

DILG RO XIII  
FILE



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) 342-2134/815-1299  
website:caraga.dilg.gov.ph; emailadd: dilgxiii@yahoo.com



DILG-13 OPINION NO. 8

April 3, 2013

WBC R99 61577854

DILG - REGION XIII
<b>RELEASED</b>
DATE: APR 11 2013
TIME: 5:08 PM
BY: [Signature]

Hon. VICENTE T. PIMENTEL, JR.  
Municipal Mayor  
Carrascal, Surigao del Sur

Dear Mayor Pimentel:

This refers your letter seeking our opinion pertaining to Ordinance No. 03, s. 2013 entitled "AN ORDINANCE IMPOSING ENVIRONMENT HAZARD FEE ON ALL COMMERCIAL VESSELS LOADING MINERAL ORES WITHIN THE MUNICIPAL WATERS OF CARRASCAL INCLUDING BARGES TRANSPORTING ORES FROM THE CAUSEWAY TO THE VESSEL" in which you raised the following issues:

- 1) Whether or not DILG Memorandum Circular Nos. 2006-70 and 2011-151 affect enacted Municipal Ordinance No. 02, s. 2012 of the Municipality of Carrascal and cause the municipality to refrain from imposing significant provisions of said ordinance especially the collection of environmental hazard fee; and
- 2) Are there any legal liabilities if the LGU continues to impose said ordinance and impose penalties for owners of vessel who failed to pay the required fee?

In your first query, we answer in the negative. The DILG Memorandum Circulars just clarified and reiterated Section 133 (e) of the Local Government Code of 1991 which prohibits the imposition of taxes, fees and charges on goods/merchandise carried into or out of, or passing through the territorial jurisdiction of the Local Government Unit (LGU). Section 133 (e) of the Code provides:

*Section 133. Common Limitations on the Taxing Powers of Local Government Units. - Unless otherwise provided*

*therein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:*

X X X

*(e) Taxes, fees and charges and other impositions upon goods carried into or out of, of passing through, the territorial jurisdiction of local government units in the guise of wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise; (emphasis supplied)*

X X X


Municipal Ordinance No. 03, s. 2013 collected fees per vessel that enters the municipal waters of the municipality and not based on the mineral ores carried by those vessels. It is our view that for purposes of the ordinance, a vessel is not a merchandise; therefore not subject to prohibition.

For the second query, we answer in the negative. The mayor is legally bound to enforce the ordinance until it is declared invalid by the court or repealed by the sangguniang bayan.

An ordinance enjoys the presumption of validity and, as such, cannot be restrained by injunction. Nevertheless, when the validity of the ordinance is assailed, courts are not precluded from issuing an injunctive writ against the enforcement when: (1) the petitioner assailing the ordinance has made out a case of unconstitutionality strong enough to overcome, in the mind of the judge, the presumption of validity; and (2) the petitioner has shown a clear legal right to the remedy sought (Social Justice Society vs. Atienza, G.R. No. 156052, February 14, 2008). If the vessels' owners think that the ordinance is contrary to Section 133 (e) of the Code, and DILG Memorandum Circulars No. 2006-70 and 2011-151, they have to file an appropriate action in court questioning the validity of the ordinance. Again, unless the ordinance will be subsequently declared by the court as invalid or the sangguniang bayan repealed it, the owners shall pay the appropriate fees and will be penalized accordingly if they failed/refused to do so.

We hope to have clarified you on this matter.

Very truly yours,

  
LILIBETH A. FAMACION, CESO IV  
OIC-Regional Director

cc: PD Pedrito P. Alacaba  
DILG Surigao del Sur

The Director  
Legal Service, DILG  
Diliman, Quezon City

d:\apv\3 tony files (drive f)\ro opinion 13\04pimentel.doc