

File



Republic of the Philippines  
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT  
REGION XIII (CARAGA REGION)  
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DILG-13 OPINION NO. 11

DILG REGION XIII  
RECORDS SECTION  
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TIME: APR 10 2012  
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BY: [Signature]

ATTY. MANUEL G. CORO  
City Legal Officer/Concurrent City Administrator  
City of Surigao

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

Dear Atty. Coro:

This refers to your seeking opinion on the following issues:

- 1) Whether or not it is mandatory for the mayor to issue the business permit even if the barangay denied the application for barangay clearance?
- 2) Whether or not the barangay can rightfully deny the application of barangay clearance? and
- 3) Are there any legal remedies on the said establishments after their application of clearance was denied?

Please be informed that Article 240 (c) par. 2 of the Rules and Regulations Implementing the Local Government Code of 1991 provides that:

*Article 240. Scope of Taxing and Other Revenue-Raising Powers of Barangays xxx*

xxx

(c) xxx

*The application for barangay clearance shall be acted upon within seven (7) working days from the filing thereof. In the event that a clearance is not issued or the application is denied within the said period, the city or municipality may issue the license or permit to the applicant" (underlining supplied).*

Nevertheless, if the issuance of barangay clearance and business permit is considered a frontline service then the provision of Anti-Red Tape Act of 2007 (R.A. No. 9485) be given suppletory in nature. Section 8, of the Act provides that:

*"Sec. 8. Accessing Frontline Services. - The following shall be adopted by all government offices and agencies:*

*(a) Acceptance of Applications and Requests – x x x.*

*(b) Action of Offices - (1) All applications and/or requests submitted shall be acted upon by the assigned officer or employee during the period stated in the Citizen's Charter which shall not be longer than five working days in the case of simple transactions and ten (10) working days in the case of complex transactions from the date the request or application was received. Depending on the nature of the frontline services requested or the mandate of the office or agency under unusual circumstances, the maximum time prescribed above may be extended. x x x*

*(2) No application or request shall be returned to the client without appropriate action. In case an application or request is disapproved, the officer or employee who rendered the decision shall send a formal notice to the client within five working days from the receipt of the request and/or application, stating therein the reason for the disapproval x x x."*

Also, Section 4 (d) of ARTA defined "action" as the written approval or disapproval made by a government officer or agency on the application or request submitted by a client for processing. Based on the letter of the punong barangay to Mr. Alberto P. Ito of IMCA Multipurpose Cooperative, the barangay clearance was not denied but remain unacted since the "request is held in abeyance".

Now let us deal on your first and third queries. Section 455 (b) (3) (iv) of the Local Government Code of 1991 provides that:

*"Section 455. Chief Executive; Powers, Duties and Compensation. (a)*  
*x x x*

*(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:*

*x x x*  
*(3) Initiate and maximize the generation of resources and revenues x x x shall:*

*x x x*  
*(iv) Issue licenses and permits x x x, pursuant to law or ordinance.*

*x x x"*

Based on the preceding provision where the power of the city mayor to issue license and permits is circumscribed, is a manifestation of the delegated police power of a municipal corporation. Necessarily, the exercise thereof cannot be deemed ministerial. As to the question of whether the power is validly exercised, the matter is within the province of a writ

of certiorari, but certainly, not of mandamus (*Robles Arrastre, Inc. Villaflor, G.R. No. 128509, August 22, 2006*). This prerogative is supported by Article 240 (c) par. 2, IRR, Local Government Code which states that "In the event that a clearance is not issued or the application is denied within the said period, the city or municipality may issue the license or permit to the applicant" (underlining supplied). The word "may" is merely permissive and operates to confer discretion upon a party (*Capati vs. Ocampo, G.R. No. L-28742, April 30, 1982*).

Therefore, it is our opinion that after the inaction or denial by the barangay of the application for barangay clearance within the prescribed period, the applicant may still apply for business permit in the City Mayor Office, subject to the approval or disapproval of the mayor. However, if the mayor denies the application and the refusal is tainted with grave abuse of discretion, the IMCA Members has still a remedy. They can file a petition for certiorari against the mayor before the court of competent jurisdiction.

As to your second query, Article 240 of the IRR, Local Government Code is very explicit of the barangay's authority to deny or approve the barangay clearance when it states that "*In the event that a clearance is not issued or the application is denied within the said period x x x*". As to whether the denial is proper, we cannot intellectually answer the question because the facts submitted are insufficient to render appropriate opinion. There was no information as to the required documents before a barangay clearance can be issued.

We hope to have clarified you on this matter.

Very truly yours,

  
LILIBETH A. FAMACION, CESO IV  
OIC – Regional Director

cc: ALBERTO P. ITAO  
IMCA Multipurpose Cooperative  
Brgy. Washington, Surigao City