



## LEGAL SERVICE

DILG OPINION No. 18 s. 2011

MAY 16 2011

**ATTY. MANUEL S. MALAPIT**

*Legal Counsel of King B Enterprises*  
Room 209 Cabrera Bldg. I  
Timog Avenue, Quezon City

Dear Atty. Malapit:

This has reference to your request for opinion pertaining to the proposed ordinance of Bauan, Batangas that intends to impose control over the transport, hauling and disposal of scrap materials entering and/or in transit within the Municipality of Bauan in the guise of controlling the municipal and industrial waste within the municipality.

An examination of your letter reveals that it is centered on the issue on whether or not the proposed ordinance by the Municipality of Bauan imposing permit and environmental fees in the entry and transit of scrap materials within said municipality is in accordance with law, specifically under Section 133 (e) of the Local Government Code (LGC).

Upon perusal of the proposed ordinance, we opine that the same appears to contravene Section 133 (e) of Republic Act No. 7160 (R.A. No. 7160), otherwise known as the "*Local Government Code of 1991*", to wit:

**"SECTION 133. Common Limitations on the Taxing Powers of Local Government Units.- Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities and barangays shall not extend to the levy of the following:**

X X X

(e) *Taxes, fees, and charges and other impositions upon goods carried **into or out of, or passing through**, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;*

X X X"

The Department, as early as 26 June 2006, issued Memorandum Circular No. 2006-70 on the suspension of LGU imposition and collection of illegal fees and taxes pursuant to Section 133 (e) of the LGC. In addition thereto, on 27 March 2009, we have issued Memorandum Circular No. 2009-42 to serve as a guide and reminder to the public officers of LGUs in the imposition and collection of local taxes, fees and charges.

To ensure that said Memorandum Circulars are observed by the Municipality of Bauan, Batangas, the Department shall send a letter to Bauan, Batangas Mayor Rynah M. Dolor, Vice-Mayor and SB Presiding Officer Juan M. Magboo, and Members of the *Sanggunian Bayan* reminding them to strictly observe the provisions on Local Government Taxation under Republic Act No. 7160, otherwise known as the "*Local Government Code of 1991*" in the imposition and collection of

taxes, fees and charges as emphasized in the guidelines laid out in Memorandum Circular No. 2009-42 dated 27 March 2009 entitled, "*Imposition and Collection of Local Taxes, Fees and Charges*", particularly paragraph 5.0 (e) thereof. A copy of the said letter is hereto attached for your reference.

As to your queries on solid waste management, the same should be addressed to the Department of Environment and Natural Resources as the agency primarily responsible in enforcing the provisions of Philippine Ecological Solid Waste Management Act of 2000.

Lastly, as to the query on whether an ordinance may require Philippine Economic Zone Authority (PEZA) registered corporations from securing the required local government permits, basic is the requirement that local ordinances should not contravene the constitution or any statute as discussed in the case entitled: **Mayor Pablo P. Magtajas, et. al vs. Pryce Properties Corporation, Inc., et. al (G.R. No. 111097. July 20, 1994)**, viz:

*"The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on 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."*

We hope to have enlightened you on this matter.

Very truly yours,

  
**ATTY. JESUS B. DOQUE IV**  
Director III