



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

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DILG OPINION NO. 41 S. 2020

**MEMBERS OF ABU SMALL-
SCALE MINER'S ASSOCIATION
(ASMA) and ABU LABORER
ASSOCIATION**

Barangay Baylao, Mambajao,
Province of Camiguin

Gentlemen:

This has reference to the letter you sent dated 11 October 2019, requesting for this Department's clarification on the alleged refusal of the of the municipal government to provide you with a mayor's business permit to continue quarrying activities and other related queries.

To give a background, members of the ASMA decided to raise the price of the gravel per load, due to increasing price of commodities, and such increase was implemented on March 2019. Subsequently, Mario Pahilangco, the assigned collector of ASMA, collects the payment from the haulers when they exit the quarry. Under the Rules and By-Laws of ASMA, the collector is an officer elected by ASMA and has a term of three years.

However, the collector was allegedly abruptly ordered replaced by a member of the Department of Environment and Natural Resources (DENR) Task Force who was reportedly designated as such at the order of the Punong Barangay, Mr. Paul John Penalosa. Moreover, on 12 March 2019, in a meeting held at the Barangay Hall attended by members of ASMA, the Punong Barangay, other barangay officials, and an officer from the Provincial Office, members of ASMA were informed of a closure order of the quarry site which came from the office of Municipal Mayor of Mambajao. In addition, members of ASMA were required to obtain clearance from several government agencies as prerequisite for the issuance of a Mayor's Business Permit to be allowed to continue working in the quarry. Nevertheless, despite having complied with the required clearances, the business permit application of some of the members of ASMA were still denied.

Consequently, those previous members of ASMA that were denied application, together with other new members, decided to form and register another association which is the Abu Laborer Association. Unfortunately, Provincial Governor Jurdin Jesus M. Romualdo, who was then the Mayor of Mambajao, who denied their business application while still members of ASMA, again denied the application of

the new association and was not given the desired permit to engage in any of their desired activity which includes quarrying at the quarrying site.

Under this premise arose the request for clarification on several issues in relation to the refusal of the municipal government to issue the Mayor's Business Permit to the small scale miner's association.

Accordingly, the queries submitted for this Department's legal opinion are hereunder quoted in verbatim:

1. *In Republic Act No. 7160 or the Local Government Code of the Philippines, it is provided in Section 138 thereof that:*

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"The permit to extract sand, gravel and other quarry resources, shall be issued exclusively by the provincial governor, pursuant to the ordinance of the sangguniang panlalawigan."

With the exclusivity of the issuance of business permits for quarry resources lodged with the province, did not the Municipality of Mambajao overstep and exceed its authority when it issued the Closure Order of the Baylao Quarry and required the workers to obtain a Mayor's Permit to continue quarrying?

2. *Can any of the barangay officials interfere and substitute their decision for that of the members of the private association, ASMA, such as when it replaced one of its officers, the collector, with one designated by such public officials?*
3. *Is the refusal by the governor's office of a permit to the new association, Abu Laborer's Association discriminatory, in restraint of trade and in violation of their constitutional right to organize and associate for purposes not contrary to law?*
4. *Can the province refuse an application for permit to quarry without providing any reason for such refusal?*

Considering that the first, third and fourth questions are interrelated, this Department deems it appropriate to tackle the issues in one discussion.

At the outset, this Department deems it imperative to clarify the misconception that only the provincial government has absolute control over small-scale mining permits or contracts by citing no less than the 1987 Philippine Constitution, which states that:

ARTICLE XII
National Economy and Patrimony

*SECTION 2. xxx The exploration, development, and utilization of natural resources shall be **under the full control and supervision of the State.** xxx*

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

[Emphasis and underscoring supplied].

Correspondingly, Section 4 of the Republic Act No. 7942, otherwise known as "The Philippine Mining Act of 1995" ("RA 7942"), provides that mineral resources are owned by the State and that, the exploration, utilization and processing thereof shall be under the State's full control and supervision, and that the State may directly undertake such activities. Likewise, Section 8 thereof provides that the Department of Environment and Natural Resources (DENR) shall be the primary government agency responsible for the conservation, management, development and proper use of the State's mineral resources.

Further, while it is true that under Section 17(b)(3)(iii) of the LGC¹ the enforcement of small scale mining law, and other laws on the protection of the environment has been devolved to the LGUs, note the proviso that such devolution is subject to supervision, control and review of the DENR, to wit:

*"(iii) Pursuant to national policies and **subject to supervision, control and review of the DENR,** enforcement of forestry laws limited to community-based forestry projects, pollution control law, **small-scale mining law, and other laws on the protection of the environment;** and mini-hydro electric projects for local purposes"*

[Emphasis and underscoring supplied].

Evidently, the LGC did not fully devolve the enforcement of the small-scale mining law to the provincial government, as its enforcement is subject to the supervision, control and review of the DENR, which is in charge, subject to law and higher authority, of carrying out the State's constitutional mandate to control and supervise the exploration, development, utilization of the country's natural resources.

¹ Section 17(b)(3)(iii), Local Government Code of 1991, as amended.

With that being said, it is now proper to address your first and fourth queries. Section 444(b)(3)(iv) of the LGC provides the legal basis of the municipal mayor's power to issue licenses and permits, to wit:

"SECTION 444. The Chief Executive: Powers, Duties, Functions and Compensation. - xxx (b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance;"

In view of the foregoing, the power of the municipal mayor to issue license and permits is founded on the general welfare clause. Therefore, as to your first query, this Department is of the considered view that municipal mayors have the authority to regulate the use of property or conduct of property rights such as requiring the workers to obtain a Business permit.

Note however that Republic Act No. 11032 (RA 11032), otherwise known as the "Ease of Doing Business and Efficient Delivery of Government Services Act of 2018", requires all local government units (LGUs) to devise a unified business application form for the issuance of business permits, clearance, and other types of authorizations, as well as set-up a one-stop-shop to facilitate all business transactions. Accordingly, this Department, together with the Department of Trade and Industry and Department of Information and Communication Technology, issued Joint Memorandum Circular (MC) 2016-01 or the Revised Standards in Processing Business Permits and Licenses in All Cities and Municipalities containing the guidelines in streamlining business permits and licensing system.

Correspondingly, this Department is of the opinion that in case an applicant has complied with all the requirements required under small-scale mining laws and has obtained all the other prerequisite based on the guideline for the issuance of Business permits, the application cannot be arbitrarily be denied, as such approval is not within the sole discretion of the local chief executive.

As to your third and fourth query, DENR Administrative Order No. 2010-21 otherwise known as the "Implementing Rules and Regulations of RA 7942" explicitly outlines the procedure and lists the mandatory requirements for application for small-scale mining permits, to wit:

Chapter IX
Small-Scale Mining

"Section 103. General Provisions

Applications (MGB Form No. 9-01) for Small-Scale Mining Permit (SSMP) shall be filed in the Office of the Provincial Governor/City Mayor through the Provincial/City Regulatory Board concerned for areas outside the Mineral Reservations and in the Regional Office concerned for areas within Mineral Reservations.

Applications for SSMP within Mineral Reservations shall be accepted only upon payment of the required fees and accompanied by five (5) sets of the following mandatory requirements:

XXX XXX XXX

Upon evaluation that all the terms and conditions and all pertinent requirements are in order and that the subject area has been cleared from any conflict, the Director, for areas within Mineral Reservations, shall approve and issue the SSMP, and the Permit Holder shall cause the registration of the same in the Bureau within fifteen (15) working days from receipt of the written notice and payment of the required fees: xxx"

Moreover, under RA 11032, all government offices and agencies are required to explain the denial of an application, to wit:

"Sec. 9. Accessing Government Services. – The following shall adopted by all government offices and agencies:

XXX XXX XXX

(c) Denial of Application or Request for Access to Government Service. – Any denial of application or request for access to government service shall be fully explained in writing, stating the name of the person making the denial and the grounds upon which such denial is based. Any denial of application or request is deemed to have been made with the permission or clearance from the highest

authority having jurisdiction over the government office or agency concerned."

Hence, despite possessing all the necessary legal permits and license and despite not having been cited for any violation by the municipal and provincial government, as well as by the Mines and Geosciences Bureau, such refusal to be given a permit may be deemed as oppressive and confiscatory and violates the constitutional guarantee of right to due process.

We now delve to your second query on whether barangay officials can interfere with the affairs of a private association and substitute the latter's decision in electing its officers with that of the Punong Barangay, the answer is in the negative.

There is no law which authorizes the Punong Barangay nor other barangay officials to interfere with the internal affairs of a private association. It is well-settled that private associations and its internal government are governed by its by-laws which refer to the rules of action adopted by the association for the government of its members and those having the direction, management and control of its affairs in their relation to the association and as among themselves.

Hence, it is undoubtedly clear that the Punong Barangay exceeded its authority by meddling with the affairs of ASMA, by ordering the substitution of its elected officer and collector with that of a member of the DENR Task Force. Such act was obviously outside the scope of his power and function as a public official.

We hope to have addressed your concern accordingly.

Thank you.

Very truly yours,

EDUARDO M. AÑO
Secretary

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