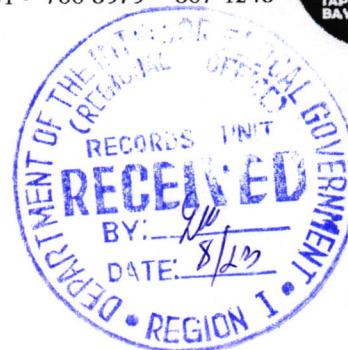




August 16, 2013

HON. BENJAMIN N. MAGGAY
Municipal Mayor
Cervantes, Ilocos Sur



Dear Mayor Maggay:

This refers to your letter requesting opinion from this office re: *“As a Mayor, is it legal, binding and ethical for me to issue business permit to operate to operators/drivers of SUVs/GT service even their Certificate of Registration has (sic) already expired and did (sic) not renewed by LTO. Likewise to a private vehicle whose registration is a private use but operating as a Public Transport Vehicle.”*

Before dwelling on the issues, may we first invite your attention to the provision of the Local Government Code of 1991, particularly sections 444 (b) (3) (iv), to wit:

Section 444. The Chief Executive: Powers, Duties, Functions and Compensation. -

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

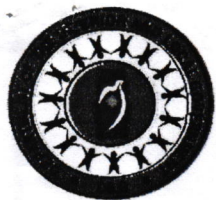
(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and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

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance;

DILG Opinion No. 135, Series 2010, dated September 29, 2010 citing Roble Arrastre, Inc. vs. Hon. Altagracia Villafior, et.al. (G.R. No. 128509, August 22, 2006), provides that

Clearly, the power of the municipal mayor to issue licenses and permits is founded on the general welfare clause. This delegated police power to the LGUs through its local chief executives authorizes the latter to regulate the use of property or conduct of property rights, i.e. business or practice of profession, among others, with its territory pursuant to conditions provided by law or ordinance for the common benefits of its inhabitants.

At the outset, the municipal mayor has the power to issue licenses and permits on the use of property or conduct of property rights within its territory. However, not all



property or conduct of property rights are subject to such power like the operation of SUVs/GT and motor vehicles except tricycles. In *LTO vs. City of Butuan* (G.R. No. 131512, January 20, 2000), the Supreme Court held that the Department of Transportation and Communication (DOTC), through the LTO and the LTFRB, has since been tasked with implementing laws pertaining to land transportation. The LTO is line agency under the DOTC whose powers and functions, pursuant to Article III, section 4(d)(1), 10(10) of R.A. No. 4136, otherwise known as Land Transportation and Traffic Code as amended, deal primarily with the registration of all motor vehicles and the licensing of drivers thereof. The LTFRB, upon the other hand, is the governing body tasked by E.O. No. 202, dated 19 June 1987, to regulate the operation of public utility or "for hire" vehicles and to grant franchises or certificates of public convenience ("CPC"). Finely put, registration and licensing functions are vested in the LTO while franchising and regulatory responsibilities had been vested in the LTFRB.

Under the Local Government Code, certain functions of the DOTC were transferred to the LGU, thusly:

Section 458. Powers, Duties, Functions and Compensation.

xxx xxx xxx

(3) Subject to the provisions of Book II of this Code, enact ordinances granting franchises and authorizing the issuance of permits or licenses, upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the city and pursuant to this legislative authority shall:

Xxx xxx xxx

(vi) Subject to the guidelines prescribed by the Department of Transportation and Communications, regulate the operation of tricycles and grant franchises for the operation thereof within the territorial jurisdiction of the city;

LGUs, indubitably, now have the power to regulate the operation of tricycles-for-hire and to grant franchises for the operation thereof. However, it is only for the operation of tricycles-for-hire. The devolved power did not include other motor vehicles but only tricycles.

You manifested that in your LGU, you have old Garage Terminal SUVs (2006 below model) whose registration as legitimate public transport vehicles were not renewed by LTO. These vehicles continue to transport passengers playing hide and seek with LTO personnel. Also, private jeeps and SUVs' owners are contracting parents to transport their children to and from school daily. And owners of these SUVs and private jeeps are asking you to issue Mayor's Permit so that they can be allowed to transport passengers and students without being questioned by the police.

Taking consideration on the matter, the very purpose of issuing Mayor's Permit is in direct violation of the powers and functions of the LTO and LTFRB because it would amount to authorizing these vehicles from operating and transporting passengers and

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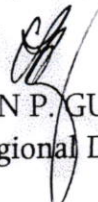

students without the necessary registrations and franchises. These vehicles were not renewed by LTO for they failed to meet the requirements of vehicles registration under LTO. Also, private jeeps and SUVs which transports passengers and students are considered by law as *colorum*. *Colorum* vehicles are prohibited by law from transporting passengers because of the absence of a legitimate and valid franchises issued by the LTFRB. In the business of public transportation, registration and franchise of motor vehicles are essential requirements in such business because the lives of passengers are at stake in case of accident. It is not an ordinary business because it involves the life and property of passengers.

The operation of unregistered SUVs and *colorum* vehicles for transporting passengers and students is beyond the powers of the LGU to regulate. It is still the DOTC through the LTO and LTFRB that have powers over them because of the mandate of public transportation. The mayor's permit will not justify any violation to be incurred by the owner and/driver thereof because it is not the requirement under the law to regulate such operation or business. The mayor's permit is not a requirement for the operation of *colorum* and unregistered motor vehicles. Hence, it is not legal and not binding for the mayor to issue business permit over the operation of such vehicles.

We hope to have enlightened you on the issues at hand. Our opinion, however, is without prejudice to any ruling or opinion rendered by a higher authority or a competent tribunal.

Warm regards.

Very truly yours,


CORAZON P. GURAY, CESO III
Regional Director 

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