



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
A. Francisco Gold Condominium II EDSA Cor. Mapagmahal St.,
Diliman, Quezon City

OFFICE OF THE SECRETARY

DILG OPINION NO. 39 S. 2002

26 February 2002

MS. EMMA C. BURGOS

Barangay Captain of Bgy. Alcatem
President, Association of Barangay Captains
Victoria, Oriental Mindoro

Dear Madam:

This pertains to your separate letters seeking opinion on whether the Sangguniang Panlalawigan of Oriental Mindoro can declare a 25-year moratorium on all forms of mining in the province through an ordinance. Relating to the law governing mining, the issue poses the question whether the Sangguniang Panlalawigan can suspend the effectivity of *Republic Act 7942*, otherwise known as the *Philippine Mining Act of 1995*.

At the onset, please be apprised that this Office has no power to pass upon the validity or invalidity of an ordinance as such power is properly within the domain of the court.

Nevertheless, for academic and guidance purposes pursuant to this Office's power of general supervision over all local government units (LGUs), we deem it fit to discuss the issues related to the question. Thus, relative to the main issue raised above, two collateral issues are pertinent, which are: (1) whether or not a provincial government can regulate all forms of mining, and (2) whether or not a sanggunian panlalawigan can exercise police power to prevent environmental destruction such as that could be brought by mining operations.

As regards the first issue, we answer in the negative. It is noted that what was devolved to the province under *Section 17[b][3][iii]* is only the enforcement of small-scale mining law. Such devolution was even made subject to national policies and to supervision, control and review by the Department of Environment and Natural Resources (DENR). This devolved function necessarily carries with it the power of the sangguniang

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panlalawigan to enact ordinances for the proper enforcement of small-scale mining law.

Clearly, therefore, since the power to enforce RA 7942 or the Mining Act, except small-scale mining, is absolutely retained by the national government, through the DENR, the details of its enforcement is not within the ordinance making power of the sangguniang panlalawigan as conferred unto it by the Local Government Code.

With regard to the second issue, it is beyond question that a LGU can exercise police power pursuant to its statutory grant under the *General Welfare Clause* of Section 16 of the *Local Government Code (RA 7160)*. Police power has been defined as the power of the State, or of LGU, where proper, to regulate the use of property and enjoyment of life and liberty for the common good.

To be a valid exercise of police power, two requisites must concur, to wit: there must be lawful subject and lawful means. Interests of the public, in general, as distinguished from those of a particular class shall be the yardstick. In addition to the general requisites, the following are required in the exercise of police power by a delegate, in this case, a local government unit: (a) there must be express grant by law, (b) within territorial limits, and (c) it must not be contrary to law. In the case presented, the protection of the general populace of Oriental Mindoro from the ill-effects of mining is undoubtedly can be considered a lawful subject. The moratorium, however, of 25 years banning all forms of mining needs to be further studied if indeed it is a lawful or reasonable means to achieve the lawful subject. Instructive on the matter is the case of *Magtajas vs. Pryce Properties, G. R. No. 111097, 20 July 1994*, where the Supreme Court held that for ordinances to be valid, they (a) must not contravene the Constitution or any statute; (b) must not be unfair or oppressive; (c) must not be partial or discriminatory; (d) must not prohibit but may regulate trade (an activity allowed by law may be regulated, but not prohibited); (e) must not be unreasonable; and (f) must be general in application and consistent with public policy.

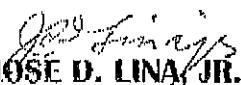
It is significant to note that with respect particularly to requisite (d) as abovestated, the Supreme Court, in the case of *Taño vs. Socrules, G. R. No. 119249, 21 August 1997*, sustained as a legitimate exercise of police power the validity of ordinances of Palawan Province and Puerto Princesa City "prohibiting the catching, gathering, processing, buying, selling and shipment of live marine coral dwelling of aquatic organism for a period of five years, coming from Palawan waters" and "banning the shipment of all live fish and lobster outside Puerto Princesa from January 1, 1993 to January 1, 1998", respectively.

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Taking the cue from there, it appears clear that total prohibition of an activity allowed by law would suffer from legal infirmity as held in the *Magtajas case*. However, if the prohibition of an activity allowed by law is only for a limited period, we are of the considered view that such prohibition is still in the nature of a regulation. Hence, with respect to the subject ordinance of the Province of Oriental Mindoro, a germane causal connection has to be established between the lawful subject and the means to be employed which is 25 years moratorium.

We hope we have enlightened you on the matter.

Very truly yours,


JOSE D. LINA, JR.
Secretary

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copy furnished:

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