



November 8, 2012

MEMORANDUM CIRCULAR
NO. 2012- 181

TO : ALL PROVINCIAL GOVERNORS, CITY MAYORS, MUNICIPAL MAYORS,
PRESIDING OFFICERS OF THE SANGGUNIANG PANLALAWIGAN,
SANGGUNIANG PANLUNGSOD, SANGGUNIANG BAYAN, DILG
REGIONAL DIRECTORS AND OTHERS CONCERNED

SUBJECT : DIRECTIVE TO COMPLY WITH SECTION 12 OF EXECUTIVE ORDER NO.
79, S. 2012 (EO No. 79)

In order to effectively implement the provisions of Executive Order No. 79 issued by His Excellency President Benigno S. Aquino III on 06 July 2012, entitled: INSTITUTIONALIZING AND IMPLEMENTING REFORMS IN THE PHILIPPINE MINING SECTOR, PROVIDING POLICIES AND GUIDELINES TO ENSURE ENVIRONMENTAL PROTECTION AND RESPONSIBLE MINING IN THE UTILIZATION OF MINERAL RESOURCES, this Department, as member of the Mining Industry Coordinating Council (MICC), hereby directs all concerned to strictly comply with Section 12 of EO No. 79, which states:

"SECTION 12. Consistency of Local Ordinances with the Constitution and National Laws/LGU Cooperation. The Department of the Interior and Local Government (DILG) and the LGUs are hereby directed to ensure that the exercise of the latter's powers and functions is consistent with and conform to the regulations, decisions, and policies already promulgated and taken by the National Government relating to the conservation, management, development, and proper utilization of the State's mineral resources, particularly RA 7942 and its implementing rules and regulations, while recognizing the need for social acceptance of proposed mining projects and activities.

LGUs shall confine themselves only to the imposition of reasonable limitations on mining activities conducted within their respective territorial jurisdictions that are consistent with national laws and regulations. x x x."

Relative thereto, all sanggunians at all LGU levels are hereby directed to stringently abide by the foregoing provision in the enactment of ordinances that aim to regulate the utilization of mineral resources within their respective territorial jurisdictions, being guided continually by the substantive requirements for the enactment of a VALID ORDINANCE as pronounced in the case of *Magtajas vs. Pryce*, and the reiteration of the principles governing LOCAL LEGISLATION as set forth in the case of *Lina vs. Paño*, to wit:

Magtajas vs Pryce Properties Corp. (G.R. No. 111097, 20 July 1994)

The tests of a valid ordinance are well established. A long line of decisions has held that to be valid, an ordinance must conform to the following substantive requirements:

1) IT MUST NOT CONTRAVENE THE CONSTITUTION OR ANY STATUTE.

2) It must not be unfair or oppressive.

3) It must not be partial or discriminatory.

4) It must not prohibit but may regulate trade.

5) It must be general and consistent with public policy.

6) It must not be unreasonable.

Lina vs Paño (G.R. No. 129093, 30 August 2001)

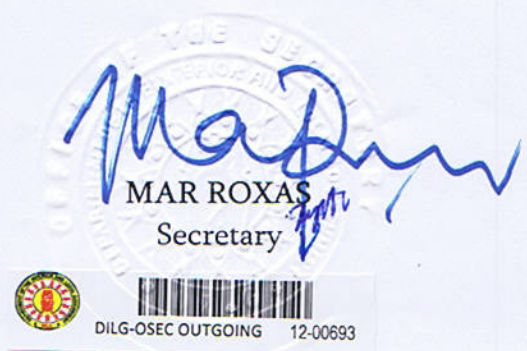
1. The power of the local government units to legislate and enact ordinances and resolutions is merely a DELEGATED POWER coming from Congress;
2. Ordinances should not contravene and existing statute enacted by Congress;
3. Municipal governments are only agents of the national government. The delegate cannot be superior to the principal or exercise powers higher than those of the latter;
4. The principle of local autonomy under the 1987 Constitution simply means "decentralization". It does not make local governments sovereign within the state or an "imperium in imperio".

In view of the above, sanggunians in all levels are enjoined to observe and be guided by the above-cited rules and principles in enacting ordinances which regulate mining.

All Provincial Governors, City and Municipal Mayors are directed to take appropriate measures for the amendment of the provisions of existing relevant ordinances and guidelines, if any, in order to conform to the above prescribed rules and precepts.

All DILG Regional Directors are hereby directed to cause the widest dissemination of this Memorandum Circular to local government units within their respective territorial jurisdictions.

For the guidance of all concerned.



Legal:03:58

110