

Powers of the Municipality in Mexico for the Use of Environmental Economic Instruments

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Abstract Are many the Municipal powers on environmental issues in Mexico the legislation environmental is based on the principle of concurrency, this principle between the three levels of government is basic for the distribution of environmental authority in the country. In terms of economic instruments in environmental matters which distinguishes basically three kinds: Fiscal instruments, Financial instruments, Market instruments, the municipality can develop and implement economic instruments of a fiscal nature, according to the tax legislation, are within its competence: Prevention and Control of Water Pollution, Prevention and Control of Atmospheric Pollution, Prevention and Control of Noise Pollution, Visual, Vibration, Thermal Energy Luminic and Prejudicial Odors, Natural Heritage Protection of Municipality and Development of Sustainable Forest.

Keywords Principle of concurrency, Environmental, Economic instruments, Municipal powers

1. Introduction

Are many the Municipal powers on environmental issues in Mexico, according to the provisions of the General Law of Ecological Equilibrium and Environmental Protection (hereinafter LGEEPA)¹ and on the different sectorial rules that has been adopted on environmental issues across the country since that was included in 1988 the foundation to legislate on environmental based on the principle of concurrency.

This principle of concurrency between the three levels of government (federal, state and municipal) is the basic principle for the distribution of environmental authority in the country², according to Article 73, Section XXIX. G of the Mexican Constitution.³

Furthermore, Article 115, section II of this same Act, on its part and now in relation to the municipal authority, provides:

"The municipalities have the authority to approve, in accordance with local laws which should issue by the

regulations, circulars and administrative rulings of general compliance within their respective jurisdictions, to organize municipal public administration, governing matters, procedures, functions and public services within its jurisdiction and ensure community participation and neighborhood".

With these constitutional bases, the LGEEPA provides in Article 1, Section VIII, one of the objectives of the law is to define:

"VIII. The exercise of the powers in environmental matters corresponds to the Federation, States, Federal District and municipalities, under the principle of concurrency provided for in Article 73 paragraph XXIX G of the Constitution."

Further on, Article 4 added:

"The Federation, States, Federal District and municipalities will exercise their powers in the preservation and restoration of ecological balance and environmental protection in accordance to the distribution of competences provided in this Law and other legal provisions."

Under these legal considerations, some municipalities have a regulation for environmental protection but most are medium or large urban municipalities⁴.

In terms of economic instruments in environmental matters, these are defined in Article 22 of LGEEPA, which distinguishes between:

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legislatures of the states, police and government, the

¹ *Official Journal of the Federation* of January 28, 1988, Mexico.

² *Cfr.* González Márquez, José Juan y Montelongo Buenavista, Ivett, *Introducción al Derecho Ambiental Mexicano*, Universidad Autónoma Metropolitana, México, 1999, p. 27 *et seq.*

³ Political Constitution of the Mexican United States, *Official Journal of the Federation* of February 5, 1917.

⁴ *Cfr.* García López, Tania, "Facultades en materia ambiental del municipio mexicano", *Temas Selectos de Gestión y Políticas Públicas municipales en materia ambiental*, Editorial Ubijus, México, 2013, p. 15 *et seq.*

- Fiscal instruments
- Financial instruments
- Market instruments

The use of economics instruments for environmental purposes has been widely recommended since in most cases is achieved through them to internalize environmental externalities.⁵

Economic instruments help the price of activities and products polluting are reflected in the good and services, such pollution is not supported by all the society, but by the polluter⁶, according to polluter pays principle⁷.

According to OECD, economic instruments influence the costs and benefits of the various options you can choose between economic operators, encouraging them to direct or modify its actions in a favorable direction for the environment⁸.

2. Tax Instruments Available to the Municipality

The municipality can develop and implement economic instruments of a fiscal nature, according to the tax legislation, within their competence. These fiscal instruments: taxes and tax incentives should be directed to the achievement of the objectives of the municipal environmental policy, which does not mean, in the specific case of taxes, that these be affected to cover environmental costs, because as noted in Article 1 of the Federal Tax Code⁹ "may be used only by law a contribution to a specific public expenditure."

The question of the affectation of tax revenues from liens in environmental matters, to expenditure for the protection, conservation and environmental restoration has been a constant concern every time that the creation of such instruments is proposed, however, as we noted, this does not have necessarily be so. The environmental liens have the objective of encourage or discourage behaviors in relation to the environment and use of natural resources and that purpose is not subject to the revenue generated by the tax is destined or not to environmental purposes¹⁰.

LGEEPA in her little fortunate drafting brings this idea by stating:

"Economic instruments of fiscal nature are tax incentives to encourage the fulfillment of the environmental policy objectives. In any case, these instruments will be established with tax collection purposes only. "

Emphasis is placed thus on the environmental purpose of

these instruments, but creates confusion the exclusive reference to "fiscal stimulus", which seems to allude to the tax incentives, these are never going to have a revenue-raising purpose, because only the taxes may have or not that purpose.

Ultimately, when the LGEEPA refers to the economic instruments of a fiscal nature only explains the concerning to the fiscal stimulus, fiscal aid, putting aside regard to liens and yet emphasizes the environmental purpose and not just revenue collection of these, confusing with its drafting about some and other fiscal instruments.

Municipalities receive revenue from taxes and rights.

About the differences between them, the Federal Tax Code¹¹ provides:

"Article 2: - The contributions are classified into taxes, social security contributions, and contributions for improvements and rights, which are defined as follows:

I. Taxes are the contributions established in law to be paid by individuals and corporations that are in the legal position or indeed expected for the same and which are different from those indicated in sections II, III and IV of this Article.

[...]

II. Rights are the contributions established in law for the use or enjoyment of the public property of the nation, as well as to receive services provided by State in its public law functions, except when this services supply by decentralized agencies or organisms, when in this latter case concern about considerations that are not provided in Federal Law Rights. Rights are also contributions by decentralized public agencies by providing exclusive services of the State ".

The most common taxes at the municipal level are:

- Property tax;
- Tax on transfer of ownership of real estate;
- Tax on fractionation;
- Tax for the maintenance and preservation of public roads.
- Tax for street lighting.
- Tax for the promotion of tourism, educational, athletic ...

These taxes, even don't say connection with the environmental question may come to include it, in fact, there are already some proposals to consider tax breaks through taxes such as property taxes, by performing desirable behaviors towards the environment (reforestation, green terraces ...)

As for the fees charged at the municipal level are usually the following:

- Right for potable water and drainage.
- Service Law collection, transportation and disposal of solid waste.

According to legal and fiscal doctrine and the tax legislation, rights are to be understood by "the consideration

⁵ Cfr., Hernández Berasaluce, Luis, *Economía y Mercado del Medio Ambiente*, Ed. Mundi-Prensa, Madrid, 1997, p. 25.

⁶ García López, Tania, *Quien contamina paga*, Ed. Porrúa, México, 1999.

⁷ OECD, Paris, 14th November 1974, c(74) 223, 14 ILM, 234, 1975.

⁸ OECD, *Taxation and the Environment, Complementary Policies*, France, 1993, p. 17 et seq.

⁹ Federal Tax Code, *Official Journal of the Federation* of December 31, 1981.

¹⁰ Cfr., Pearce, David W., *Economía Ambiental*, Fondo de Cultura Económica, México, 1985, p. 75 et. seq.

¹¹ Federal Tax Code, *op. cit.*

to be paid to the treasury of the State, as the price of administrative services provided by the powers of the same and their dependencies to certain people that request ", in a way that for the determination of quota contributions for concept of rights must be taken into account the cost to the State is performing the service and that referral fees are fixed and equal for all receiving similar services¹².

These rights, which relate to services provided by the municipality, include many more environmental considerations which have now.

Thus, not only is possible to create new taxes in environmental matters at the municipal level but also is feasible to incorporate environmental aspects into existing ones.

3. Financial Instruments to Municipality Service

It is also possible to design, develop and implement in the municipality economic instruments of a financial nature that, according to applicable law, are under municipal jurisdiction. These financial instruments: funds, trusts, credits, bonds and liability insurance, should be directed to the preservation, protection, restoration and sustainable use of natural resources and the environment as well as the financing of programs, projects, studies, scientific research, technological development and innovation for the preservation of ecological balance and environmental protection.

In regard to the requirement of civil liability insurance or bonds in the municipalities can be made as long as the area in which it is imposed be under municipal jurisdiction. A concrete example would be if for the award of the service of solid waste management to a private company it was demanded to these guarantees.

As for the funds and trusts, they can develop at all levels: federal, state and municipal as are financial mechanisms that "facilitate the implementation of policies and actions to protect the environment"¹³ and that can be created as private organizations public or mixed, integrating "many groups of stakeholders in their activities such as: environmental authorities, international cooperation, donors, implementers final and society in general"¹⁴.

4. Market Instruments for the Municipality

Regarding market economic instruments: grants, authorizations, licenses and permits that correspond to preset volumes of pollutants emissions in the air, water or soil, or that set limits on use of natural resources, construction or protected areas or areas whose preservation and protection is

considered relevant from the environmental point of view, these should be addressed also to the preservation, protection, restoration and sustainable use of natural resources and the environment as well as the financing of programs , projects, studies, scientific research, technological development and innovation for the preservation of the ecological balance and environmental protection.

5. Areas of Action at the Municipal Level in Environmental Matters

Are many, as we mentioned, the municipal competences in environmental and could be categorized as follows¹⁵:

- Specific legislative powers;
- Powers to develop their own environmental policies;
- Powers of participation;
- Powers for delegation;
- Implementation or management Powers;
- Monitoring and control Powers;

Moreover, the municipal jurisdiction and its scope will depend on the particular environmental sector. The areas of municipal action in environmental matters are:

5.1. Prevention and Control of Water Pollution

In terms of prevention and control of water pollution, the powers of the municipality focus on prevention and control of wastewater discharges to receiving bodies of municipal competition from commercial establishments and services and where applicable request and authorize to those who generate wastewater discharges to recipient bodies the fulfilling the maximum permissible limits established by the Mexican official norms and standards state officials.

There must also be at the municipal level a utility of drinking water, drainage and sewerage system¹⁶, which should be adjusted to the provisions of the National Water Act, regards to the operation, use or utilization of the waters has assigned.

Article 115 of the Constitution provides that, within the functions and public services which are responsible for municipalities are those relating to drinking water, drainage, sewage treatment and disposal of wastewater.

The charging of fees on water for the concept of water and sewer service is one of fiscal instruments in environmental matters oldest in the country.

The Supreme Court of Justice of the Nation noted, in relation to these municipal rights:

"... There are various rights established generally by local legislatures, which taxable fact is the municipal water supply service, given in terms of the provisions of

¹² Ninth Period, Instance: Full, Jurisprudence, Source: Appendix 2000, Volume I, Const., Supreme Court Jurisprudence, Thesis: 174, Page: 212

¹³ Garcia Lopez, Tania, *Derecho ambiental mexicano. Introducción y principios*, Editorial Bosch, Barcelona, 2013, p. 126 et seq.

¹⁴ *Idem*.

¹⁵ Cfr. García López, Tania, "Facultades en materia ambiental del municipio mexicano", *Temas Selectos de Gestión y Políticas Públicas municipales en materia ambiental*, op. cit.

¹⁶ Municipalities can provide the service directly or through an agency or parastatal.

Article 115, section III constitutional”¹⁷.

5.2. Prevention and Control of Atmospheric Pollution

The prevention and control of air pollution generated by stationary and mobile sources that are not federal or state order is the responsibility of the municipality.

This power is expressed essentially in the emissions testing of vehicles in accordance with current environmental regulations, the adoption of vehicle inspection programs and the management of vehicular movement of environmental issues

Since 2011¹⁸ the municipality has, along with the states and the federal powers to formulate and implement actions to mitigate and adapt to climate change. The Climate Change Act¹⁹ specified in Article 9 the municipal powers in this area, including:

"Develop, drive and evaluate climate change municipal policy according to national and state policy."

5.3. Prevention and Control of Soil Pollution and Solid Waste

Urban solid wastes are the exclusive responsibility of the municipality, as already mentioned. This competence involves that the municipality should be responsible for collecting and treating municipal solid waste generated in the same; involves the installation in the municipal territory of final disposal sites non-hazardous waste, as well as centers or transfer stations thereof.

According to Article 10 of the General Law for the Prevention and Management of Waste²⁰, corresponds to the municipalities:

"... integral management functions of urban solid waste, which consist of the collection, transportation, treatment and disposal ..."

Municipalities may contract the service of waste management in the municipality, plus can also use economic instruments that fall on their generation.

5.4. Prevention and Control of Noise Pollution, Visual, Vibration, Thermal Energy Luminic and Prejudicial Odors

These types of pollution are municipal jurisdiction as long as they generated by mobile sources that are not federal or state competence, as well as stationary point sources in commercial or service establishments.

It is common to request for activities that can generate these types of pollution, a municipal environmental license, which fixes the conditions of issuance.

5.5. Natural Heritage Protection of Municipality and Development of Sustainable Forest

The municipalities have powers to take action to preserve and restore the natural heritage resources of the municipality, whose care is not reserved to the federation or state government.

The mechanisms that municipality has for these purposes are:

- ecological land management;
- promotion and management of protected natural areas,
- Protection of the quality of the urban and rural landscape;
- Protection of flora and fauna;
- Promotion of sustainable forest development activities;
- Promotion of the formation of public and private organizations for the administration of urban parks and environmental conservation in the population centers.

The administration of parks and public gardens established within the municipal territory is one of the traditional areas of municipal environmental management.

Protected natural areas of municipal jurisdiction, according to the LGEEPA are:

- I. Ecological Preservation Areas of Population Centers;
- II. Municipal Ecological Park, and
- III. Those areas that the municipality established in order to protect its natural heritage.

6. Conclusions

First. The municipality can develop and implement economic instruments of a fiscal nature, according to the tax legislation, are within its competence. These fiscal instruments: taxes and tax incentives should be directed to the achievement of the objectives of the municipal environmental policy, which does not mean, in the specific case of taxes, that these be affected to cover environmental costs.

Second. Not only is possible to create new taxes on environmental issues at the municipal level but also it is feasible to incorporate environmental concerns into existing, for example in the property taxes, by performing desirable behaviors towards the environment (reforestation, green terraces ...)

Third. In regard to the requirement of civil liability insurance or bonding at a given municipality can be as long as the area in which it is imposed under municipal jurisdiction. A concrete example would be if for the award of service solid waste management to a private company it is demanded to these guarantees.

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- Protection of the quality of the urban and rural landscape;
- Protection of flora and fauna;

¹⁷ Judicial Weekly of the Federation and its Gazette, 2000, p. 349.

¹⁸ Article 8 of the LGEEPA, *op. cit.*

¹⁹ Climate Change Law, Official Journal of the Federation of June 6, 2012.

²⁰ General Law for the Prevention and Integral Management of Waste, Official Journal of the Federation of October 8, 2003.

- Promotion of sustainable forest development activities;
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