



Republic of the Philippines
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT
DILG-NAPOLCOM Center, EDSA corner Quezon Avenue, West Triangle, Quezon City
http://www.dilg.com.ph

DILG OPINION NO. 34 S. 2020

FEB 12 2020

ATTY. GERALD C. CABRERA

President

Cabrera and Associates Law Office
Unit 4A Karina Bldg, 33 Shaw Blvd.
San Antonio, Pasig City

Dear Atty. Cabrera:

This has reference to your letters dated 9 and 10 January 2020, requesting for the Department's clarification on the following issues, respectively:

- i. Is it legal and permissible for a private corporation, which is the partner of the municipality in a Public-Private Partnership contract to collect payments from the consumers of the potable water it produces, for and in behalf of the partnership?
- ii. Whether or not the stated provision is legal in the sense that the intention of the Municipality and the Concessionaire is that the latter will act only upon the instruction of the Municipality and the Concessionaire will REPRESENT it accordingly, as opposed to a DELEGATION of the power of eminent domain, wherein the said power is given to the Concessionaire, which is not the case?

The said provision in the contract states that:

"Municipality hereby appoints the Concessionaire as its agent and representative, in its name, place and stead, to apply for and exercise its easement, eminent domain, right of way and similar rights and powers given to TAPAZ in connection with infrastructure projects and works undertaken relating to the Concession by the Concessionaire in the Service Area pursuant to this Agreement"

Hence, the above-specified queries.

One of the modalities of the Public-Private Partnership for the People (LGU P4) per DILG Memorandum Circular No. 2016-120¹ is Concession, and Concession is defined as a contractual arrangement whereby the financing and construction of a new facility and/or rehabilitation of an existing facility is undertaken by the

¹ Entitled "GUIDELINES FOR THE IMPLEMENTATION OF PUBLIC-PRIVATE PARTNERSHIP FOR THE PPEOPLE INITIATIVE FOR LOCAL GOVERNMENTS (LGU P4)"

PSP after turnover thereof to it, and includes the operation, maintenance, management and improvement, if any, of the facility for a fixed term during which **the PSP generally provides service directly to facility users and is allowed to charge and collect the approved tolls, fees, tariffs, rentals or charges from them.**

From the aforesaid definition, it is concluded that query number one should be answered in the affirmative.

With respect to the second query, we qualify. If the intention is to delegate the power enumerated therein, specifically, the power of eminent domain, we answer in negative as such power cannot be delegated following the general principle of law, expressed in the maxim "*delegatus non potest delegare*", that a delegated power may not be further delegated. However, if the intention as stated in your letter is to represent the municipality to apply and exercise the eminent domain upon the instruction of the municipality, then we answer in the affirmative.

As a matter of fact, Section 19 of Republic Act No. 7160 or the Local Government Code of 1991 provides that the exercise of the power of eminent domain must be pursuant to an ordinance.

It is further emphasized that the procedure laid down in Section 1², Rule 67 of the Rules of Court should be strictly observed, and in filing the expropriation proceeding, we are of the view that the private sector (concessionaire) may represent the municipality in observance of Section 3, Rule 3 of the Rules of Court, which provides that:

*"Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, **or a party authorized by law** or these Rules.xxx"*

² *The right of eminent domain shall be exercised by the filing of a verified complaint which shall state with certainty the right and purpose of expropriation, describe the real or personal property sought to be expropriated, and join as defendants all persons owning or claiming to own, or occupying, any part thereof or interest therein, showing, so far as practicable, the separate interest of each defendant. If the title to any property sought to be expropriated appears to be in the Republic of the Philippines, although occupied by private individuals, or if the title is otherwise obscure or doubtful so that the plaintiff cannot with accuracy or certainty specify who are the real owners, averment to that effect shall be made in the complaint.*

Based on the afore-quoted provision, we are of the view that the representative (concessionaire) should be authorized by an ordinance enacted by the sanggunian concerned in filing the expropriation proceeding in behalf of the municipality.

We hope we have sufficiently addressed your concern.

Very truly yours,


SEC. EDUARDO M. AÑO
DILG

CC: Dir. Ariel O. Iglesia, CESO IV
Regional Director
DILG-Region VI

LS/9050
AO

