

**DILG ROKHI
FILE**



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DILG-13 OPINION NO. 004-2014

March 5, 2014

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DILG - REGION XIII	
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DATE:	MAR 12 2014
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BY:	pas

MIGUELITO E. BARON
Brgy. Songkoy, Kitcharao
Agusan del Norte

Dear Mr. Baron:

This refers to Resolution No. 026 Series 2013 entitled "A Resolution Requesting the Department of the Interior and Local Government for a Legal Opinion Relative to the Financial Requirement of a Newly Created Barangay particularly Barangay Songkoy of the Municipality of Kitcharao, Province of Agusan del Norte" 2nd Indorsement of which by Provincial Director Romeo A. Solis was received by this Office on February 21, 2014.

Based on the Resolution above, we have noted the following premises which are so important that we cannot just ignore them:

1. *Brgy. Songkoy was purportedly created by virtue of Ordinance No. 155-2004 Series of 2005 by the Province of Agusan del Norte;*
2. *The financial requirement of Brgy. Songkoy came from the mother barangay and shared with another daughter barangay based on a Memorandum of Agreement; thus,*
 - a. *Mother barangay retained 40% of its IRA;*
 - b. *Brgy. Songkoy got 30% of the IRA of the mother barangay;*
 - c. *Brgy. Crossing got 30% of the IRA of the mother barangay.*
3. *The Memorandum of Agreement signed in December 2009 expired in January 2010;*

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- 4 Upon the expiration of the MOA, the two (2) daughter barangay's IRA share was reverted to the national coffers since the two (2) were not included in the allocation of IRA from the DBM.

Let us invite you to read the pertinent provisions of the Local Government Code as to creation of local government units such as a barangay, viz:

"Section 6. Authority to Create Local Government Units. A local government unit may be created, divided, merged, abolished, or its boundaries altered ~~with~~ by law enacted by Congress in the case of a province, city, municipality or any other political subdivision, or by ordinance passed by the sangguniang panlalawigan or sangguniang panlungsod concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

Section 7. Creation and Conversion. - As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. - It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population. - It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land Area. - It must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).

Section 8. Division and Merger. - Division and merger of existing local government units shall comply with the same requirements herein prescribed for their creation: Provided, however, That such division shall not reduce the income, population, or land area of the local government unit or units concerned to less than the minimum requirements prescribed in this Code: Provided, further, That the income classification of the original local government unit or units shall not fall below its current classification prior to such division.

The income classification of local government units shall be updated within six (6) months from the effectivity of this Code to reflect the changes in their financial position resulting from the increased revenues as provided herein.

Section 10. Plebiscite Requirement. - No creation, division, merger, abolition, or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall

be conducted by the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.

Section 14. Beginning of Corporate Existence. - When a new local government unit is created, its corporate existence shall commence upon the election and qualification of its chief executive and a majority of the members of its sanggunian, unless some other time is fixed therefor by the law or ordinance creating it.”(Emphasis supplied)

Going back to the creation of Barangay Songkoy, given the alleged Sanggunian Panlalawigan Ordinance creating it, may we be informed if the required plebiscite was ever conducted by the COMELEC within one hundred twenty (120) days from the effectivity of the ordinance? And if ever there was such plebiscite, may we be informed of the result?

The Department is bereft of the authority to pass upon the validity of the creation of local government units, such as Brgy. Songkoy, Kitcharao, Agusan del Norte. Nonetheless, without passing upon the issue of validity, for purposes of discussion, we just assume the validity of the creation.

We would like to stress that the last paragraph of Section 285 of the Local Government Code of 1991 provides:

“Provided, finally, that the fiscal requirement of barangays created by LGUs after the effectivity of the Code shall be the responsibility of the local government units concerned.”

Relative thereto, Article XIV (g) of the Implementing Rules and Regulations of RA 7160 states:

“(g) Financial requirement – the financial requirement of the barangays created by LGUs after the effectivity of the Code shall be the responsibility of the LGU concerned.”

DILG Opinion No. 34, s. 2004 as quoted in DILG Legal Opinion No. 92, s. 2011, and DILG Opinion No. 38, s. 2004 had the occasion to interpret Section 285 of the Local Government Code of 1991, viz.:

"In this regard, may it be noted that barangays may be created through a law enacted by Congress or through an ordinance by the Sangguniang Panlalawigan with respect to the creation of new barangays in a municipality, or by the Sangguniang Panlungsod, with respect to the creation of new barangays within a city (Secs. 385 and 386, RA 7160). The aforementioned provisions expressly provide that the financial requirement of the barangays created by the provincial government or the city government, shall be the responsibility of the LGU concerned. The phrase "Local Government Units concerned" undoubtedly refers to the local government unit which created the new barangays and obviously that refers also to the provincial or city government, as the case may be.

Accordingly, with respect to the financial requirement of the newly created barangays in your municipality, their IRA share should be borne by the provincial government, being the creating LGU."

Thus, assuming that there was a valid creation of Brgy. Songkoy, Kitcharao, Agusan del Norte (which includes the compliance with the plebiscite requirement), it is the Province of Agusan del Norte, being the creating LGU which must bear the financial requirement of Brgy. Songkoy, and not the so-called mother barangay. To emphasize, the IRA share of the so-called mother barangay is theirs alone and the financial requirements of the newly created barangays after the effectivity of the Local Government Code shall be borne by the creating LGU. It is, therefore incorrect to say that the 30% of the IRA shared by the mother barangay to Brgy. Songkoy has reverted back to the national coffers after the expiration of the MOA when such IRA share is actually that of the mother barangay.

The case of Rodolfo G. Navarro, et al. vs. Executive Secretary Eduardo Ermita, et al. (G.R. No. 180050 promulgated on April 12, 2011) involving R.A. 9355 entitled "An Act Creating the Province of Dinagat Islands", says:

"xxx It must be borne in mind that the central policy considerations in the creation of local government units are economic viability, efficient administration, and capability to deliver basic services to their constituents. The criteria prescribed by the LGC, i.e., income, population and land area, are all designed to accomplish these results. In this light, Congress, in its collective wisdom, has debated on the relative weight of each of these three criteria, placing emphasis on which of them should enjoy preferential consideration.

Without doubt, the primordial criterion in the creation of local government units, particularly of a province, is economic viability. This is the clear intent of the framers of the LGC. xxx"

and thereafter quotes the excerpts from congressional debates.

This same criterion must have been considered when the Sangguniang Panlalawigan allegedly created Brgy. Songkoy so that it would be lighter a burden to bear its financial requirement.



As to the amount or basis for the computation of IRA for Barangay Songkoy, Municipality of Kitcharao, Province of Agusan del Norte, the Local Government Code of 1991 (LGC) is silent. Nevertheless, assuming that there was a valid creation of Barangay Songkoy, we invite you to revisit Ordinance No. 155-2004 Series of 2005 by the Province of Agusan del Norte for any provision relative to the amount of your share. If there is no such provision, still it is incumbent upon the Province of Agusan del Norte to provide for your financial requirement as mandated by law. It may help that you seek an audience with the Governor and lobby for the inclusion of your financial requirement in the Annual and/or Supplemental Budget.

Nevertheless, the predicament of barangays created after the effectivity of the Local Government Code of 1991, specifically as regards financial requirement, has been noticed by at least two (2) legislators already. Let us share with you a press release of the House of Representatives on August 23, 2013 saying that Rep. Anthony del Rosario (1st District, Davao del Norte) sponsored House Bill 65 seeking to address the predicament of non-IRA barangays. He said it is aimed at enabling them to optimize the performance of their functions and administration, effectively and efficiently. He believes that the delivery of basic social services will be enhanced by granting IRA to these basic political units for poverty alleviation of their respective populace. Thus, he saw it relevant to re-introduce the proposal filed in the 14th Congress by Rep. Bernardo Piñol to avoid further financial deprivation of non-IRA barangays and likewise accord them full autonomy. Thus, it may very well help you and others similarly situated to you if you address the concern embodied

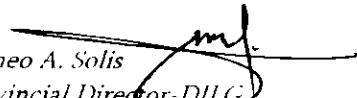
in your request for legal opinion to our legislators, most particularly to the Representative of your District to the lower house of Congress.

We hope to have sufficiently helped you on the matter.

Very truly yours,


LILIBETH A. FAMACION, CESO IV
Regional Director 

cc:


Romeo A. Solis
Provincial Director-DILG
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