

March 8, 2010

HON. DIOSDADA I. GIELCZYK
Punong Barangay
Barangay Hall
Jugan, Consolacion
Cebu

Dear Punong Barangay Gielczyk:

This has reference to your letter dated March 04, 2010, requesting legal opinion on the observations of the Committee on Laws of the Sangguniang Bayan of Consolacion contained in its report submitted in connection with the review made on Ordinance No. 2009-02 (An Ordinance Revising Tax Ordinance 99-001, Series of 1999) of Barangay Jugan.

Please be informed at the outset that the Department of the Interior and Local Government does not have any authority to rule on the propriety of any tax ordinance because under Section 187 of the Local Government Code of 1991, any question on the constitutionality or legality of tax ordinances or revenue measures may be appealed to the Secretary of Justice within thirty (30) days from its effectivity. In the same manner, our Department does not have authority to pass upon the findings of the Sangguniang Bayan of Consolacion in the exercise of its authority or power to review legislative measures passed and approved by the barangays within its territorial jurisdiction. Nevertheless, in view of your aforestated request, we are impelled to express our views thereon for academic discussion only.

To recall, the 1987 Constitution provides under Article X, Section 5 thereof that each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to such guidelines and limitation as the Congress may provide. Thus, the power to levy taxes is subject to the limitations provided by law passed by Congress; and for local government units it is the Local Government Code of 1991. Section 152 of the Local Government Code of 1991 provides for the scope of the taxing powers of barangays –

“Section 152. Scope of Taxing Powers. – The barangay may levy taxes, fees and charges, as provided in this Article, which shall exclusively accrue to them:

- (a) Taxes - On stores or retailers with fixed business establishments with gross sales or receipts of the preceding calendar year of Fifty Thousand Pesos (P50,000.00) or less, in the case of cities and Thirty Thousand Pesos (P30,000.00) or less, in case of municipalities, at a rate not exceeding one percent (1%) on such gross sales or receipts.
- (b) Service Fees or Charges – Barangays may collect reasonable fees or charges for services rendered in connection with the regulation or the use of

barangay-owned properties or service facilities such palay, copra or tobacco dryers.

- (c) Barangay Clearance – No city or municipality may issue any license or permit for any business or activity unless a clearance is first obtained from the barangay where such business or activity is located or conducted. For such clearance, the sangguniang barangay may impose a reasonable fee. The application for clearance shall be acted upon within seven (7) working days from the filing thereof. In the event that the clearance is not issued within the said period, the city or municipality may issue the said license or permit.
- (d) Other Fees and Charges – The barangay may levy reasonable fees and charges:
 - (1) On commercial breeding of fighting cocks, cockfighting and cockpits;
 - (2) On places of recreation which charge admission fees; and
 - (3) On billboards, signboards, neon signs, and outdoor advertisements.

It is very clear from the foregoing provision of law that barangays may only impose, levy, assess and collect one particular kind of tax, and that is tax on stores or retailers with fixed business establishments with gross sales or receipts of the preceding calendar year of P50,000.00 or P30,000.00, depending on whether the barangay is located in a city or in a municipality. And let it be emphasized that the tax can only be assessed, imposed and collected on stores or retailers **with fixed business establishments**. And neither can taxes, fees or charges be assessed and collected on agricultural and aquatic products when sold by marginal farmers or fishermen (Sec. 133f, LGC).

As regards barangay clearance, the amount imposed and collected for the issuance of a barangay clearance is a fee. This is evident from Section 152 of the Local Government Code of 1991 and Article 240 of its implementing rules and regulations. Article 240 (c) expressly categorized the imposition on barangay clearance as a fee. The reasonableness of a fee would depend largely on the regulatory service to be rendered by the barangay in relation to the issuance of a barangay clearance.

In closing please be advised that PD 231 cited in Resolution 01-67 Series of 2010 passed by your sangguniang barangay has been repealed by the Local Government Code of 1991 under Section 534(c) thereof.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director