



REPUBLIC OF THE PHILIPPINES  
**DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT**

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July 20, 2011

FREDDIE C. ASUNCION  
Secretary to the Sangguniang Bayan  
Municipality of San Gabriel  
La Union



Dear Mr. Asuncion;

This refers to your letter requesting for legal opinion on the queries, which we hereunder quoted, viz:

1. Whether or not the Sangguniang Bayan or any local legislature has the authority to penalize a violation already sanctioned and penalized by a national law and impose a penalty varies from that indicated therein.
2. Whether or not such act of a local legislature constitute indirect amendment of the National Law?

Before dwelling on the issues, may we first invite your attention to the provision of the Local Government Code of 1991, to wit:

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**Section 16. General Welfare.** - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

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Dwelling on the issues, this Office opines that Sangguniang Bayan or any local legislature has the authority to penalize a violation already sanctioned and penalized by a national law and impose a penalty varies from that indicated therein. This authority is imbued by virtue of the General Welfare Clause given by the Local Government Code.

The **GENERAL WELFARE CLAUSE** is the statutory grant of police power to local government units. It has two branches: 1. The *general legislative power* – authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon by the municipal council by law: and 2. The *police power proper*: authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort and convenience of the municipality and its inhabitants, and for the protection of their property. (*Laws on Public Corporation, Atty. Hilario Justino F. Morales, November 2007*)

In case of violation, it's up to the prosecutor to determine which law to apply. Whether to apply the National Law or the Ordinance by the Municipality, provided that the limitation imposed by the prohibition on double jeopardy under the Constitution is not violated in the prosecution of the violators.

The act of a local legislature does not constitute indirect amendment of the National Law because the National law deals with violation of a statute, while the other deals with violation of ordinance. One does not necessarily amend the other.

We hope that we have addressed your concern accordingly.

Very truly yours,

  
**MANUEL V. BIASON, CESO III**  
Regional Director