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Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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<http://www.dilg.gov.ph>

DILG OPINION NO. 34 S. 2018

MS. DONNA CLEOFAS
Legislative Staff
Office of Councilor Anthony Peter D. Crisologo
Room 205, Legislative Wing
City Hall Complex, Quezon City

25 JUN 2018

Dear Ms. Cleofas:

This has reference to your electronic mail dated 22 February 2018 requesting for this Department's comments and/or suggestions on the proposed City Ordinance No. PO20CC-056, S-2016 entitled, *"AN ORDINANCE AMENDING SECTION 2 OF ORDINANCE NO. SP-1923, S-2009 WHICH IMPOSES A CEILING FEE FOR THE ISSUANCE OF BARANGAY CLEARANCE WITHIN QUEZON CITY"*.

First and foremost, in the review of an ordinance, the basic rule is that the subject of the ordinance must not be violative of any national laws and the passage or amendment thereof must be within the corporate powers of the city to enact and must be in accordance with the procedure prescribed by law, the Local Government Code (LGC).

Basically, the said proposed ordinance increases the ceiling fee for the issuance of barangay clearance. However, this Department also observed that the subject matter of the proposed city ordinance pertains to barangay clearance which is within the autonomy of the barangays.

To enlighten us on the matter, Section 22 of the Local Government Code (LGC) enumerated the following powers of every local government unit (LGU), to wit:

XXX XXX XXX

"(d) Local government units shall enjoy full autonomy in the exercise of their proprietary functions and in the management of their economic enterprises, subject to the limitations provided in this Code and other applicable laws."

Be it noted further that Section 152 of the Local Government Code (LGC), provides that:

“Section 152. Scope of Taxing Powers. - The barangays may levy taxes, fees, and charges, as provided in this Article, which shall exclusively accrue to them:

XXX

XXX

XXX

(c) Barangay Clearance. - No city or municipality may issue any license or permit for any business or activity unless a clearance is first obtained from the barangay where such business or activity is located or conducted. For such clearance, the sangguniang barangay may impose a reasonable fee. The application for clearance shall be acted upon within seven (7) working days from the filing thereof. In the event that the clearance is not issued within the said period, the city or municipality may issue the said license or permit.” (Emphasis supplied)

In view of the above-given provision of law, the sangguniang barangays are empowered to issue barangay clearance. In order for them to discharge such duty, they are authorized under Section 391 of the LGC to enact ordinances to discharge the responsibilities conferred upon it by law or ordinance and to promote the general welfare of the inhabitants therein.

Hence, with respect to the proposed city ordinance itself, this Department is of the considered view that the same is beyond the power conferred upon the Sangguniang Panlungsod of Quezon City by the LGC. What the Sangguniang Panlungsod of Quezon City, as the legislative body of the city can do pursuant to Section 458(1)(i) of the LGC is to review all ordinances approved by the sangguniang barangay to determine whether these are within the scope of the prescribed powers of the sanggunian.

Moreover, in DILG-Legal Opinion No. 43, S.2011 dated 15 July 2011, the Department has opined that:

“There may be instances where a Barangay Clearance is issued independent of a business license or permit, e.g. proof of residency for job applicants, provided that such issuance and the fee imposed therefor are sanctioned by a Barangay Ordinance, the fee imposed is reasonable, an official receipt of the Republic of the Philippines is issued upon collection of the fee.”

Thus, the enactment of an ordinance for purposes of imposing barangay clearance fee is within the power of the Sangguniang Barangays and not the Sangguniang Panlungsod.

As to the imposition of barangay clearance fee, likewise Section 152 of the LGC has given the sanggunian barangay wide latitude to impose reasonable fee. The reasonableness of a fee would depend on the regulatory service to be rendered by the barangay in relation

to the issuance of a barangay clearance. Fees and charges should be proportionate or equal to the cost of issuing the license or permit and the expense incurred¹.

In addition, in Section 2 of the proposed ordinance, we are not inclined to support the imposition of barangay clearance fee for the practice of profession. Please note that Section 139 of the LGC is very explicit when it provides that:

“SECTION 139. Professional Tax - (a) The province may levy an annual professional tax on each person engaged in the exercise or practice of his profession requiring government examination as such amount and reasonable classification as the Sangguniang Panlalawigan may determine but shall in no case exceed Three hundred pesos (P300.00)

(b) Every person legally authorized to practice his profession shall pay the professional tax to the province where he practices his profession or where he maintains his principal office in case he practices his profession in several places: Provided, however, That such person who has paid the corresponding professional tax shall be entitled to practice his profession in any part of the Philippines without being subjected to any other national or local tax, license, or fee for the practice of such profession.”
(Underscoring ours)

Moreover, Section 151 states that:

“SECTION 151. Scope of Taxing Powers. – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose. Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rate of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.” (Emphasis given)

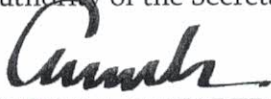
Accordingly, with respect to the imposition of barangay clearance fee for practice of profession, we submit that the same is ultra vires or beyond the power conferred upon the barangays as it is within the taxing powers of provinces and cities. Moreover, Section 139(b) is very explicit when it provides that such person who has paid the corresponding professional tax shall be entitled to practice his profession in any part of the Philippines

¹ DILG Legal Opinion No. 55, S.2012 dated 29 August 2012

without being subjected to any other national or local tax, license, or free for the practice of such profession.

We hope to have assisted you on the matter.

Very truly yours,
By Authority of the Secretary:


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Undersecretary

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