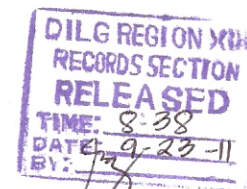
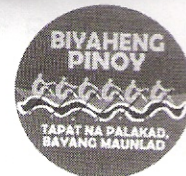




Republic of the Philippines  
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT  
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September 22, 2011

HON. JOVITA S. UMAPAS  
Municipal Vice Mayor  
Marihatag, Surigao del Sur

Thru: Mr. Pedrito P. Alacaba  
Provincial Director  
DILG, Surigao del Sur

Dear Vice Mayor Umapas:

This refers to your letter seeking opinion on whether Municipal Ordinance No. 2, series of 2011, entitled "AN ORDINANCE REGULATING THE USE OF FARM TO MARKET ROADS IN THE MUNICIPALITY OF MARIHATAG PROVIDING POLICIES AND GUIDELINES AND IMPOSING PENALTIES IN CASE OF VIOLATION" was enacted in accordance with the Local Government Code of 1991 and related laws, rules and regulations.

We believe that said ordinance does not contravene the Local Government Code of 1991 and other laws. The ordinance is not only about temporary closure but about regulating the use of farm-to-market roads wholly and jointly maintained by the municipal government. The local legislative body can delegate some of its powers to the mayor on the principle of delegation of legislative power. Due to the increasing complexity of the task of government and the growing inability of the legislature to cope directly with the myriad problems demanding its attention, the delegation of legislative power has become the rule and its non-delegation the exception (Agpalo, Philippine Administrative Law, 1999 Edition, p. 140).

The legislative body can delegate to the local chief executive the discretion as to how the law shall be enforced, issue rules to fill in details, to ascertain facts on which the law will operate, to exercise police power, and to fix rates. It cannot however delegate its power to make, alter or repeal of a law, determine legislative policies and objectives to be achieved or fix the limits within which law shall operate. To be a valid delegation the law has to pass the completeness and sufficiency of standard tests. The completeness tests states that the law must be complete in all its items and conditions when it leaves the legislature such that when it reached the delegate the only thing he will have to do is to enforce it (Eastern Shipping Lines, Inc. vs. POEA, 166 SCRA 533 (1988)) while sufficient standard tests may be found within the policy or purpose of the law which sets up the standards or guides to indicate the extent, and prescribe the limits, of the discretion which may be exercised under the statute by the administrative agency (1 Am. Jur. 2d, pp. 913-914 cited in Agpalo, Philippine Administrative Law, 1999 Edition, p. 148). We believe that Ordinance No. 2, series of 2011 passed both tests.

Our only observation is in Section 11(a) of the Ordinance. The Omnibus Rules Implementing Book V of Administrative Code of 1987 is only applicable to civil service employees. It is not applicable to violators of Section 5 who may not be government employees. Even if there is a provision in the ordinance that civil servants who violate said provision are also administratively liable under Civil Service Rules, the same is doubtful. A government employee may be liable under Civil Service Rules if the crime committed is essentially connected with the performance of his official duties, if not, the administrative case may be filed only after a final judgment of conviction shall have been rendered by the court of justice (Provincial Board of Zamboanga vs. Guzman, 21 SCRA 957).

We hope to have clarified you on this matter.

Very truly yours,



ATTY. RENE K. BURDEOS, CESO III  
Regional Director

cc: Atty. Edward Justine R. Orden  
Chief, Law Division  
Legal Service, DILG  
Diliman, Quezon City