

**DILG RO XHI
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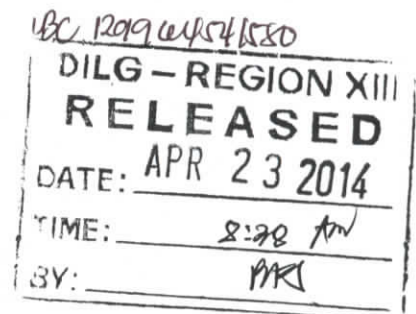


Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
REGION XIII (CARAGA REGION)
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DILG-13 OPINION NO. 008-2014

April 22, 2014



HON. GENES C. CAPON
HON. ROY B. NGUHO
HON. LORETO L. LAPIDA
Members of the Sangguniang Bayan
(Committee on Ethics, Rules, Ordinance and Good Government)
Tubay, Agusan del Norte

Dear Hon. Capon, Hon. Nguho and Hon. Lapida:

This refers to your letter addressed to the Secretary of the Interior and Local Government, Hon. Manuel A. Roxas II, indorsed for appropriate action and disposition on April 15, 2014 by the Legal and Legislative Liaison Service of the DILG and received on April 21, 2014 by this level.

You represented your good selves as Chairman, Vice-Chairman and Member of the Committee on Rules of the 17th Sangguniang Bayan (SB) of Tubay, Agusan del Norte. You requested for a legal opinion and proper guidance on some ordinances passed by the 16th SB and the resolutions of the Sangguniang Panlalawigan (SP) approving the same.

We have noted that the subject Ordinances / Resolutions were already approved in the year 2013 or almost a year before this date. In such cases, we are precluded from taking action thereon in accordance with DILG Memorandum Order No. 2010-02 dated 17 September 2010 which supplements DILG Memorandum Order No. 2010-01 dated 04 March 2010. Duly approved ordinances are presumptively valid acts; thus, they enjoy the presumption of regularity on the part of the public officer concerned, unless otherwise declared by our courts of justice upon proper judicial action.

In the City Government of Quezon City vs. Hon. Judge Vicente Ericeta (G.R. No. L-34915, 24 June 1983), the words of Justice Malcolm were quoted saying:

/amg lo008-2014

Page 1 of 2

"The presumption is all in favor of validity... The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular...municipality and with all the facts and lances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well-being of the people..."

However, any question in connection with the non-compliance with the substantive requirements in the passage of such ordinances / resolutions must already be threshed out by filing a special civil action for Declaratory Relief before the proper court in accordance with Sections 1 and 4, Rule 63 of the Revised Rules of Court, which state:

"Section 1. Who may file Petition – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, or ordinance may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties thereunder. xxx"

Section 4. Local Government Ordinances - In any action involving the validity of a local government ordinance, the corresponding prosecutor or attorney of the local government unit involved shall be similarly notified and entitled to be heard. xxx"

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: Mr. Romeo A. Solis
Provincial Director-DILG
DILG – Agusan del Norte

Yul O. Guerta
MLGOO-DILG
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Page 2 of 2