



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

DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT  
 CENTRAL RECORDS SECTION  
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 DATE: 12-03-11  
 TIME: 1:45  
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**LEGAL SERVICE**

DILG Legal Opinion No. 25 s. 2012  
**MAR 08 2012**

**MR. ERNESTO A. TABASA**  
 Chairman  
 Confederation of Transport Cooperative and Assoc.  
 Bliss, Calumpang, General Santos City

Dear **Mr. Tabasa**:

This refers to your 14 February 2012 letter requesting for a clarification on MC No. 2011-68, particularly the exception to the prohibition on the operation of tricycles along the National Highway.

It is your contention that despite the issuance of MC No. 2011-68 which prohibits the operation of tricycles along the national highway, several tricycles continue to operate thereon notwithstanding the fact that the Sangguniang Panlungsod did not provide exception thereon through legislation. This happens because law enforcers are confounded on the application of the exception. As such, the latter has ceased apprehending tricycles operating along the national highways.

Below is a discussion on the issue, *viz.*:

DILG MC No. 2011-68, which is a reiteration of DILG MC No. 2007-01 was issued by the Department to regulate the operations of tricycles and pedicabs rendering transport services to the general public pursuant to the DOTC's "Guidelines to Implement the Devolution of LTFRB's Franchising Authority Over Tricycles-For-Hire to Local Government Units Pursuant to the Local Government Code (RA No. 7160)."

Under the Guidelines issued by the DOTC, as reiterated under DILG MC Nos. 2011-68 and 2007-01, "For safety reasons, no tricycles should operate on national highways utilized by 4 wheel vehicles greater than 4 tons and where normal speed exceed 40 kph. However, the SB/SP may provide exceptions if there is no alternative route."

Municipalities and cities, through their respective sanggunians, are granted the power to regulate the operation of tricycles and grant franchises within their respective territorial jurisdictions subject to the guidelines prescribed by the DOTC pursuant to Sections 447 (3) (vi) and 458 (3) (vi) of the Local Government Code.

In the case "*LTO vs. City of Butuan*," *G.R. 131512, January 20, 2000*, the Supreme Court had the occasion to discuss the DOTC's (through the Land Transportation Franchising Regulatory Board) devolved power to grant franchises to tricycles-for-hire to the LGUs pursuant to the above-cited provisions of the Local Government Code, *viz.*:

*"The Department of Transportation and Communications<sup>9</sup> ("DOTC"), through the LTO and the LTFRB, has since been tasked with implementing laws pertaining to land transportation. x x x The LTFRB, upon the other hand, is the governing body tasked by E.O. No. 202, dated 19 June 1987, to regulate the operation of public utility or "for hire" vehicles and to grant franchises or certificates of public convenience ("CPC").<sup>11</sup> x x x*

*Under the Local Government Code, certain functions of the DOTC were transferred to the LGUs, thusly:*

*Sec. 458. Powers, Duties, Functions and Compensation. —*

x x x x x x x

*(3) Subject to the provisions of Book II of this Code, enact ordinances granting franchises and authorizing the issuance of permits or licenses, upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the city and pursuant to this legislative authority shall:*

(VI) Subject to the guidelines prescribed by the Department of Transportation and Communications, **regulate the operation of tricycles and grant franchises for the operation thereof within the territorial jurisdiction** of the city. (Emphasis supplied).

LGUs indubitably now have the power to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof. "To regulate" means to fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; or to subject to governing principles or laws.<sup>12</sup> A franchise is defined to be a special privilege to do certain things conferred by government on an individual or corporation, and which does not belong to citizens generally of common right.<sup>13</sup> xxx <sup>14</sup> **The devolution of the functions of the DOTC, performed by the LTFRB, to the LGUs, as so aptly observed by the Solicitor General, is aimed at curbing the alarming increase of accidents in national highways involving tricycles. It has been the perception that local governments are in good position to achieve the end desired by the law-making body because of their proximity to the situation that can enable them to address that serious concern better than the national government.**

It may not be amiss to state, nevertheless, that under Article 458 (a)[3-VI] of the Local Government Code, the power of LGUs to regulate the operation of tricycles and to grant franchises for the operation thereof is still subject to the guidelines prescribed by the DOTC. In compliance therewith, the Department of Transportation and Communications ("DOTC") issued "Guidelines to Implement the Devolution of LTFRBs Franchising Authority over Tricycles-For-Hire to Local Government units pursuant to the Local Government Code." Pertinent provisions of the guidelines state:

In lieu of the Land Transportation Franchising and Regulatory Board (LTFRB) in the DOTC, the Sangguniang Bayan/Sangguniang Panglungsod (SB/SP) shall perform the following:

(a) Issue, amend, revise, renew, suspend, or cancel MTOP and prescribe the appropriate terms and conditions therefor;

xxx xxx xxx

Operating Conditions:

1. For safety reasons, no tricycles should operate on national highways utilized by 4 wheel vehicles greater than 4 tons and where normal speed exceed 40 KPH. However, the SB/SP may provide exceptions if there is no alternative route.
2. Zones must be within the boundaries of the municipality/city. However, existing zones within more than one municipality/city shall be maintained, provided that operators serving said zone shall secure MTOP's from each of the municipalities/cities having jurisdiction over the areas covered by the zone.
3. A common color for tricycles-for-hire operating in the same zone may be imposed. Each unit shall be assigned and bear an identification number, aside from its LTO license plate number.
4. An operator wishing to stop service completely, or to suspend service for more than one month, should report in writing such termination or suspension to the SB/SP which originally granted the MTOP prior thereto. Transfer to another zone may be permitted upon application.
5. The MTOP shall be valid for three (3) years, renewable for the same period. Transfer to another zone, change of ownership of unit or transfer of MTOP shall be construed as an amendment to an MTOP and shall require appropriate approval of the SB/SP.
6. Operators shall employ only drivers duly licensed by LTO for tricycles-for-hire.
7. No tricycle-for-hire shall be allowed to carry more passengers and/or goods than it is designed for.
8. A tricycle-for-hire shall be allowed to operate like a taxi service, i.e., service is rendered upon demand and without a fixed route within a zone.<sup>16\*</sup>

It is therefore clear that under the GENERAL rule, tricycles and pedicabs are prohibited to operate along the national highway; the EXCEPTION to the prohibition is if there is NO ALTERNATIVE ROAD, as categorically provided for in an ordinance duly enacted by the Sanggunian.

Applying the foregoing premises, it is clear that the Sanggunian may, through an ordinance, allow the operation of tricycles-for-hire along the national highway under conditions set forth in the DOTC's Guidelines, as reiterated in DILG MC Nos. 2007-01 and 2011-68, provided that there is no alternative route.

In the absence of an ordinance providing authority for their operation, tricycles are therefore prohibited from operating along the national highway.

We hope to have enlightened you on this matter.

Very truly yours,

  
**JESUS B. DOQUE IV**  
Director III

LS08:rb

AC