

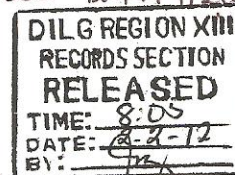
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DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
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UBC-129947126214



February 1, 2012

DILG-13 OPINION NO. _____

04

Hon. ERNESTO T. MATUGAS
City Mayor
Surigao City

Thru: Mr. Domingo E. Bulabog
Provincial Director
DILG, Surigao del Norte

Dear Mayor Matugas:

This refers to your letter dated January 20, 2012 seeking opinion on whether you still need the authority from the sangguniang panlungsod before you can file an ejectment case against SRBC Realty and Development Corporation.

You mentioned that the City Government of Surigao (City) leased its real property located in the city boulevard to SRBC Realty & Development Corporation (SRBC) on July 12, 2005. However it was discovered that SRBC is neither registered as corporation nor as partnership with the Securities and Exchange Commission. Because of this, the City wrote Alfredo T. Bonpin, Chairperson of SRBC, to vacate the property within thirty (30) days from receipt of the letter; however, there is no indication that SRBC will vacate the premises to the detriment of the City. You now wanted to sue SRBC and you asked the sangguniang panlungsod for authority but it refused on the ground that it is bereft of any power to do so.

Please be informed that Section 22 of the Local Government Code enumerated the corporate powers of local government units and one of which is the capacity to sue and be sued. In exercising such power, Section 455 (b)(3)(viii) of the Local Government Code vests on the City Mayor the authority to institute administrative or judicial proceedings. The said Section provides:

"Sec. 455. Chief Executive: Powers, Duties and Compensation.- (a) The city mayor, as the chief executive of the city government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

(b) For efficient, effective, and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

(1) x x x;

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and countryside growth and progress and, relative thereto shall:

x x x

(viii) Institute or cause to be instituted administrative or judicial proceedings for violation of ordinances in the collection of taxes, fees or charges, and for the recovery of funds and property; and cause the city to be defended against all suits to ensure that its interests, resources and rights shall be adequately protected.

x x x. (emphasis supplied) ”

From the foregoing, it is clear that the mayor has the authority to file suits "for the recovery of funds and property" on behalf of the city. Prior authorization from the Sanggunian is not necessary. The Sanggunian is correct when it commented that nowhere in the enumerated powers and duties of the Sanggunian can one find the requirement of such prior authorization in favor of the mayor for the purpose of filing suits on behalf of the city.

Please be informed however that in instituting judicial action, the city government cannot be represented by private lawyers as only public officers may act for and in behalf of public entities and public funds should not be spent to hire private lawyers. It can only be represented by the city legal officer, or if vacant, the city prosecutor, in all civil actions and special proceedings wherein the city or any of its officers is a party (ASEAN Pacific Planners vs. City of Urdaneta, 566 SCRA 219).

We hope to have enlightened you on this matter.

Thank you very much.

Very truly yours,



ATTY. RENE K. BURDEOS, CESO III
Regional Director