



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
DILG-NAPOLCOM Center, EDSA corner Quezon Avenue, West Triangle, Quezon City
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DILG OPINION NO. 42 S. 20²⁰

ATTY. MARITES M. SO

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02 MAR 2020

Dear Atty. So:

This has reference to your letter dated 15 January 2020 requesting for the Department's opinion on the validity of General Trias Ordinance No. 16-11 entitled "RENEWING THE TERM OF THE FRANCHISE GRANTED TO GENERAL TRIAS WATER CORPORATION (GTWC) DATED 23 OCTOBER 1995 EXTENDING THE OCTOBER 2050 AND AUTHORIZING THE LOCAL CHIEF EXECUTIVE TO NEGOTIATE THE TERMS OF THE CONCESSION AND SIGN THE MEMORANDUM OF AGREEMENT WITH GTWC ON BEHALF OF THE CITY OF GENERAL TRIAS PROVINCE OF CAVITE".

It is a hornbook principle that ordinances, as legislative enactments, enjoy presumptive validity that even the judiciary does not afford to overthrow except upon strict judicial scrutiny applying the well-established tests of constitutionality.

In *Tano v. Hon. Gov. Socrates*¹, the court explained:

"It is of course settled that laws (including ordinances enacted by local government units) enjoy the presumption of constitutionality. To overthrow this presumption, there must be a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative contradiction. In short, the conflict with the Constitution must be shown beyond reasonable doubt. Where doubt exists, even if well-founded, there can be no finding of unconstitutionality. To doubt is to sustain."

This presumption is rooted in the deference that the judiciary accords to a coordinate branch- the legislature. This too, is the very reason for the executive branch, where this Department belongs, to abstain from giving opinions/dispositions on the validity of duly enacted ordinances.

Parenthetically, what we can provide you is a relevant discussion of the ordinance's subject matter without going overboard to giving a decisive position on its validity.

¹ G.R. No. 110249. August 21, 1997.

In the main, Local Government Units (LGUs) generally possess the power to grant franchises anchored on its ordinance-making power. In the case of Sangguniang Panlungsod on franchises for waterworks system, Section 458 of R.A. No. 7160, otherwise known as the "Local Government Code of 1991", provides as follows:

"Section 458. Powers, duties, Functions and Compensation. - (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:...xxx..."

(5) Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, shall: ...xxx..."

(vii) Subject to existing laws, establish and provide for the maintenance, repair and operation of an efficient waterworks system to supply water for the inhabitants and to purify the source of the water supply; regulate the construction, maintenance, repair and use of hydrants, pumps, cisterns and reservoirs; protect the purity and quantity of the water supply of the city and, for this purpose, extend the coverage of appropriate ordinances over all territory within the drainage area of said water supply and within one hundred (100) meters of the reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service; and regulate the consumption, use or wastage of water and fix and collect charges therefor;"

This power to enact ordinance on waterworks system, being subject to existing laws, finds its way to the application of P.D. 1076, otherwise known as the "Water Code of the Philippines" (Water Code) which upholds the power of the National Water Resources Board (NWRB) to grant water permits; and of P.D. No. 198 as amended, which dictates approval by Local Waters Utilities Administration (LWUA) in the formation of local water districts.

We have thoroughly discussed this under DILG Opinion No. 18 s. of 2018 and DILG Opinion No. 77 s. of 2018. Thus, we reiterate that the role of local governments in water distribution or waterworks system is not mainly to provide franchise, but is merely for recognition subsequent to, and dependent upon, the approval and issuance of permits of NWRB or LWUA, as the case may be.

Specifically mentioned in DILG Opinion No. 77 s. of 2018 that the role of local governments is not necessarily the granting of a franchise but is limited to the formation of such local water districts such as naming and describing the boundary thereof pursuant to Section 6 of P.D. No. 198, as amended:

"Section 6. Formation of District. - This Act is the source of authorization and power to form and maintain a district. Once formed,

a district is subject to the provisions of this Act and not under the jurisdiction of any political subdivision. To form a district, the legislative body of any city, municipality or province shall enact a resolution containing the following:

(a) The name of the local water district, which shall include the name of the city, municipality, or province, or region thereof, served by said system, followed by the words "Water District".

(b) A description of the boundary of the district. In the case of a city or municipality, such boundary may include all lands within the city or municipality. A district may include one or more municipalities, cities or provinces, or portions thereof.

(c) A statement of intent to transfer any and all waterworks and/or sewerage facilities owned by such city, municipality or province to such district pursuant to a contract authorized by Section 31 (b) of this Title.

(d) A statement identifying the purpose for which the district is formed, which shall include those purposes outlined in Section 5 above.

(e) The names of the initial directors of the district with the date of expiration of term of office for each.

(f) A statement that the district may only be dissolved on the grounds and under the conditions set forth in Section 44 of this Title.

(g) A statement acknowledging the powers, rights and obligations as set forth in Section 36 of this Title.

Nothing in the resolution of formation shall state or infer that the local legislative body has the power to dissolve, alter or affect the district beyond that specifically provided for in this Act.

If two or more cities, municipalities or provinces, or any combination thereof, desire to form a single district, a similar resolution shall be adopted in each city, municipality and province.

Also, relevant is Section 46 of PD. No. 198, as amended, which reads as follows:

"Section 46. Exclusive Franchise. - No franchise shall be granted to any other person or agency for domestic water service within the district or any portion thereof unless and except to the extent that the board of directors of said district consents thereto by resolution duly adopted."

Foregoing considered, it necessarily follow that granting extension of franchise to construct, install, operate and maintain for commercial purposes a

water supply and system for the purpose of water distribution should not be through an all-encompassing grant of power from the local legislative body totally disregarding the requirements imposed by the Water Code and PD No. 198 in the formulation of water districts.

Incidentally, we are confronted time and again of questions about the prevailing practices of some Local Government Units enacting ordinance directly giving franchises on water distribution or waterworks management system capitalizing on the general power to enact ordinances provided by Section 458 of the Local Government Code. The Department no longer has jurisdiction thereon and the matter should be resolved before the proper forum.

We hope to have enlightened you on the matter.

Very truly yours,
BY AUTHORITY OF THE SECRETARY:


MARIVEL C. SACENDONCILLO, CESO III
Undersecretary

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