



Republic of the Philippines  
**DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT**  
**REGION XIII (CARAGA REGION)**

1559 Matimco Bldg., Km. 4, Libertad, Butuan City  
 Telefax Nos. (085) 342-2134 / 815-1229  
 website: caraga.dilg.gov.ph; email address: dilgxiii@yahoo.com



**DILG RO XHI**  
**FILE**

DILG-13 OPINION NO. 005-2014  
 March 26, 2014

THE HONORABLE MEMBERS OF THE SANGGUNIANG BAYAN  
 Santa Josefa, Agusan del Sur

Through: **MR. VICENTE P. PINEDA**  
 Secretary to the Sangguniang Bayan

*Dear Sirs and Mesdames:*

This refers to your letter to the Provincial Director-DILG Ms. Arleen Ann R. Sanchez, forwarded to this level on March 25, 2014 requesting for assistance and opinion on the legality of the proposed organic demo farm project of Sta. Josefa subject to usufruct.

Based on the same letter and your personal visit together with Hon. Reynaldo M. Quijada, Hon. Arnold Evangelio, Hon. Sarah Banger, Hon. Pablo O. Plaza and Mr. Edward P. Otero at the Regional Office, we gleaned that:

1. You would like to know the legality of SB's authorization for the Mayor to enter into and sign a deed of usufruct for the land to be used for the municipality's organic demo farm project;
2. Mr. Robert Otero, owner of the 10-hectare land subject to usufruct sincerely offers the property for use of the municipality absolutely free for as long as it is exclusively used as demo farm and for other uses related to it;
3. The draft usufruct agreement says the usufruct is effective for a period of ten (10) years and renewable upon agreement of the parties;
4. The demo farm would necessarily include permanent structures and other facilities constituting improvement on the land which has now begun;
5. Another piece of land has already been previously acquired for the same purpose by LGU Santa Josefa, Agusan del Sur.

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**DILG - REGION XIII**  
**RELEASED**  
 DATE: MAR 31 2014  
 TIME: 1:28 PM  
 BY: MAS

At the outset, we would like to inform you that we are bereft of authority to pass on the legality or validity of actions or agreements. This is properly left to the courts of competent jurisdiction.

Nevertheless, we may discuss some important points without necessarily going into the issue of legality or validity.

The New Civil Code of the Philippines, specifically Title VI. Usufruct of Book 2: Property, Ownership and Its Modifications, defines usufruct, and enumerates the rights and obligations of the usufructuary, and the extinguishment of usufruct from Articles 562 to 612. The following are some provisions for your consideration:

*Art. 562. Usufruct gives **a right to enjoy the property of another with the obligation of preserving its form and substance**, unless the title constituting it or the law otherwise provides.*

*Art. 579. The **usufructuary may make on the property held in usufruct such useful improvements or expenses for mere pleasure as he may deem proper, provided he does not alter its form or substance**; but he shall have no right to be indemnified therefor. He may, however, remove such improvements, should it be possible to do so without damage to the property.*

*Art. 583. The usufructuary, before entering upon the enjoyment of the property, is obliged:*

*(1) To make, after notice to the owner or his legitimate representative, an inventory of all the property, which shall contain an appraisal of the movables and a description of the condition of the immovables;*

*(2) **To give security, binding himself to fulfill the obligations imposed upon him in accordance with this Chapter.***

*Art. 585. The usufructuary, whatever may be the title of the usufruct, may be excused from the obligation of making an inventory or of giving security, when no one will be injured thereby.*

*Art. 586. Should the usufructuary fail to give security in the cases in which he is bound to give it, the owner may demand that the immovables be placed under administration, that the movables be sold, that the public bonds, instruments of credit payable to order or to bearer be converted into registered certificates or deposited in a bank or public institution, and that the capital or sums in cash and the proceeds of the sale of the movable property be invested in safe securities.*

*The interest on the proceeds of the sale of the movables and that on public securities and bonds, and the proceeds of the property placed under administration, shall belong to the usufructuary.*

*Furthermore, the owner may, if he so prefers, until the usufructuary gives security or is excused from so doing, retain in his possession the property in usufruct as administrator, subject to the obligation to deliver to the usufructuary the net proceeds thereof, after deducting the sums which may be agreed upon or judicially allowed him for such administration.*

Art. 587. If the usufructuary who has not given security claims, by virtue of a promise under oath, the delivery of the furniture necessary for his use, and that he and his family be allowed to live in a house included in the usufruct, the court may grant this petition, after due consideration of the facts of the case.

The same rule shall be observed with respect to implements, tools and other movable property necessary for an industry or vocation in which he is engaged.

If the owner does not wish that certain articles be sold because of their artistic worth or because they have a sentimental value, he may demand their delivery to him upon his giving security for the payment of the legal interest on their appraised value.

Art. 588. After the security has been given by the usufructuary, he shall have a right to all the proceeds and benefits from the day on which, in accordance with the title constituting the usufruct, he should have commenced to receive them.

**Art. 595. The owner may construct any works and make any improvements of which the immovable in usufruct is susceptible, or make new plantings thereon if it be rural, provided that such acts do not cause a diminution in the value of the usufruct or prejudice the right of the usufructuary.**

**Art. 596. The payment of annual charges and taxes and of those considered as a lien on the fruits, shall be at the expense of the usufructuary for all the time that the usufruct lasts. (504)**

**Art. 602. The expenses, costs and liabilities in suits brought with regard to the usufruct shall be borne by the usufructuary.**

**Art. 605. Usufruct cannot be constituted in favor of a town, corporation, or association for more than fifty years. If it has been constituted, and before the expiration of such period the town is abandoned, or the corporation or association is dissolved, the usufruct shall be extinguished by reason thereof.**

Art. 612. Upon the termination of the usufruct, the thing in usufruct shall be delivered to the owner, without prejudice to the right of retention pertaining to the usufructuary or his heirs for taxes and extraordinary expenses which should be reimbursed. After the delivery has been made, the security or mortgage shall be cancelled.

Indeed, we laud the magnanimity of the owner in offering the land for the use of the Municipality for no consideration. However, we noted that there are still some expenses the LGU must consider relative to the subject land in usufruct such as delivering security, unless specifically exempted from giving the same, and expenses, costs and liabilities in suits brought with regard to the usufruct, in case there is any.

While the permission to use the land seems to mean perpetual use for the specified purpose, the written agreement provides for a 10-year period of effectivity. Although renewable by mutual agreement, the same may be extinguished, of course, at the end of the agreed period. While it is provided that the structures, naturally including permanent ones, built on the land subject to usufruct, are owned by LGU-Santa Josefa, we think about what would become of them if the agreement would not be renewed.

Further, we understood that there has been a land purposely acquired by Municipality of Sta. Josefa, Agusan del Sur for such organic demo farm project which although far from the town capital, is nevertheless accessible through paved road.

Lastly, we noticed that the name of the generous donor is Mr. Robert P. Otero, who we presume is a relative within the fourth civil degree of consanguinity of the incumbent Mayor, Hon. Jann Roby R. Otero. We are all aware that the term of elective officials is subject to the three-term limit and the outcome of each election is unpredictable. Thus, we are apprehensive of the repercussions of the change of administration, if there would be any, to the project and to the usufruct agreement itself.

Needless to say, just utilize the acquired land for the purpose or have the land subject of usufruct be donated instead. Let us be reminded of the provisions of Section 335 of the Local Government Code of 1991 saying:

*Section 335. Prohibitions Against Expenditures for Religious or Private Purposes. - No public money or property shall be appropriated or applied for religious or private purposes.*

Also, Section 3 of Republic Act 3019 otherwise known as the Anti-Graft and Corrupt Practices Act provides for corrupt practices of public officers:

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*(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.*

*(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.*

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*(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.*

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*(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.*

(h) Directly or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

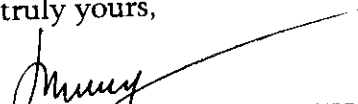

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

We appreciate the efforts of the present administration of Santa Josefa, Agusan del Sur to undertake impressive and inspiring projects such as the organic demo farm. However, we are just reminded of the similar circumstances in cases decided by the Office of the Ombudsman, finding the accountable officers guilty of violating Section 3 (e) of R.A. 3019

We hope that the foregoing sufficiently addressed your concerns. This opinion is rendered without prejudice to the decisions that competent higher authorities and the courts may subsequently decree.

Very truly yours,

  
LILIBETH A. FAMACION, CESO IV  
Regional Director 

cc: Ms. Arleen Ann R. Sanchez  
Provincial Director-DILG  
Gov. D.D. Plaza Gov't Center, Patin-ay  
Prosperidad, Agusan del Sur

Jason Ryan R. Lam, MPA  
MLGOO-DILG  
Santa Josefa, Agusan del Sur

Legal Service, DILG  
Quezon Ave., Quezon City

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BC 12996454188