can the SB Members who constitute a quorum in a regular or special session temporarily appoint SB Secretariat in case of the latter’s absence?  
2. Can a certified “urgent” measure be excluded in the regular session due to non-compliance of the prescribed cut-off date for submission of agenda?  
3. As between a previously prepared list of agenda vis-à-vis certified “urgent” measure, which must be given preference?  
4. Can the appointing authority legally impose disciplinary sanctions to members of the SB Secretariat who are all absent during the scheduled special session?  
5. In SB composed of eleven (11) members including the Vice Mayor as Presiding Officer, what constitutes a quorum in a regular or special session?
Opinion:

1st query, we answer in the affirmative. The Sanggunian Bayan may appoint a temporary Secretary in case the SB Secretary is absent on a regular or special session. It is true that the SB Secretary’s role is indispensable to any direction that the sanggunian may go, but his/her absence is not a valid reason to postpone the scheduled regular or special session.

Relative to your 2nd and 3rd queries, Art. 103 of the Implementing Rules and Regulations of the LGC provide that “the sanggunian concerned shall adopt or update its existing rules of procedure:” which includes the order and calendar of business, the legislative process and parliamentary procedures, among others. Thus, it can be gleaned from your “draft” Internal Rules and Procedures, that issues on “urgent” measures are being treated as provided under Sec. 33 (b) of your IRP, which we quote:

“Deviation from the prescribed order of business may be done only under the following circumstances:

a. Xxx
b. When the measure to be acted upon by the sanggunian is certified by the Local Chief Executive as urgent, it shall have priority over all other items of business and shall be considered without need of suspending the rules or even if it is not included in the calendar of business. Xxx.”

Considering that this level is in a quandary as to whether the attached IRP is the one approved by the previous sanggunian members or the proposed new IRP of the new set of SB Members, still Sec. 52 (b) of the LGC provides that, “when public interest so demands, special sessions may be called by the local chief executive or by a majority of the members of the sanggunian.”

In this regard, may we emphasize the ruling of the Supreme Court in the case of Alberto Romulo vs. Nicanor Yñiguez (04 February 1986), where the Supreme Court ruled that “Internal Rules do not have the force of law but are merely in the nature of by-laws prescribed for the orderly and convenient conduct of proceedings. They are merely procedural and not substantive. They may be waived or disregarded by the deliberative body and with their observance the courts have no concern”.

“In the light of the said Supreme Court pronouncement, it is thus clear that the Internal Rules of Procedure of that Sangguniang Panlungsod, not being a law, cannot rise above and be more superior than the express provisions of RA 9005 and the Local Government Code. Hence, should there be inconsistency between the law and the Internal Rules of Procedure, the law must always prevail. At this point, it may be well to stress that while the Sanggunian is empowered by law to adopt its own Internal Rules of Procedure, said Rules, however, can only deal on matters not yet governed by law and that the Rules must always be consistent with law. Having raised the issue that the Internal Rules of that Sanggunian excluded the Vice Mayor in the determination of the quorum, may we take this opportunity to advise you of the need to amend that particular Rule in order to conform with the law.” (DILG OP no. 90, s 2007)
Relative to your 4th query, it has to be noted that the Sanggunian Secretary as a career official who is appointed by the Local Vice-Chief Executive may be disciplined by the appointing authority upon existence of a just cause. Thus, members of the SB secretariat may also be subjected to disciplinary sanctions by the appointing authority if there are reasons to believe that they are guilty for neglect in the performance of their duty.

For your 5th query, for purposes of clarity, please allow us to discuss the terms quorum, “simple majority,” and “qualified majority.”

For the sanggunian to officially transact business, there should be a quorum. A quorum is defined by Section 53 of the Local Government Code of 1991 as referring to the presence of the majority of all the members of the sanggunian who have been duly elected and qualified. Relative thereto, generally, ordinary measures require for its enactment only the approval of a simple majority of the sanggunian members present, there being a quorum. These pertain to the normal transactions of the sanggunian which are approved by the sanggunian through a vote of simple majority of those present. On the other hand, there are certain measures where the Local Government Code requires for its approval the vote of majority of all the members who were duly elected and qualified. This is what we call approval by the qualified majority of the sanggunian. In this case, the approval is to be voted not just by the majority of those present in a session there being a quorum but by a majority of all the members of the sanggunian duly elected and qualified regardless of whether all of them were present or not in a particular session, there being a quorum. (DILG Op 13, 2010)

The Sangguniang Bayan is composed of 8 regular members, the Liga Ng mga Barangay President and the SK Federation President as ex-officio members, and the Vice-Mayor as Presiding Officer. The total membership therefore is eleven (11). Relative thereto, Sec. 53 of the LGC provides that a majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business. “Majority” has been defined in Santiago vs. Guingona, et al. (G.R. No. 134577, 18 November 1998) as that which is greater than half of the membership of the body. Following the said ruling, since the total membership of the sanggunian being 11, 11 divided by 2 will give us a quotient of 5.5. Let it be noted however that a fraction cannot be considered as one whole vote, since it is physically and legally impossible to divide a person or even his vote into a fractional part. Accordingly, we have to go up to the next whole number which is 6. In this regard, 6 is more than 5.5 and therefore, more than one half of the total membership of the Sangguniang bayan in conformity with the jurisprudential definition of the term majority. The presence of 6 members shall already constitute a quorum in the sangguniang bayan for it to conduct official sessions. (DILG OP No. 46 s. 2007)

For your guidance.

BLANDINO M. MACEDA, CESO III
Regional Director