

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Department of Justice

OPINION NO. 136, S. 1994

September 26, 1994

Secretary Angel C. Alcala
Department of Environment and
Natural Resources
Visayas Avenue, Diliman
Quezon City

S i r :

This refers to your request for "clarification or enlightenment" on some points relative to this Department's Opinion No. 90, current series, wherein it was ruled that for the Province of Palawan, it is the "Strategic Environmental Plan [SEP] for Palawan Act" (R.A. No. 7611), which primarily governs, and not the general provisions of the "National Integrated Protected Areas System [NIPAS] Act of 1992" (R.A. No. 7586).

You specifically wish to be clarified on the following points:

1. On the matter of the regulatory functions of the DENR, whether "the SEP law has taken out from the DENR the authority or power to regulate the utilization of natural resources in Palawan such as the issuance of cutting permits, forest management agreements, environmental clearance, etc.", which you feel "was not the intendment of the SEP law" as may be gleaned from the Senate deliberations on House Bill No. 19576 which later became R.A. No. 7611.

2. On program implementation, whether the Palawan Council for Sustainable Development (PCSD) has been granted authority under the SEP law "to implement programs in Palawan which heretofore has been mandated by law to the DENR such as reforestation projects, integrated social forestry projects, community forest management, etc.", and if so, whether the DENR can "relinquish its obligations" under existing foreign-assisted projects in favor of the PCSD "without violating our [its] international commitments".

3. On the precise nature of PCSD's function, whether PCSD is "a planning, policy-making or coordinating body" or was it intended to exercise executive functions such as the implementation of



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projects and programs relating to the SEP", and if it was intended to exercise executive functions, whether the membership of Members of Congress therein may not be considered unconstitutional.

We have carefully studied the provisions of the SEP law and the Congressional debates prior to its enactment. To our mind, the PCSD is intended to function both as a planning, policy-making and coordinating body as well as an implementing body. This is clear from the enumeration of the powers and functions of the PCSD under Section 19 of the SEP law which pertinently provides:

"SEC. 19. Powers and Functions.- In order to successfully implement the provisions of this Act, the Council is hereby vested with the following powers and functions:

(1) Formulate plans and policies as may be necessary to carry out the provisions of this Act;

(2) Coordinate with the local governments to ensure that the latter's plans, programs and projects are aligned with the plans, programs and policies of the SEP;

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(9) Enforce the provisions of this Act and other existing laws, rules and regulations similar to or complementary with this Act;

(10) Perform related functions which shall promote the development, conservation, management, protection, and utilization of the natural resources of Palawan; and

(11) Perform such other powers and functions as may be necessary in carrying out its functions, powers, and the provisions of "this Act". (Emphasis supplied.)

This is also clear from the definition of functions under Section 20 of the Palawan Council for Sustainable Development Staff, which is tasked to

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"serve as the professional staff of the Council and to provide the machinery to coordinate the policy and functions, implement programs, and organize such services as may be required by the Council in the exercise of its functions".

The SEP law does not clearly delineate the functions of the government agencies involved in the management, conservation and utilization of natural resources in Palawan. It does not, in particular, provide in express terms for the situations contemplated in your abovestated points of clarification. The ambiguity of the SEP law in this respect was in fact admitted during the Congressional deliberations, and we quote"

"Senator Maceda. x x x x x x
And if I may add, if I will read the provision as it is of the present bill, is my impression correct that the Palawan Council for Sustainable Development is the one which is going to decide, whether timber permits henceforth will be granted in certain areas or not, subject of course to their policies and ecological and other considerations? But, is it not correct that, in effect, what we are transferring also from the DENR to the Palawan Council for Sustainable Development is the issuance, under whatever conditions they want, or the authority to issue permits which at the present time is a power of the Secretary of Environment and Natural Resources?

"Senator Alvarez. Mr. President, I have come across this gray zone of yet undefined specific power. I think, with the presence of the Undersecretary of Environment and Natural Resources in the Council, there need not be an ultimate authority to remove the function of granting licenses, withdrawing licenses from the Department of Environment and Natural Resources. It is possible that within the planning system, it can still be worked out to the exercise of this grant of licenses which will still be lodged with the Department of Environment and Natural Resources, precisely, because it has the technical manpower and the field force to determine how this

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specific area of Natural Resources Management which means, forestry management problem, can be handled.

In relation to the functions of the Council for defining the ecological zoning, this is going to be a linkage of two government agencies. They have to work out on cases in the specific; but ultimately, under the law, there is no mandate here that does away with this National Authority, because the function of the Palawan Council for Sustainable Development is like, that of a local government body, and it acknowledges the authority of the line agencies by integrating into the Council the participation of line officers, like the NEDA, the Undersecretary for Environment and Natural Resources.

Senator Maceda. May I call the attention of the Gentleman to Section 12, Chapter IV on page 9, in connection with Section 16, Chapter VI on page 11, and I read: x x x x x x x x x x

The way I read these two sections, it is clear in my mind that the authority to issue timber licenses, the authority to issue fishing licenses, and the authority to issue a license to put up a seaweed farm on one of those islands there will now belong to the Palawan Council for Sustainable Development, because this responsibility and function is being taken out, in effect, from the DENR, and as far as coastal resources, fishing and the like, even from the Department of Agriculture and Food are concerned.

Senator Alvarez. Mr. President, the law is wise in the sense that it does not categorically provide who should exercise the final authority in this particular area. We can interpret this law to mean that the Council will provide management guidelines for environmental protection, specifically for Palawan. But with the presence of the Undersecretary these guidelines will, of course, have to fall

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back on the authority of the Department of Environment and Natural Resources in pursuing the program for Palawan. We have not provided in this law any categorical statement that, now, it will be its final authority -- and it does not presume to have that final authority -- to grant or withdraw licenses for logging concessions, because the science of forest management, if I may so, is still in the field of responsibility of the Department of Environment and Natural Resources where we have the data, the information, and the brain power to understand this management. So, I can envision a situation where the Undersecretary is to participate in the planning, and then the Secretary will say: "But this is what the Department of Environment and Natural Resources feels about this." And, there is no harm in these two bodies interacting with each other.

If I will construe this very liberally, I want to see this as an authority to set directions for environment and for the national body, the DENR, to yield to some areas of this direction. In specific cases in Palawan, the specific policy council for sustainable development may be able to add to its own wealth of knowledge, science, and information on forest management. It we put these two provisions together, Mr. President, there is still a way for administrative flexibility and interplay of decision making between the DENR and the PCSD." (Senate deliberation, March 23, 1990, emphasis supplied.)

While the SEP law may not have been very explicit on the matter of jurisdiction between the PCSD and the DENR, one thing, however, is quite clear from the abovequoted discussions on the floor of the Senate - that the law intends the two agencies (DENR and PCSD) to work closely together and evolve a workable arrangement taking into consideration the technical expertise of the DENR and the policy directions of the PCSD.

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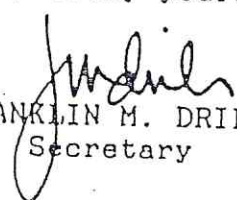
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However, we may add that whatever working relationship may be agreed upon by these two agencies should also take into account, as limitations thereon, (1) the provisions of Section 7 of the SEP law which mandates "the imposition of a total commercial logging ban in all areas of maximum protection and in such other restricted use zones as the [PCSD] ... may provide: x x x"; and (2) the conditions attached to existing agreements for foreign-assisted projects vis-a-vis the non-impairment of contracts clause in the Constitution.

We are not making any comment on the issue raised regarding the membership of the Congressional representatives in the PCSD. As we have stated, under the principle of separation of powers, the matter does not pertain to our jurisdiction.

We hope that with the foregoing, we have been able to give you the desired "clarification or enlightenment" on the perceived implications of the SEP law.

Very truly yours,


FRANKLIN M. DRILON
Secretary


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