Legal infrastructure and collaborative governance of university science and technology parks and local government units: The case of the UP – Ayala Land Technohub and the Quezon City Local Government in the Philippines

Prof. Dr. JONATHAN P. SALE
University of the Philippines

Country Presentation: Group 1
“Law may operate to facilitate or constrain collaboration. The term legal infrastructure has been used to refer to a combined system of constitutional, statutory, decisional, and administrative law, taken together with the available institutional enforcement and support mechanisms...Statutes may lower barriers to collaboration, for example, by authorizing public agencies to do anything together that they have power to do apart...Law is an independent variable: it creates incentives, barriers, or obstacles to collaboration.” (Bingham 2011)
Collaborative governance entails information exchange, action or movement harmonization, resource sharing, and capacity enhancement among the partners. Torres and Margolin (2003) cite Himmelman in their continuum on collaboration and other forms of working together (Fig. 1). (Sale 2011, 2012A, 2014) 
“Legal scholars have recognized an evolution away from command-and-control hierarchy to the new governance.”2 (Fig. 2)
Introduction

Fig. 1. Forms of Working Together
Introduction

Fig. 2. Law/Public Policy Continuum.
Source: Sale in this study, based on Bingham (2011).
Public-private partnerships (PPPs) are very popular governance practices, as they enable the private partner to engage in business and have profits while the public partner improves the provision of public services – a seemingly win-win, non-hierarchical approach involving both state and non-state actors, where the private sector has an increasing public role. One example of a delivery mode for PPPs is design – build – operate – finance. PPPs are organizational arrangements with a sector-crossing or sector-blurring nature, and are new modes of governance – governance by partnerships or collaborative governance. (Schuppert 2011, Sale 2014)
The UP – Ayala Land Technohub is a PPP that has helped the University of the Philippines (UP) Diliman Campus generate P351,447,523.20 for twenty-nine (29) proposed renovation projects, many involving academic buildings of the university. The amount is UP Diliman’s share of the earnings generated from properties leased by UP to Ayala Land. (Sale 2014)

Quite recently, however, the local government unit of Quezon City where the UP – Ayala Land Technohub is located, has claimed that the national university owes real property taxes to it because UP leased the science and technology park to private developer Ayala Land, Inc.
This research examines the legal infrastructure and collaborative governance concerning university science and technology parks and local government units in the Philippines by analyzing the case of the UP – Ayala Land Technohub and the Quezon City Local Government. Has the legal infrastructure created incentives, barriers, or obstacles to collaboration?
Legal Infrastructure and collaborative governance

Under the Philippine Constitution, all revenues and assets of non-stock, non-profit educational institutions used actually, directly, and exclusively for educational purposes shall be exempt from taxes and duties. Subject to conditions prescribed by law, all grants, endowments, donations, or contributions used actually, directly, and exclusively for educational purposes shall be exempt from tax. Also, science and technology are essential for national development and progress. The State shall give priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, and services. The Congress may provide for incentives, including tax deductions, to encourage private participation in programs of basic and applied scientific research. The State shall encourage the widest participation of private groups, local governments, and community-based organizations in the generation and utilization of science and technology.
Section 22 of Republic Act 9500, the UP Charter of 2008, provides that the UP Board of Regents may plan, design, approve and/or cause the implementation of land leases provided that such mechanisms and arrangements shall not conflict with the academic mission of the national university. Under the same section, the Board may approve the implementation of joint ventures, and any plan to generate revenues and other sources from land grants and other real properties entrusted to the national university shall be consistent with the academic mission and orientation of the national university, as well as protect it from undue influence and control of commercial interests.
Legal Infrastructure and collaborative governance

Section 25 of the UP Charter also declares that all revenues and assets of the national university used for educational purposes or in support thereof shall be exempt from all taxes and duties. Notably, the Local Government Code also provides that all lands, buildings, and improvements actually, directly, and exclusively used for educational purposes shall be exempt from payment of real property tax.

Thus, the legal infrastructure indicates that education and science and technology are a public good which is the reason for tax exemption or incentive. The legal infrastructure also provides for possibilities of collaboration.
Collaborative Governance of the UP – Ayala Land Technohub

UP is the site of two (2) science and technology parks (Sale 2012B), one of which is the UP – Ayala Land Technohub. A collaboration between industry and the academe, the Technohub is envisioned as an integrated community of science and technology companies building a dynamic learning and entrepreneurial laboratory. The Philippine Economic Zone Authority (PEZA) approved the P1.478 billion expansion of the said science and technology (S&T) park for the construction of additional information technology (IT) buildings. The Technohub follows the build – operate – transfer delivery mode under Philippine law, Republic Act 6957, as amended by Republic Act 7718. (Sale 2014)
As already noted, the UP – Ayala Land Technohub as a PPP has helped the UP Diliman Campus generate P351,447,523.20 for 29 renovation projects, involving academic buildings of the university. (Sale 2014)

The 29 capital outlay renovation projects include those of the following academic units: College of Architecture, College of Arts and Letters, College of Human Kinetics, College of Social Sciences and Philosophy, College of Mass Communication (CMC), College of Social Work and Community Development, College of Science, College of Fine Arts, College of Home Economics (CHE), College of Music, and the Archaeological Studies Program. Also receiving funds for their capital outlay projects are the Housing Office for the renovation of the Hardin ng Rosas; the UP Diliman Police for a satellite police station; the Office of the Campus Architect to expand its office at Coral Building; the University Library for its site development fronting the UP Lagoon and the Academic Oval; and the University Theater for its revitalized air-conditioning and other renovation works.
Seven UP Diliman units will have funds for laboratories and service equipment. These are: CMC, CHE, the Diliman Interactive Learning Center (DILC), the UPD Information Office (UPDIO), the Human Resources Development Office (HRDO), the Diliman Learning Resource Center (DLRC) and the UP Center for Ethnomusicology (UPCE). (P351M now available for UPD use. Accessed at http://www.upd.edu.ph/~updinfo/jul13/articles/P135M_now_available.html)
Claim of the Local Government Unit of Quezon City

The Quezon City Treasurer claimed the UP property became taxable when it started to be used in a proprietary function and not for educational purposes. He added: “At any rate, we’re charging UP because our office thinks that they’re taxable, because the property is now being utilized by a private entity which is also taxable…when UP utilized the property in a proprietary function, they stepped into the (category) of an ordinary taxable entity.” (UP vs QC govt: Row looms over Ayala-TechnoHub land. Accessed at http://newsinfo.inquirer.net/640522/up-vs-qc-govt-row-loomsover-ayala-technohub-land)
Claim of the Local Government Unit of Quezon City

As discussed previously, Republic Act 9500 states that “all revenues and assets of the University of the Philippines used for educational purposes or in support thereof shall be exempt from all taxes and duties.” The petition filed by the national university argues that the said provision “applies to UP’s properties whether used for educational purposes or in support thereof.” (SC stops auction of UP-Ayala Land Technohub. Accessed at http://newsinfo.inquirer.net/641992/sc-stops-auction-of-up-ayala-land-technohub)

The Philippine Supreme Court recently issued a temporary restraining order prohibiting the Office of the City Treasurer, Quezon City from enforcing the Final Notice of Delinquency and from proceeding with the sale of the subject property at a public auction. (SC stops Quezon City from selling UP property in tax row. Accessed at http://www.gmanetwork.com/news/story/381823/economy/finance/sc-stops-quezon-city-from-selling-up-property-in-tax-row)
Claim of the Local Government Unit of Quezon City

Law and Public Policy

Command-and-Control  New governance

Fig. 2. Law/Public Policy Continuum.
Source: Sale in this study, based on Bingham (2011).
“Public law is a tool for institutional design; it needs to provide a framework that authorizes collaboration, facilitates broader and more effective use, and preserves accountability to the rule of law and transparency in government.” The legal infrastructure has created incentives to collaboration. The Philippine Constitution recognizes the significance of education and science and technology and provides tax exemption and incentives. Republic Act 9500 (UP Charter) also contributes to collaborative governance as it has enabled the national university to enter into a PPP with the Ayala Land, Inc. and establish the UP-Ayala Land Technohub. As an outcome, it enabled the national university to generate funds from the lease amounting to P351,447,523.20, which is being used for educational purposes or in support thereof.
However, the interpretation of the Local Government Code (Republic Act 7160) is seemingly creating some barriers or obstacles to this collaboration. Citing Republic Act 7160, the Local Government Unit of Quezon City has claimed that the national university owes real property taxes to it and even went to the extent of having the property slated for auction because of its interpretation that the property has been used for proprietary, not educational, purposes. In this sense, the law operates to both facilitate and constrain collaboration because of how it is interpreted.

From the perspective of the national university, these tend to indicate that risk management is needed. Schuppert, citing Budäus and Grüb, proposes a transparency report as a governance instrument (Fig. 3). (Sale 2014)
The risk, organizational, performance, and resource reports about the PPP should be able to depict the nature of the relationship and its outcomes. Ideally, the reports should disclose that funds generated are being used by the national university for educational purposes or in support thereof, and that science and technology, which is also a public good under the Philippine constitution, is being enhanced via the PPP. Overall, the transparency report should demonstrate that the PPP is consistent with the academic mission and orientation of the national university. As a governance instrument, the transparency report should help protect the national university from undue influence and control of commercial interests as required in its charter. In particular, the risk report ought to help reveal legal and other risks, if any.
Conclusion

Fig. 3. Elements of transparency report
References

- 1987 Constitution of the Republic of the Philippines
- Republic 7160.
- Republic Act 6957, as amended by Republic Act 7718.
- Republic Act 9500.


References


