Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice
Manila

OPINION NO. 85, 2005

February 2, 2005

Secretary Michael T. Defensor
Department of Environment and Natural Resources (DENR)
Visayas Avenue, Diliman
Quezon City

Sir:

This refers to your request for opinion on the validity of ordinances and resolutions issued by a number of local government units (LGUs) imposing a moratorium on large-scale mining activities and the processing of application for mining within their respective areas of jurisdiction.

You state that these ordinances include those passed by the *Sangguniang Panlalawigan* of Capiz (Ordinance No. 6, series of 1999), Oriental Mindoro (Provincial Ordinance No. 001-2002), Eastern Samar (Provincial Ordinance No. 08, series of 2003) and Iloilo (Resolution No. 99-145) pursuant to their power under Republic Act No. 7160, otherwise known as the "Local Government Code of 1991."

You further state that the President issued Executive Order No. 270[1] and directed the DENR to take the lead in the preparation of the Minerals Action Plan (MAP); and that the President also issued Memorandum Circular No. 67[2] to operationalize the MAP in order to implement the aforesaid E.O. No. 270.

You are of the view that the ordinances and resolutions of LGUs encroach upon the mandate and authority of the DENR, particularly the Mines and Geosciences Bureau (MGB) as the government agencies responsible for the conservation, management, development, and proper use of the State's mineral resources pursuant to Sections 8 and 9 of Republic Act No. 7942 otherwise known as "The Philippine Mining Act of 1995." You also state that such view finds support in the Department of the

[1] Entitled "National Policy Agenda on Revitalizing Mining in the Philippines"; dated January 16, 2004.

[2] Dated September 19, 2004.

Interior and Local Government (DILG) Opinion No. 31, s. 2002[3] wherein the DILG opined that the *Sangguniang Panlalawigan* can only regulate or enforce small-scale mining, subject to review and approval of DENR, and the enforcement of R.A. No. 7942 on large-scale mining is absolutely retained by the National Government and is not within the ordinance-making power of the *Sangguniang Panlalawigan.*

Since you are in a quandary on how to implement your mandate and the order of the President contained in E.O. No. 270, as amended, and M.C. No. 67, s. 2004 in the light of the ordinances and resolutions of LGUs above-mentioned, you seek the opinion of this Department on the validity of said LGU issuances.

At the outset, it bears stressing that this Department has answered a similar query in our Opinion No. 35, s. 2001[4], where we held:

> "We are constrained, much to our regret, to decline rendition of opinion on your query.
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> Pursuant to law, the Secretary of Justice, is authorized to act only on appeals questioning the constitutionality or legality of a tax ordinance or revenue measure filed within thirty (30) days from the effectivity thereof (Section 187 of Republic Act No. 7160). **The final resolution of the issue raised herein, which concerns the validity of subject ordinance, properly belongs to the court (Secretary of Justice Ops. Nos. 45, 61 and 98, s. 1994). An ordinance is presumed to be valid although its reasonableness may be judicially inquired into** (Victorias Milling Co. vs. Municipality of Victorias, Negros Occidental, 25 SCRA 192). (emphasis supplied)
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> xxx xxx xxx."

We reiterate our earlier position that it is not within the province of the Secretary of Justice to declare an ordinance, other than a tax or revenue measure, as invalid. It is a judicial function that we cannot arrogate unto ourselves without violating certain legal and jurisprudential principles.

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[3] Dated February 26, 2002 and issued upon the request of a Barangay Captain from Brgy. Alcatern, Victoria, Oriental Mindoro.

[4] Issued upon the request of the Mines and Geosciences Bureau inquiring on the validity of Ordinance No. 6, series of 1999 passed by the *Sangguniang Panlalawigan* of Capiz, declaring a 15-year moratorium on all large-scale mining activities and the processing of application for mining.

To guide the DENR and the MGB, however, we take this opportunity to elucidate the test in determining the validity of an ordinance enacted by the local *sangguniang*. In long lines of decisions,[5] the Supreme Court has held that for an ordinance to be valid, it 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; and
6) It must not be unreasonable.

In *Lina v. Paño*,[6] the Supreme Court reiterated that in our system of government, the power of local government units to legislate and enact ordinances and resolutions is merely a delegated power coming from Congress. The reason for this is obvious, as elucidated in *Magtajas v. Pryce Properties Corp.*[7]:

> "Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred upon them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. **It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.**
>
> Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they cannot exist. As it creates, so it may destroy. As it may destroy, it may abridge and control. Unless there is some constitutional limitation on the right, the legislature might, by a single act, and if we can suppose it capable of so great a folly and so great a wrong, sweep from existence all of the municipal

[5] Magtajas v. Pryce Properties Corporation, 234 SCRA 255 [1994]; Tatel v. Municipality of Virac, 207 SCRA 157 [1992]; Solicitor General v. Metropolitan Manila Authority, 204 SCRA 837 [1991]; De la Cruz v. Paras, 123 SCRA 569 [1983]; U. S. v. Abandan, 24 Phil. 165 [1913].

[6] 364 SCRA 76 [2001].

[7] 234 SCRA 273 [1994].

corporations in the state, and the corporation could not prevent it. We know of no limitation on the right so far as the corporation themselves are concerned. They are, so to phrase it, the mere tenants at will of the legislature (citing Clinton vs. Ceder Rapids, etc. Railroad Co., 24 Iowa 455)." (emphasis ours)

The high court further explained that nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion, to wit:

"The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. 5, Constitution), which cannot now be withdrawn by mere statute. **By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.**" (emphasis ours)

Insofar as provincial resolutions are concerned, we see nothing wrong in the enactment thereof since the same is well within the power and authority of local *sanggunian* to enact. This is part of the local government's autonomy to air its views which, at times, may be contrary to that of the national government's. However, this freedom to exercise contrary views does not mean that local governments may actually enact ordinances that go against laws duly enacted by Congress such as R.A. No. 7942.

In the instant request, Resolution No. 99-145 of the Sangguniang Panlalawigan of Iloilo Province appears to be but a mere policy statement on the part of the provincial council, which is not self-executing. As the text clearly states, the resolution simply requests the Secretary of DENR and the Regional Director of the MGB not to approve any mining permit application of any company without prior consultation with the provincial government of Iloilo. As such, Resolution No. 99-145 could not and should

not be interpreted as a measure or ordinance prohibiting the operation of large-scale mining in the province of Iloilo.

Finally, we invite your attention to this Department's Opinion No. 7, current series,[8] where we had the occasion to opine that even the Palawan Council for Sustainable Development (PCSD), an agency created by law[9] to govern, implement and administer the policy direction of the Strategic Environmental Plan (SEP) for the Province of Palawan, cannot exercise the quasi-judicial power vested to the DENR, through the Mines and Adjudication Board (MAB), to act on all cases or matters involving mining areas/leases in the province of Palawan.

Please be guided accordingly.

Very truly yours,

RAUL M. GONZALEZ
Secretary

Copy furnished:

Hon. Rigoberto D. Tiglao
Secretary and Head
Presidential Management Staff
Malacañang, Manila

[8] The opinion is issued upon the request of then DENR Secretary Elizea Gozun on the issue of whether or not all cases pending before the Mines and Adjudication Board (MAB) involving mining areas located in Palawan should be referred to the PCSD, and on the pronouncement that the absence of PCSD conformity is a ground for revocation of any license, contract, permit or lease involving the utilization of natural resources in Palawan.

[9] See R.A. No. 7611