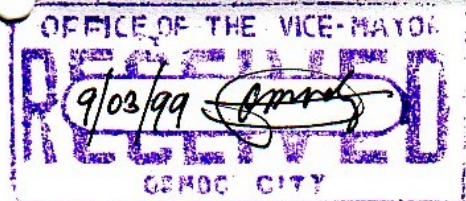


REPUBLIKA NG PILIPINAS
SANGGUNIANG PANLUNGSOD
LUNGSOD NG ORMOC



EXCERPT FROM THE MINUTES OF THE REGULAR SESSION OF THE EIGHTH
SANGGUNIANG PANLUNGSOD NG ORMOC HELD AT THE HONORABLE
PLACIDO ENECIO HALL, SANGGUNIANG PANLUNGSOD
BUILDING ON SEPTEMBER 02, 1999



DATE: 9/3/99 PRESENT:

BY: [Signature]
NGSOD NG ORMOC

Hon. Dennis Y. Capuyan, City Councilor, Acting Presiding Officer
Hon. Jose S. Serafica, City Councilor, Floor Leader
Hon. Nepomuceno P. Aparis I, City Councilor, Assistant Floor Leader
Hon. Mariano Y. Corro, City Councilor
Hon. Sotero M. Pepito, City Councilor
Hon. Alfredo F. Capahi, City Councilor
Hon. Eduardo P. Tan, City Councilor
Hon. Jose C. Alfaro, Jr., City Councilor
Hon. Claudio P. Larrazabal, City Councilor
Hon. Fernando P. Parrilla, Ex-Officio City Councilor,
Chapter President, Liga ng mga Barangay ng Ormoc

ABSENT:

Hon. Celso P. Adolfo, (O.B. - Ilo-ilo City), City Vice Mayor &
Presiding Officer
Hon. Chiqui B. Labagala, (Sick Leave), Ex-Officio City Councilor,
SK Federation President

RESOLUTION NO. 99-150

A RESOLUTION REQUESTING CITY LEGAL OFFICER, ATTY. CLETO L. EVANGELISTA, JR., TO COMMENT ON THE WITHIN POSITION PAPER OF THE CHAIRMAN, COMMITTEE ON WAYS AND MEANS, COUNCILOR MARIANO Y. CORRO, RELATIVE TO THE TAXABILITY OF LEYECO V VIS-A-VIS HIS LEGAL OPINION THAT LEYECO V IS EXEMPTED FROM THE PAYMENT OF REAL PROPERTY TAXES AS ASSESSED BY THE CITY GOVERNMENT OF ORMOC.

WHEREAS, City Legal Officer, Atty. Cleto L. Evangelista, Jr., has rendered an opinion that "LEYECO V is exempted from the payment of real property taxes assessed by the City Government of Ormoc", contained in his 2nd Indorsement dated August 23, 1999, a copy of which is hereto attached marked as ANNEX "A", for ready reference;

WHEREAS, the Chairman, Committee on Ways and Means, Councilor Mariano Y. Corro, is of the view that LEYECO V is not exempt from the payment of the real property tax, as contained in his position paper entitled: "IS LEYECO V EXEMPT FROM THE PAYMENT OF THE REAL PROPERTY TAX?" copy of which is hereto attached marked as ANNEX "B", for ready reference;

WHEREAS, it is to the benefit of all concerned that the opposing views on the matter be resolved, especially that this is a matter of public concern, by requesting City Legal Officer, Atty. Cleto L. Evangelista, Jr., to make his comment on the aforementioned position paper of Councilor Mariano Y. Corro;

WHEREFORE, premises considered, on motion of Councilor Mariano Y. Corro, Chairman, Committee on Ways and Means, severally seconded by Councilors Nepomuceno P. Aparis I, Claudio P. Larrazabal, Alfredo F. Capahi and Jose C. Alfaro, Jr.; be it

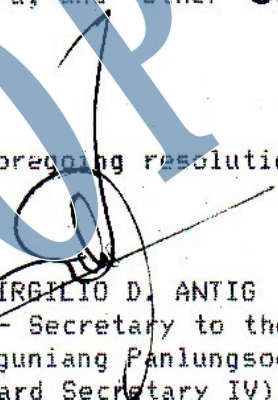
RESOLVED, AS IT IS HEREBY RESOLVED, to pass a resolution REQUESTING CITY LEGAL OFFICER, ATTY. CLETO L. EVANGELISTA, JR., TO COMMENT ON THE WITHIN POSITION PAPER OF THE CHAIRMAN, COMMITTEE ON WAYS AND MEANS, COUNCILOR MARIANO Y. CORRO, RELATIVE TO THE TAXABILITY OF LEYECO V VIS-A-VIS HIS LEGAL OPINION THAT LEYECO V IS EXEMPTED FROM THE PAYMENT OF REAL PROPERTY TAXES AS ASSESSED BY THE CITY GOVERNMENT OF ORMOC;

ADOPTED, September 2, 1999.


RESOLVED, FURTHER, to furnish copies of this resolution to - Honorable City Mayor, Eufrocino M. Codilla, Sr.; City Legal Officer, Atty. Cleto L. Evangelista, Jr.; City Administrator, Vicente V. Redoña; In-Charge of Office - City Treasurer, Salud Rivera, and other Offices concerned.

CARRIED UNANIMOUSLY.

I HEREBY CERTIFY to the correctness of the foregoing resolution.

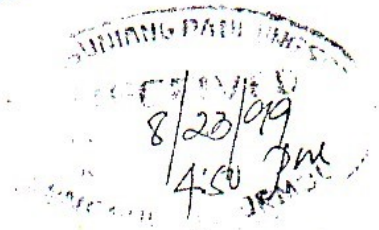

VIRGILIO D. ANTIG
SIC - Secretary to the
Sangguniang Panlungsod
(Board Secretary IV)

ATTESTED:


DENNIS Y. CAPUYAN
City Councilor,
Acting Presiding Officer

Republic of the Philippines
OFFICE OF THE CITY LEGAL OFFICER
Ormoc City

2nd Indorsement
August 23, 1999



Respectfully returned to In Charge of Office- City Treasurer, Salud Rivera, her 1st Indorsement dated July 27, 1999 relative to the real property tax liability of LEYECO V.

Sec. 193 of the Local Government Code provides:

“ Unless otherwise provided in this code, tax exemptions or incentives granted to or presently enjoyed by all persons, whether natural or juridical, including government owned or controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this code.”

While LEYECO V which is created under P.D. 269 apparently is not registered under the Cooperative Development Authority (CDA), Art. 128 of the Cooperative Code of the Philippines (CCP) in its Transitory Provisions provides:

“ All cooperatives registered under Presidential Decree Nos. 175 and 775 and Executive Order No. 898, and all other laws shall be deemed registered with the Cooperative Development Authority . . . Provided further, that cooperatives registered under Presidential Decree No. 269 as amended by Presidential Decree No. 1645, shall be given three (3) years within which to qualify and register with the Authority.”

The above period for electric cooperatives to convert from non-stock to stock cooperatives has been extended to May 4, 2000 pursuant to the Joint Memorandum Circular dated October 20, 1997 signed by the Chairman of the Cooperative Development Authority, Jose C. Medina Jr. , and the Chairman of the National Electrification Commission, Francisco C. Viray, and approved by Executive Secretary, Ruben D. Torres.

Moreover, Art. 127 of the CCP on Repeal provides:

“ . . . Provided, further, That nothing in this Code shall be interpreted to mean the amendment or repeal of any provision of Presidential Decree No. 269.”

the exemptions previously granted to, or presently enjoyed by, all persons, whether natural or juridical, were withdrawn upon the affectivity of the code.

Thus, electric cooperatives registered under P.D. No. 269 still enjoy all the benefits and incentives granted under P.D. No. 269 as amended, which include among others tax exemption privileges mentioned in sec. 39 thereof.

Opinion No. 101, S. 1996 of the Department of Justice rendered by then Hon. Secretary of Justice Teofisto T. Guingona is very enlightening:

“Accordingly, NEA-registered cooperatives which shall remain to be registered under P.D. No. 269, as amended, for their failure to register under R.A. No. 6938, shall continue to enjoy their tax and duty exemption privileges under Section 39 of P.D. No. 269, as amended, and as restored by FIRB Resolution No. 24-87.

It goes without saying that since such electric cooperatives are not registered cooperative under R.A. No. 6938, “ they shall not be entitled to the other benefits granted to CDA-registered electric cooperatives under R.A. No. 6938.”

Considering the foregoing, LEYECO V is exempted from the payment of real property taxes assessed by the City Government of Ormoc.

CLETO L. EVANGELISTA, JR.
City Legal Officer

natural or juridical, were withdrawn upon the affectivity of the code.

IS LEYECO V EXEMPT FROM THE PAYMENT OF THE REAL PROPERTY TAX?

LEYECO V is an electric cooperative created under the provisions of PD 269, and under the law of its creation, specifically section 39 thereof, it is exempt from the payment of the real property tax.

It is not registered under the Cooperative Development Authority, although it was given three (3) years within which to qualify and register with the Authority under Article 128 of the Cooperative Code of the Philippines (RA # 6938). Joint memorandum circular dated October 20, 1997 signed by the Chairman of the Cooperative Development Authority, Jose C. Modina, Jr., and the Chairman of the National Electrification Commission, Francisco C. Viray, and approved by the Executive Secretary, Ruben D. Torres, further extended the period for electric cooperative to convert from non-stock to stock cooperative to May 4, 2000.

The pertinent provisions of the Local Government Code of 1991 (RA 7160), on tax exemptions are-

"Sec. 193. Withdrawal of Tax Exemption Privilege-

Unless otherwise provided in this code, tax exemptions or incentives granted to, or presently enjoyed by, all persons, whether natural or juridical, except local water district, COOPERATIVES DULY REGISTERED under R.A. 6938, non-stock and non-profit hospitals and educational institutions, are HEREBY WITHDRAWN upon the affectivity of this Code."

"Sec. 234. Exemption from Real Property Tax - The following are exempted from the payment of the real property tax:

(a) XXX

(D) All real property owned by Duly Registered Cooperative as provided for under RA 6938;

(e) XXX

Except as provided herein, ANY EXEMPTION FROM PAYMENT OF THE REAL PROPERTY TAX PREVIOUSLY GRANTED TO, OR PRESENTLY ENJOYED BY, all persons, whether natural or juridical, including all government owned or controlled corporations are HEREBY WITHDRAWN UPON THE EFFECTIVEVITY of this code."

First, can LEYECO V claim exemption from the payment of the real property by invoking the provisions of PD 269, the law of its creation?

It cannot. As clearly provided for in the aforecited provisions of the L.G.C., the exemptions previously granted to, or presently enjoyed by, all persons, whether natural or juridical, were withdrawn upon the affectivity of the code.

On this score, our Supreme Court in the case of Mactan Cebu International Airport Authority, versus Hon. Ferdinand J. Marcos, Et Al, G.R. No. 120082, promulgated on September 11, 1996, (The Lawyer's Review, Vol. X, No. 10, pages 29 to 35) has this say:

"As to tax exemptions or incentives granted to or presently enjoyed by natural or juridical persons, including government – owned or controlled corporations, Section 193 of the LGC prescribes the general rule, viz., they are withdrawn upon the affectivity of the LGC, except those granted to the local water district, cooperatives duly registered under RA No. 6938, non stock and non-profit hospitals and educational institution, and unless otherwise provided in the LGC. The latter provision could refer to Section 234, which enumerated the properties exempt from real property tax. But the last paragraph of Section 234 further qualifies the retention of the exemption in so far as the real property taxes are concerned by limiting the retention only to those enumerated therein; all others not included in the enumeration lost the privilege upon the affectivity of the LGC. Moreover, even as the real property is owned by the Republic of the Philippines, or any of its political subdivision covered by item (a) of the first paragraph of Section 234, the exemption is withdrawn if the beneficial use of such property has been granted to a taxable person for consideration or otherwise."

By way of information, the petitioner in the aforesaid case, Mactan Cebu International Airport Authority was created by Republic Act 6958, and Section 14, thereof provides: "The authority shall be exempt from real taxes imposed by the National Government or any of its political subdivisions, agencies and instrumentalities. XXX"

Moreover, Section 534, par. (c) of the LGC, provides:

"All general and special laws, acts, City charters, decrees, executive orders, proclamation and administrative regulations, or part thereof which are inconsistent with any of the provisions of this code are hereby REPEALED OR MODIFIED ACCORDINGLY."

Opinion no. 41, S. 1996, dated April 23, 1996 of the Department of Justice, rendered by the Hon. Secretary Teofisto T. Guingona, to the effect that failure of such ECs to apply and / or qualify for permanent registration with the CDA will not mean cancellation or forfeiture of their registration with the NEA. They shall remain as NEA-registered ECs entitled to all the benefits and incentives granted under PD No. 269, as amended, but of course not to the benefits and incentives granted under RA No. 6938 " is accordingly modified by the decision of the Supreme Court in the aforementioned Mactan Cebu International Airport Authority, insofar as enjoyment of exemptions or incentives are concerned as they are already withdrawn upon the affectivity of the LGC.

Secondly, Can LEYECO V invoke the provisions of Section 234, par. (d) the LGC, exempting from the real property tax of all property owned by duly registered cooperatives as provided for under RA 6938?

The fact that LEYECO V is not a "duly registered cooperative as provided in RA 6938" disqualifies LEYECO V from availing the benefits of said provisions of the LGC, notwithstanding the fact that ^{the} period for electric cooperatives to convert from non-stock to stock cooperative has been extended to May 4, 2000. Besides, as pointed out by the Secretary of Justice, the Honorable Teofisto G. Guingona in his opinion no. 41, S. 1996: "Based on these premises, it is believed that the registration with the CDA under RA no. 6938 is optional insofar as ECs are concerned. Hence, some ECs may opt not to register with the CDA, or if they do choose to register with CDA, may fail to qualify for registration under RA No. 6938. In either case, the ECs shall not lose their status as registered ECs under PD 269. However, they shall not be entitled to the other privileges granted to CDA-registered electric cooperatives under R. A. no. 6938."

Anent the Cotabato Electric Cooperative case, suffice it to say that the Honorable Judge who rendered the decision that COTELCO "is exempted to pay real property tax pursuant to Section 39 of PD 269" has not considered the decision of the Supreme Court in the Mactan Cebu International Airport Authority case.

Finally, in the resolution of the issue - whether or not LEYECO V is exempt from the payment of the real property tax, the following points are worthy of considerations, to wit:

"The law frowns against exemption from taxation and statutes granting tax exemptions are thus construed strictissimi juris against the taxpayers and liberally in favor of the taxing authority. A claim of exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken. Elsewise stated, taxation is the rule, exemption therefrom is the exception."

"The power to tax is the most effective instrument to raise needed revenues to finance and support myriad activities of the local government units for the delivery of the basic services essentials to the promotion of the general welfare and the enhancement of the peace, progress, and the prosperity of the people. It may also be relevant to recall that the original reasons for the withdrawal of tax exemption privilege granted to government-owned and controlled corporations and all other units of government were that such privileges resulted in serious tax base erosion and distortion in the tax treatment of similarly situated enterprises, and there was a need for this entities ^{to share in the requirements of the development process or to finance,} by paying the taxes and other charges due from them." (Refer to ~~affore~~ cited case of Mactan Cebu International Airport Authority)

In view of all the foregoing premises, it is respectfully submitted that LEYECO V is not exempt from the payment of the real property tax.

MARIANO V. CORRO
CHAIRMAN, COMMITTEE ON WAYS & MEANS